



INDIA: TAINTING THE UN'S BLUE HELMETS

ASIAN CENTRE FOR HUMAN RIGHTS

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Asian Centre For Human Rights

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LIST OF ABBREVIATIONS

ACHR	Asian Centre for Human Rights
AR	Assam Rifles
AEC	Army Education Corps
AMC	Army Medical Corps
AMS	Assessment for Mission Service
BSF	Border Security Force
CDT	Conduct and Disciplinary Team
CIVPOL	Civilian Police
CoAS	Chief of Army Staff
CoI	Court of Inquiry
Congo	Republic of Congo
CoS	Chief of Staff
CPFs	Central Police Forces
CRPF	Central Reserve Police Force
CUNPK	Centre for UN Peacekeeping
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of Congo
EME	Electronics & Mechanical Engineers
FDLR	Forces Démocratiques de Libération du Rwanda
FPU	Formed Police Unit
GOC	General Officer Commander
IAPTC	International Association of
IHQ	Integrated Headquarters
INDBATT	Indian Military Contingent/Battalion
INGO	International Nongovernmental Organization
IPS	Indian Police Service

ITBP	Indo-Tibetan Border Police
JCO	Junior Commissioned Officer
J & K	Jammu and Kashmir
MEA	Ministry of External Affairs
MHA	Ministry of Home Affairs
MoD	Ministry of Defence
MoFA	Ministry of Foreign Affairs
MoU	Memorandum of Understanding
MONUC	UN Organization Mission in the Democratic Republic of Congo
MPV	Multipurpose Vehicles
MS	Mission Services
NDA	National Defence Academy
NGO	Nongovernmental Organization
NSG	National Security Guards
OHCHR	Office of United Nations High Commissioner for Human Rights
OIOS	UN's Office of Internal Oversight Services
ONUC	Opération des Nations Unies au Congo
PBOR	Personnel Below Officer Rank
PET	Physical Efficiency Test
PKO	Peacekeeping Operations
PR	Permanent Representative
PST	Physical Standards Test
PTC	Peacekeeping Training Centres
RMP	Recruitable Male Population
RTI	Right to Information
SAT	Selection Assistance Team
SAAT	UN Selection Assistance and Assessment Team
SC	Supreme Court

SPAT	UN Special Police Assessment Teams
SPS	State Police Service
SSB	Sashastra Seema Bal
SSC	Staff Selection Commission
SVPNPA	Sardar Vallabhbhai Patel National Police Academy
UN	United Nations
UNSAS	UN Standby Arrangement System
UPSC	Union Public Service Commission

Introduction: Tainted Peacekeeping

India is one of the largest contributors to UN peacekeeping operations. India has supported some 43 peacekeeping operations since the 1950s. It is currently the third largest troop contributor. Over 163,000 Indian personnel have served the UN in the last 60 years.¹ More Indian soldiers have lost their lives in the defence of UN's peace than any other nation: 154 Indian soldiers have died serving the UN²

Yet, India's record with the UN is being increasingly tarnished by repeated reports of violations of the *Code of Personal Conduct for Blue Helmets*, particularly, sexual abuse and exploitation by the Indian peacekeepers. This report makes very clear that if nothing is done to address the causes of these crimes; there will be further abuses, damage to UN Peacekeeping operations, India's reputation, and further suffering of many victims. This report investigates the cases, the causes and proposes domestic reform to prevent further abuse.

The allegations of abuse are extremely serious. An investigation by the UN Office of Internal Oversight Services (OIOS) examined allegations of sexual exploitation and abuse by the peacekeepers in the UN Mission in the Democratic Republic of the Congo (MONUC). Though the OIOS report of 5 January 2005 did not identify the country of the peacekeepers, the OIOS made eight recommendations including to the MONUC Force Commander and the Contingent commanders being instructed to ensure discipline over the personnel under their command.³ Indian troops were already posted with the MUNOC and therefore, the Contingent commanders were aware of the recommendations of the OIOS.

This OIOS report appears to have made no impact. In May 2008, following further complaints, the OIOS began a second investigation this time relating to allegations of sexual abuse and exploitation, this time specifically by Indian Peacekeeping contingent. The investigation revealed evidence suggesting Indian contingent's involvement in sexual exploitation and abuse.⁴

Three Army officers - a Lieutenant Colonel and two Majors were arrested by the South African police in Pretoria in March 2008 on charges of rape while posted with the North Kivu brigade of the Mission.⁵ The UN pressed for appropriate action and India's Defence Minister A.K. Antony promised a thorough and time-bound probe.⁶

1. See Dipankar Banerjee, "Contributor Profile: India," Institute of Peace and Conflict Studies, New Delhi, 27 January 2013, available at: http://www.ipinst.org/~ipinst/images/pdfs/india_banerjee130201.pdf, last accessed on 13 August 2013.

2. Out of 3,135 peacekeepers killed during missions, India has lost 154, followed by Nigeria with 139, Pakistan with 133, Ghana with 131, Canada with 121 and Bangladesh with 113. See UN Peacekeeping, Fatalities, Nationality and Mission up to 31 July 2013, available at: http://www.un.org/en/peacekeeping/fatalities/documents/stats_2.pdf, last accessed on 12 August 2013.

3. Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, UN General Assembly Document No. A/59/661 dated 5 January 2005.

4. See UN Secretary-General Department of Public Information, *Secretary-General Concerned by Probe Outcome Indicating Peacekeepers Previously in Democratic Republic of Congo May Have Committed Sexual Exploitation*,⁹ 12 August 2008, available at: <http://www.un.org/News/Press/docs/2008/sgsm11741.doc.htm>, last accessed on 14 August 2013.

5. 3 Army officers on UN Congo mission accused of rape, The Indian Express, 18 March 2008, available at: <http://www.indianexpress.com/news/3-army-officers-on-un-congo-mission-accused-of-rape/285654/#sthash.BtJbPNkV.dpuf>

6. See Agency, *Antony orders swift probe into Congo charge*, The Times of India, 14 August 2008, available at: http://articles.timesofindia.indiatimes.com/2008-08-14/india/27925519_1_indian-soldiers-monuc-congolese, last accessed on 14 August 2013.

Yet by August 2008,⁷ there were further abuses, as the Conduct and Discipline Unit of the UN reportedly launched an investigation against Major R.S. Ghumman, belonging to the Jammu and Kashmir Rifles battalion, on charges of sexual exploitation and abuse after he was allegedly found in the company of sex workers in a hotel in the Democratic Republic of Congo (DRC) on 6 July 2010.⁸

Earlier between July and November 2007, the OIOS conducted investigations into allegations of misconduct by Indian peacekeepers deployed with MONUC (ID Case No. 0648/06). In the confidential report dated 7 February 2008, the Indian military contingent (INDBATT) were found responsible for purchase of counterfeit gold and unlawful detention, sale of UN rations to members of insurgent *Forces Democratiques de Liberation du Rwanda* (FDLR); purchase of cannabis from FDLR, exchange of ammunition for ivory from FDLR etc.

The persistent violations by the Indian peacekeepers show that the OIOS inquiries have had little or no impact on the conduct of the Indian peacekeepers. But the abuses and the lack of action should not be surprising. India has a very poor domestic record on human rights and an equally poor record on investigation and prosecution of the human rights violators especially from the Indian Army.

Troops are mainly selected for UN peacekeeping based on their performance; with the priority going to performance in counter-insurgency operations. For example, all Indian troops selected for the MUNOC were chosen based on their outstanding performances in counter-insurgency operations.⁹ Indian policy gives explicit “*preference to Persons Below Officer Rank (PBOR) who have proven themselves while serving in counter-insurgency operations*”.¹⁰ For the Central paramilitary forces/Central Armed Police the selection criteria again emphasize “personnel, who have served for at least two years in the hard/extreme hard areas like Jammu and Kashmir, North East region or the Naxal Affected states”.¹¹

But ‘performance’ is unpicked in this report. Outstanding performance does not just include genuine bravery or other action but also appears to include the perpetration of gross human rights violations including extrajudicial executions. As the case of Colonel Harvinder Singh Kohli popularly known as the “Ketchup Colonel”¹² exposes, extrajudicial executions are often rewarded with promotion for individual officers and medals for the brigade/company. The case of “Ketchup Colonel” further

7. Ibid.

8. UN sex glare on major, The Telegraph, 16 July 2010 available at http://www.telegraphindia.com/1100716/jsp/nation/story_12690103.jsp

9. The Press Information Bureau of the Government India stated that the following contingents were chosen based on their excellent performances in counter-insurgency operations: 1) the 5th Garhwal Rifles, 2) the 10th Assam Regiment, 3) the 19th R&O Flight, 4) the 6th Battalion of the Sikh Regiment, 5) the 5th Bihar Regiment and 6) the 18th Grenadiers. See Press Information Bureau, Government of India, Indian Contingent to UN Peacekeeping Mission in Congo, 20 March 2008, available at: <http://pib.nic.in/newsite/erelease.aspx?relid=36810>, last accessed on 12 August 2013.

10. Provided in the *Naib Subedar K.C. Jena vs Union of India & Ors.* on 1 February, 2010 [W.P.(C) No.7994/2009 & C.M. No.4481/2009] judgement available at <http://delhicourts.nic.in/Feb10/Naib%20Subedar%20K.C.%20Jena%20Vs.%20UOI.pdf>

11. See criteria for selection of officers for deployment with UN/Foreign Missions, available at <http://bsf.nic.in/doc/recruitment/r46.pdf>

12. See TNN, “Army revisits ‘Ketchup Colonel’ case this week,” Times of India, 7 July 2010, available at: http://articles.timesofindia.indiatimes.com/2010-07-07/india/28311861_1_bosses-defence-ministry-harvinder-singh-kohli, last accessed on 12 August 2013. See also Judgment of the Armed Forces Tribunal, Col Harvidner Singh Kohli vs Union of India and others, TA/254/09 in W.P.C. No.7827/2009, Judgment 11 January 2010, available at: http://aftdelhi.nic.in/benches/principal_bench/judgments/court_2/ta25409harvinder11012010.pdf, last accessed on 12 August 2013.

demonstrates that there appear to be incentives to engage in extrajudicial executions, and other gross violations of human rights during counter insurgency operations.

If Indian peacekeepers are selected from those who have performed in counter insurgency and, if those counter insurgency operations routinely involve gross violations of human rights, then logically it is difficult to resist the conclusion that perpetrators of gross human rights violations are being selected for the UN peacekeeping duties.

This logic is supported by strong evidence. Those who passed the UN administered Selection Assistance and Assessment Team (SAAT) Test, (selected in the UN SAAT held in UN CIVPOL Centre from 23 to 30 May 2013)¹³ include: Sanjeev Kumar, Assistant Sub-Inspector of Punjab Police accused of custodial torture,¹⁴ Superintendent of Police Altaf Ahmad Khan of Jammu and Kashmir Police accused of rape and custodial death,¹⁵ Head Constable Shiv Charan of Chandigarh Police already arrested by police on the charge of kidnapping and extortion,¹⁶ and Inspector Atul Soni of Punjab Police arrested under Section 25 of the Arms Act for carrying 52 live cartridges of different calibers at the Indira Gandhi International Airport in New Delhi while boarding a Philippines Airlines flight to Manila.¹⁷

The Government of India and the Army routinely deny the involvement of security forces in human rights violations but the human rights violations in these conflict afflicted areas are well documented. They are widespread and systematic.

As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns following his visit to India reported to the UN Human Rights Council of June 2013, *“According to the NHRC, 2,560 deaths during encounters with police were reported between 1993 and 2008. Of this number, 1,224 cases were regarded by the NHRC as “fake encounters”. The police, the central armed police forces, and the armed forces have been accused of “fake encounters”. Complaints have been lodged, particularly against the Central Reserve Police Force, the Border Security Forces, and the armed forces acting under the Armed Forces (Special Powers) Act (AFSPA)..... Encounter killings have become virtually a part of unofficial State policy”*.¹⁸

India's security forces are provided impunity under Section 6 of the Armed Forces Special Powers Act since 1958 and under Section 197 of India's Criminal Procedure Code. Both these provisions make it mandatory to seek prior sanction from the concerned state government or Central Government before any action can be taken. Unsurprisingly permission is rare, if ever, granted.

The UN Human Rights Committee in July 1997 held that the bar to commence *“criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, without the sanction of the central Government contributes to a climate of impunity and deprives people of remedies to*

13. Merit List of UN SAAT (UN Selection and Assistance and Assessment Team) held in UN CIVPOL Centre from 23 to 30 May 2013

14. ASI booked for making inmates dance in nude, The Tribune, 7 February 2005
<http://www.tribuneindia.com/2005/20050207/punjab1.htm#32>

15. Lesson in irony: Gallantry award goes to rape accused, Tehelka, 17 August 2012, available at: http://archive.tehelka.com/story_main53.asp?filename=Ws170812JK.asp

16. Head Constable held for kidnapping, extortion, The Tribune, 27 February 2006

17. Held with live ammo, Punjab cop gets bail, The Tribune, 14 June 2012, available at: <http://www.tribuneindia.com/2012/20120614/punjab.htm#12>

18. UN Human Rights Council Document No. A/HRC/23/47/Add.1 dated 26 April 2013 available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

which they may be entitled in accordance with article 2, paragraph 3, of the Covenant". It recommended that "the requirement of governmental sanction for civil proceedings be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive."¹⁹

The Special Rapporteur on extrajudicial, summary or arbitrary executions in his report of June 2013 after his visit to India stated: "***This provision effectively renders a public servant immune from criminal prosecution. It has led to a context where public officers evade liability as a matter of course, which encourages a culture of impunity and further recurrence of violations.... Security officers who committed human rights violations are frequently promoted rather than brought to justice. Promoting rather than prosecuting perpetrators of human rights violations is not unique to Punjab... [but] throughout the country***".²⁰

In most of the cases referred to India by the UN Department of Peacekeeping Operations (DPKO) or the OIOS, India has systematically failed to take any action. India failed to live upto its commitment of providing full support for the "implementation of a policy of zero tolerance with regard to conduct and discipline of troops including, sexual exploitation and abuse".²¹

Only after repeated requests from the UN, the Government of India started taking limited measures, but only with respect to sexual exploitation and abuse by the Indian troops during their deployment with the MUNOC.²²

In November 2012, Chief of Army Staff General Bikram Singh, who himself was the Deputy Force Commander under the MUNOC at the time of commission of the crimes, told the media that the Court of Inquiry (CoI) had found one person responsible for sexual abuse and three others for command and control failure.²³ However, in his reply of 1 April 2013 to the Director of the Asian Centre for Human Rights (ACHR), Major General Anil Mehta of the Army Headquarters stated that the "*investigation on the subject incident is still not completed and disclosure of information at this stage is likely to impede the process of investigation*" and therefore could not provide the information requested by ACHR.²⁴ The two contradictory versions of the events suggest either Chief of Army Staff General Bikram Singh or Major General Anil Mehta is lying.

This report presents and analyses the current selection policies and practices for deployment in the UN peacekeeping operations by the Indian Army, the Central Paramilitary forces and the State Police.

It also sets out the role of various oversight mechanisms in place in India and examines the response of the Government of India to the allegations of violations and abuses committed by Indian peacekeepers, in particular the Army, during their deployment on UN peacekeeping operations.

19. *Concluding observations of the Human Rights Committee : India*, 08/04/1997, CCPR/C/79/Add.81 are available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument)

20. UN Human Rights Council Document No. A/HRC/23/47/Add.1 dated 26 April 2013 available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

21. See Permanent Mission, India, "India and UN: Peacekeeping & Peacebuilding", available at: http://www.un.int/india/india_and_the_un_pkeeping.html, last accessed on 12 August 2013.

22. This topic is discussed in further detail in Chapter 3: Congo Gate.

23. See Gautam Datt, *Indian army's shame: Indictment of 4 Indian peacekeepers for 'sexual misconduct' on a UN posting in Congo dents the army's honour*, India Today, 25 November 2012, available at: <http://indiatoday.intoday.in/story/indian-army-shamed-action-against-jawan-for-fathering-child-congo-india-today/1/234613.html>, last accessed on 14 August 2013.

24. See RTI Reply to Mr Suhas Chakma by Major General Anil Mehta Vide No.B/87008/AG/PM/RTI2356 dated 1 April 2013.

This report concludes that India's engagement with UN peacekeeping operations is here to stay as it forms part of India's strategic engagement with Africa and the Middle East. It is therefore in India's interest to promote better national vetting mechanisms prior to sending the troops for UN peacekeeping operations to ensure that criminal elements in the Army or Police do not blemish India's outstanding track record for global peace; and establish transparent and exemplary accountability against those found guilty.

At national level, India already has such vetting procedures for appointments into the Army and paramilitary forces. But vetting for deployment with the UN peacekeeping missions would imply tackling the use of human rights violations in domestic counter insurgency operations, something India appears reluctant to do.

The Asian Centre for Human Rights hopes that the Government of India will consider the recommendations of this report to further contribute to the UN peacekeeping operations and ensure those deployed uphold India's reputation.

Suhas Chakma
Director

Chapter 1: India's Involvement in UN Peacekeeping

i. The History of India's Contribution to UN Peacekeeping

As a founding member of the UN, India has contributed to the goal of the UN of maintaining international peace and security through peacekeeping.²⁵ Since 1950, India has responded, whenever possible, to the request of the UN for troops for peacekeeping missions and has taken part in over 43 peacekeeping missions, contributing over 163,000 personnel.²⁶ To date, India remains among the largest and most reliable troop contributing countries to UN peacekeeping operations (PKOs).²⁷

India first deployed troops for peacekeeping during the Korean War as a part of the Neutral Nations Repatriation Commission in 1953-54, which involved the facilitation of the withdrawal of the sick and wounded and provision of a custodian force.²⁸ This was followed by a troop deployment to Indo-China (Vietnam, Cambodia and Laos) from 1954-1970 to assist with monitoring, ceasefire compliance and repatriation of prisoners of war, among others.²⁹ India's first armed troop contingent was deployed from 1956 until 1967 in Gaza in the wake of the conflict between Israeli and Egyptian forces.³⁰ Since the end of the Cold War, India has been engaged in most of the UN's peacekeeping missions so far.³¹ In addition to providing troops for deployment, India has also provided military observers for many of the UN missions as requested.³²

India is currently the third largest contributor of troops (military and police) to the UN peacekeeping operations, after Pakistan and Bangladesh.³³ As of 30 June 2013, a total strength of 7,878 personnel

25. India signed the Declaration by the UN on 1 January 1942 and participated in the UN Conference of International Organization from 25 April to 26 June 1945. See Permanent Mission, India, "India and United Nations," available at: <http://www.un.int/india/india%20&%20un/introduction.pdf>, last accessed on 13 August 2013. The UN's other activities include, but are not limited to, conflict prevention and mediation, peacemaking, peace enforcement and peacebuilding. See UN Peacekeeping, Peace and Security, available at: <http://www.un.org/en/peacekeeping/operations/peace.shtml>, last accessed on 14 August 2013.

26. See Dipankar Banerjee, "Contributor Profile: India," Institute of Peace and Conflict Studies, New Delhi, 27 January 2013, available at: http://www.ipinst.org/~ipinst/images/pdfs/india_banerjee130201.pdf, last accessed on 13 August 2013.

27. See UN Peacekeeping, Military, available at: <http://www.un.org/en/peacekeeping/issues/military.shtml>, last accessed on 14 August 2013. See also Indian Army, Peacekeeping Operations, available at: <http://indianarmy.nic.in/Site/FormTemplate/frnTempSimple.aspx?MnId=+IvGBXBtT8qBLIigysA5Fw==&ParentID=neWZ5Gt5GCLqW1+og+7E9g==&flag=JtIdWd96zIWX233IJPME5Uw==>, last accessed on 14 August 2013.

28. See Permanent Mission, India, "India and UN, India's contribution to UN Peacekeeping Missions," available at: <http://www.un.int/india/india%20&%20un/contribution.pdf>, last accessed on 12 August 2013.

29. See Id.

30. See Id.

31. India participated in the following past missions since 1950: (1) Korea (1950-1954), (2) Indo-China (1954-1970), (3) Middle East (UNEE, 1956-1967), (4) Congo (ONUC, 1960-64), (5) Cambodia (UNTAC, 1992-1993), (6) Mozambique (ONUMOZ, 1992-1994), (7) Somalia (UNITAF and UNOSOM II, 1993-1994), (7) Rwanda (UNAMIR, 1994-1996), (8) Angola (UNAVEM, 1989-1999), (9) Sierra Leone (UNAMSIL, 1999-2001), and, (10) Ethiopia-Eritrea (UNMEE, 2006-2008). See UN Peacekeeping, Past Peacekeeping Operations, available at: <http://www.un.org/en/peacekeeping/operations/past.shtml>, last accessed on 13 August 2013. See also Blue Helmets for Africa: India's Peacekeeping in Africa by Frank van Rooyen, OCCASIONAL PAPER NO. 60, South African Institute of International Affairs, May 2010, available at: <http://www.saiia.org.za/occasional-papers/blue-helmets-for-africa-indias-peacekeeping-in-africa>, last accessed on 12 August 2013.

32. India has provided military observers in the Iran-Iraq (1988-1991) and Iraq-Kuwait border disputes (1991 onwards), Namibia (1989-1991), Angola (1989-1991), Central America (1988-1992), El Salvador (1991-1995), Liberia (1993-1997), and Ethiopia-Eritrea (2000 until 2008). See UN Peacekeeping, Past Peacekeeping Operations, available at: <http://www.un.org/en/peacekeeping/operations/past.shtml>, last accessed on 13 August 2013. See also Blue Helmets for Africa: India's Peacekeeping in Africa by Frank van Rooyen, OCCASIONAL PAPER NO. 60, South African Institute of International Affairs, May 2010, available at: <http://www.saiia.org.za/occasional-papers/blue-helmets-for-africa-indias-peacekeeping-in-africa>, last accessed on 12 August 2013.

33. As of 30 June 2013, Pakistan had contributed 8,230 persons for peacekeeping operations; Bangladesh had contributed

(6,821 troops, 1,012 police and 45 UN Military Experts on Mission (UNMEM) were deployed in 10 out of 15 UN peacekeeping missions across the world.³⁴

Additionally, India has contributed prominent military advisers, force commanders, elite military contingents, observers and dedicated staff officers.³⁵ The Indian Army has also deployed female officers as Military Observers and Staff Officers, in addition to contributing female officers as part of Medical Units on UN Missions. As part of its policy for active participation in UN peacekeeping activities, India keeps one brigade of troops for the UN Standby Arrangement System (UNSAS) for deployment in emergency situations.³⁶ India also provided the first full Female FPU for peacekeeping work in 2007 to the UN Operation in Liberia.³⁷ More than 100 female police officers from India were sent to Liberia to train the local police and provide support for the work of the UN in that country.³⁸ India also deployed personnel of Indian Air Force and Indian Navy for the PKOs.

During the past 63 years, Indian troops have paid the ultimate price in various peacekeeping missions. India has suffered the highest number of casualties, with a total of 154 Indian soldiers losing their lives while serving in UN PKOs as of 31 July 2013.³⁹

Lastly, in addition to personnel and equipment contributions for peacekeeping, India contributes financially to the UN peacekeeping budget. Over the past several years, India's contribution has been increasing:⁴⁰

7,986; and India had contributed 7,878 persons. See UN Peacekeeping, Contributors, Ranking of Military and Police Contributors To UN Operations, available at: http://www.un.org/en/peacekeeping/contributors/2013/jun13_1.pdf, last accessed on 13 August 2013.

34. See Contributions to UN Peacekeeping Operations, Monthly Summary of Contribution (Police, UN Military Experts on Mission and Troops), available at: http://www.un.org/en/peacekeeping/contributors/2013/jun13_1.pdf, last accessed on 12 August 2013. See also UN Peacekeeping, Past Peacekeeping Operations, available at: <http://www.un.org/en/peacekeeping/operations/past.shtml>, last accessed on 13 August 2013. These include: 1) UN Stabilization Mission in Haiti (MINUSTAH), 2) UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), 3) UN Disengagement Observer Force (UNDOF), 4) UN Peacekeeping Force in Cyprus (UNFICYP), 5) UN Interim Force in Lebanon (UNIFIL), 6) UN Interim Security Force for Abyei (UNISFA), 7) UN Mission in Liberia (UNMIL), 8) UN Mission in the Republic of South Sudan (UNMISS), 9) UN Assistance Mission in Afghanistan (UNAMA), and, 10) UN Operation in Côte d'Ivoire (UNOCI). See also UN Mission's Contributions by Country, available at: http://www.un.org/en/peacekeeping/contributors/2013/jun13_5.pdf, last accessed on 12 August 2013.
35. For example the Indian Army has provided the following military personnel for missions: General Thimayya in Korea & Cyprus, Lt Gen Dewan Prem Chand in Cyprus & Namibia, Lt Gen Satish Nambiar in Yugoslavia, Maj Gen Inderjit Rikhye in Sinai, West Irian & Yemen, Maj Gen PS Gyani in Yemen, Sinai & Cyprus, Maj Gen V Jaitley in Sierra Leone, Maj Gen LM Tiwari in Lebanon, Maj Gen (now Lt Gen) Rajender Singh, SM, VSM in Ethiopia-Eritrea, Lt Gen RK Mehta, PVSM, AVSM, YSM, VSM as Military Adviser to the Secretary General in UN HQ, Lt Gen JS Lidder, UYSM, AVSM in Sudan and Maj Gen Bikram Singh, AVSM, SM, VSM as Divisional Commander in Congo, in addition to many contingent commanders. See India Army, Operations/UN Mission, UN Peacekeeping, available at: <http://indianarmy.nic.in/Site/FormTemplate/fmTempSimple.aspx?MnId=F21fZ7AbalwUHZa61BNZ4A==&ParentID=BFVG9WrbpFJzUmW3xQcbgw==&flag=FUyAl0na1plHx5Xj0PuHyQ==>, last accessed on 13 August 2013.
36. See UN Peacekeeping: India's Role in UN Peacekeeping Missions, Indian Embassy to Austria and Montenegro and Permanent Mission of India to the International Organisations in Vienna, available at: http://www.indianembassy.at/page_id=1259, last accessed on 12 August 2013.
37. See BBC News, "Female peacekeepers reach Liberia," 30 January 2007, available at: <http://news.bbc.co.uk/2/hi/africa/6314263.stm>, last accessed on 13 August 2013.
38. See UN News Centre, "In a first for UN peacekeeping, all-female police unit arrives in Liberia," available at: http://www.un.org/apps/news/story.asp?newsid=21391&cr=#.UgnjN7_3KfQ, last accessed on 13 August, 2013.
39. Out of 3,135 peacekeepers killed during missions, India has lost 154, followed by Nigeria with 139, Pakistan with 133, Ghana with 131, Canada with 121 and Bangladesh with 113. See UN Peacekeeping, Fatalities, Nationality and Mission up to 31 July 2013, available at: http://www.un.org/en/peacekeeping/fatalities/documents/stats_2.pdf, last accessed on 12 August 2013.
40. See Questions asked by Mr. Amir Alam Khan during Rajya Sabha Budget session 2010, Indian contribution to UN's Budget, Unstarred Question No. 3745, answered on 29.04.2010, available at: <http://164.100.47.4/newsquestion/ShowQn.aspx>, last accessed on 12 August 2013. See also Lok Sabha Question No. 628 answered on 3.08.2011 respectively by Ms. Preeti Kaur, Minister of State in the Ministry of External Affairs, available at: <http://164.100.47.132/LssNew/psearch/>

- (a) 2007 – 2008 Rs. 26.95 crore (US \$5,778,925.15);
- (b) 2008 – 2009 Rs. 30.02 crore (US \$6,437,229.43);
- (c) 2009 – 2010 Rs. 36.55 crore (US \$7,837,466.21); and
- (d) 2010 – 2011 Rs. 41.56 crore (US \$8,911,767.32).

ii. India's Policy on UN Peacekeeping Operations

India's support for peacekeeping activities flows from her commitment to the UN Charter. India's participation in PKOs is based on an analysis of the situation demanding intervention and on an assessment of national interests. Decisions about whether to participate in a PKO follow set procedures, which include a case by case examination by the Cabinet Committee on Security and the advice/approval of the Ministry of External Affairs (MEA). Troop requests are received from the DPKO by the Permanent Mission, India and then forwarded to the MEA in Delhi. If the MEA tentatively clears the request, the proposal is forwarded to the Ministry of Defence (MoD) for detailed examination. The proposal is then examined from a military perspective by a tri-service joint board under the Director General of Staff Duties at the Army Headquarters. The board's recommendations are then sent to the MEA, where its UN Division may consider the proposed participation further from a political angle. After approval, the External Affairs Minister will announce the decision either through a statement in Parliament, if it is in session, or through a press statement from the ministry's spokesperson.⁴¹

India's policy on peacekeeping is governed by the following principles:⁴²

- All means for the peaceful settlement of disputes chosen by the conflicting parties should be exhausted before establishing a peacekeeping operation;
- PKOs should strictly adhere to the principles of the UN Charter, in particular the principles of full respect for the sovereignty of States, their territorial integrity and non-intervention in their internal affairs;
- PKOs should be considered at the request of the Member States involved and should be under the command and control of UN;
- The resources for peacekeeping activities should not be at the expense of resources for developmental activities of the UN; and
- It is important to ensure that the distinction between PKOs and other activities of the UN, including humanitarian assistance, is maintained.

QResult15.aspx?qref=105423, last accessed on 12 August 2013.

41. See Dipankar Banerjee, "Contributor Profile: India," Institute of Peace and Conflict Studies, New Delhi, 27 January 2013, available at: http://www.ipinst.org/~ipinst/images/pdfs/india_banerjee130201.pdf, last accessed on 13 August 2013.

42. India has held talks with both the United States and United Kingdom on peacekeeping issues. A number of meetings were held between these countries in order to exchange views on policy and operational aspects of peacekeeping and for planning joint activities and identifying institutional cooperation in peacekeeping. See UN Peacekeeping: India's Role in UN Peacekeeping Missions, Indian Embassy to Austria and Montenegro and Permanent Mission of India to the International Organisations in Vienna, available at: http://www.indianembassy.at/?page_id=1259, last accessed on 12 August 2013.

Chapter 2: Overview of Indian Army and UN Peacekeeping

i. Indian Army Recruitment, Selection and Promotion Policies

The Indian Army is the fourth largest standing army in the world.⁴³ Recruitment in the Indian Army is open and voluntary.⁴⁴ Every citizen of India and subject of Nepal⁴⁵, regardless of caste, class, religion and community is eligible for recruitment provided they meet the physical, medical and educational criteria.⁴⁶

The Indian Army recruits, like other armies have two categories – officers and Junior Commissioned Officers (JCOs)/other ranks known in the vernacular as *Jawans*.⁴⁷

Recruitment of Officers

The Union Public Service Commission (UPSC) is in charge of officer recruitment. University graduates are eligible for the Combined Defence Services Examination. It is held twice a year and is an all-India competitive examination.⁴⁸

The UPSC also holds entrance examinations for the National Defence Academy (NDA) twice a year.⁴⁹ Anyone having completed Higher Secondary education is eligible to sit.⁵⁰

For technical branches, the Women's Special Entry Scheme and the National Cadet Corps Special Entrance Scheme entrance is made through the respective recruiting directorates of the Army.⁵¹

43. See Global Security.org, World's Largest Armies, available at: <http://www.globalsecurity.org/military/world/armies.htm>, last accessed on 14 August 2013.

44. See Indian Army, About, Introduction, available at: <http://indianarmy.nic.in/Site/FormTemplate/fmTempSimple.aspx?MnId=hHK+uFUPkHhwyVTm++dAEQ==&ParentID=IvitzcsUv+GZDOU2+LPAXA==&flag=TAcOW9ZOvslj3/hWFp+pFA==>, last accessed on 12 August 2013.

45. Under Section 11 of the Army Act of 1950, subjects of Nepal are also eligible for enrolment in the Indian Army.

46. See Indian Embassy, India, Chapter 4, Defence, available at: https://www.indianembassy.org/indiainfo/india_2000/chapters/chp04.pdf, last accessed on 12 August 2013. See also Join India Army, Officers Life in the Army, What Army Offers You, available at: http://joinindianarmy.nic.in/inner.aspx?status=2&menu_id=138&cid=1, last accessed on 12 August 2013.

47. See Join India Army, Officers Life in the Army, What Army Offers You, available at: http://joinindianarmy.nic.in/inner.aspx?status=2&menu_id=138&cid=1, last accessed on 12 August 2013. See also Join Indian Army, JCO & Other Ranks, Eligibility Criteria for Recruitment of JCOs and Other Ranks, available at: http://joinindianarmy.nic.in/inner.aspx?status=11&menu_id=299&cid=2, last accessed on 12 August 2013. Jawan is a private soldier or male constable in India. See Macmillan Dictionary Online, available at: <http://www.macmillandictionary.com/dictionary/british/Jawan>, last accessed on 14 August 2013.

48. After passing the examination, cadets are trained at the Indian Military Academy, Dehradun, in all aspects of combat, tactics using computers and other modern tools and technologies. Upon successful completion of the Indian Military Academy, Dehradun, a cadet is commissioned as a "Lieutenant" in the Indian Army. See Join Indian Army, Officers, Type of Commission, Permanent Commission, available at: http://joinindianarmy.nic.in/inner.aspx?status=2&menu_id=98&cid=1, last accessed on 12 August 2013.

See also Join Indian Army, Entry Schemes Men, Graduate UPSC, IME (DE), available at: http://joinindianarmy.nic.in/inner.aspx?status=3&menu_id=60&cid=1, last accessed on 13 August 2013.

49. See available at: http://joinindianarmy.nic.in/inner.aspx?status=2&menu_id=138&cid=1, last accessed on 12 August 2013.

50. Successful candidates join the NDA for three years. Upon completion of the NDA, cadets attend the Indian Military Academy, Dehradun. As stated previously, from the Indian Military Academy, Dehradun, cadets are commissioned as a "Lieutenant" in the Indian Army. See Join Indian Army, Officers, Type of Commission, Permanent Commission, available at: http://joinindianarmy.nic.in/inner.aspx?status=2&menu_id=98&cid=1, last accessed on 12 August 2013.

51. Persons in Standard XI and XII who have taken physics, chemistry and mathematics and who have achieved an cumulative score of 70 percent and above, can apply for the 10 + 2 Technical Entry Scheme. Over the next five years, the Army will then provide the candidate with an opportunity to earn an engineering degree and commission the candidate as an officer on completion of four years of training, all free of cost. This is a non-UPSC entry. See Join Indian Army, Life in the Army, What Army Offers You, available at: http://joinindianarmy.nic.in/inner.aspx?status=2&menu_id=138&cid=1, last accessed on 12 August 2013.

Prior to being commissioned, candidates must complete required courses and a medical examination. They are subject to a character and background investigation and interview or training required by their academy.⁵²

Recruitment of JCOs and Other Ranks (Jawans)

Jawans are recruited in open recruitment rallies held across the country throughout the year and India.⁵³ These recruitment rallies are advertised in local media.⁵⁴

The Indian Army has established education, age, height, chest measurement, weight and physical standards for both Jawan and officer recruitment.⁵⁵ There are exemptions made to allow persons from more remote, mountainous and/or disadvantaged regions in India.⁵⁶

Recruitment begins with a preliminary screening at the rally site. Document checking, physical fitness tests, physical measurements, and a medical test follow this initial process.⁵⁷ Candidates who pass these initial tests sit for a written examination. Successful candidates are then sent for basic training.⁵⁸

Candidates are required to sign a declaration stating, among others, that they have not been arrested nor convicted by a criminal court nor involved in a case registered by police.⁵⁹

Training

Prospective soldiers are sent to train at various pre-commission training academies, i.e. the National Defence Academy, Pune; the Indian Military Academy, Dehra Dun; and the Officers Training Academy, Chennai. Further specialised training is provided to officers depending on the need for specialisation.⁶⁰

52. See Join Indian Army, Officers, Type of Commission, Permanent Commission, available at: http://joinindianarmy.nic.in/inner.aspx?status=2&menu_id=98&cid=1, last accessed on 12 August 2013. See also Verification of Potential Enrollee for Indian Army, Ministry of Defence (Army), available at: http://odisha.edespatch.com/PDF_DEST/L00261/2012/6/25403_1.pdf, last accessed on 13 August 2013.

53. See Id. See also Indian Embassy, India, Chapter 4, Defence, available at: https://www.indianembassy.org/indiainfo/india_2000/chapters/chp04.pdf, last accessed on 12 August 2013.

54. See Id. There are 11 Zonal Recruiting Officers, two Gorkha recruiting Depots, one Independent Recruiting Office and 59 Army Recruiting Office, in addition to 47 Regimental Centers, which carry out recruitment through rallies in their respective areas of jurisdiction. See also Recruitment and Training, Pages 142-143, 2013 Annual Report, Ministry of Defence, Government of India, available at: https://mod.gov.in/writereaddata/AR_2013/Eng/ch10.pdf, last accessed 12 August 2013.

55. See Join Indian Army, JCO & Other Ranks, Eligibility Criteria for Recruitment of JCOs and Other Ranks, available at: http://joinindianarmy.nic.in/inner.aspx?status=11&menu_id=299&cid=2, last accessed on 12 August 2013.

56. *Ibid.*

57. See also Recruitment and Training, Pages 142-143, 2013 Annual Report, Ministry of Defence, Government of India, available at: https://mod.gov.in/writereaddata/AR_2013/Eng/ch10.pdf, last accessed 12 August 2013. The documents include birth certificate, educational qualification certificate, passport photographs, etc. See also Join India Army, Common Instructions for Interview at all SSBs, available at: http://joinindianarmy.nic.in/inner.aspx?status=11&menu_id=269&cid=1, last accessed on 12 August 2013.

58. See Recruitment and Training, Pages 142-143, 2013 Annual Report, Ministry of Defence, Government of India, available at: https://mod.gov.in/writereaddata/AR_2013/Eng/ch10.pdf, last accessed 12 August 2013.

59. See Verification of Potential Enrollee for Indian Army, Ministry of Defence (Army), available at: http://odisha.edespatch.com/PDF_DEST/L00261/2012/6/25403_1.pdf, last accessed on 13 August 2013.

60. See Indian Army Act, 1950, Chapter VI, available at: http://indianarmy.nic.in/Site/RTI/rti/DSR/DSR_VOLUME_1/CHAPTER_06/91.htm, last accessed on 13 August 2013.

During basic training, the Government of India's MoD carries out a background check of all recruits.⁶¹ This must comply with the instructions of IAFK-1152.⁶² The recruiting officer starts the background checking process or 'Verification Roll (IAFK-1152)' on enlistment.⁶³ Once completed, it is kept with the recruit's record or 'Sheet Roll'.⁶⁴

Finally before a candidate joins the Army or paramilitary force, the enrolling officer must read and explain conditions of service, in addition to requiring that the candidate answer a set series of enrollment questions including on criminal antecedents. Failure to answer honestly, if later discovered, is subject to court martial and penal sentences up to five years (Army Act, 1950).⁶⁵ These questions relate, amongst others, to a detailed examination of possible involvement in criminality.⁶⁶

Indian Army Act, 1950

Once selected, the recruit is subject to the rules and regulations of the Army Act⁶⁷ which specifies

61. According to the MoD this is done in an effort to keep out 'undesirable and anti-national' elements from the Armed Forces. "Undesirable" persons according to the Indian Army have been defined as: (a) "members associated with anybody/party declared unlawful; (b) persons wanted by the police and who get enrolled for political motives to spread anti-government propaganda and dissatisfaction; (c) persons engaging in activities prejudicial to interest of the Nation/State or promote on grounds of religion, race, language, caste or community, feelings of enmity or hatred between different sections of people; (d) deserters from the Armed Forces, Police, and Para Military Forces; (e) 'Bad Character' registered with police authorities and economic offenders; (f) Members involved in subversive activities including member of any Organisation, which aims to change society by violent means; and; (g) Candidates inducted by Intelligence Agencies with fake documents. See Part-VIII; Section-II: Verification of Potential Enrollee for Indian Army, Ministry of Defence (Army), available at: http://odisha.edespatch.com/PDF_DEST/L00261/2012/6/25403_1.pdf, last accessed on 13 August 2013. Details to be confirmed in the background check include, but are not limited to, the candidates home address, education background (including schools attended and degrees/certificates obtained), family members, profession(s), previous government service, details of Sarpanchs and Nambardars and details of the witness(es) who has(ve) signed the Character/ Pre-Verification Certificate. See Part-VIII; Section-II: Verification of Potential Enrollee for Indian Army, Ministry of Defence (Army), available at: http://odisha.edespatch.com/PDF_DEST/L00261/2012/6/25403_1.pdf, last accessed on 13 August 2013.
62. See Army Act, 1950, Chapter IV, Section 139, available at: http://indianarmy.nic.in/Site/RTI/rti/DSR/DSR_VOLUME_1/CHAPTER_04/62.htm, last accessed on 13 August 2013.
63. idem
64. It is important to note that the process of character and background verifications for Gorkha recruits from Nepal are conducted by the civil authorities in accordance with the instructions issued to the recruiting officers. See Section 138 of the Army Act of 1950, available at: http://indianarmy.nic.in/Site/RTI/rti/DSR/DSR_VOLUME_1/CHAPTER_04/62.htm, last accessed on 12 August 2013.
65. Section 44
66. See ITBP Rules available at <http://mha.nic.in/pdfs/ITBP-Rule-1994.pdf> under which the enrollment form requires candidate to answer
 - "12. (a) Have you ever been arrested?;
 - (b) Have you ever been prosecuted?
 - (c) Have you ever been kept under detention or imprisoned?
 - (d) Have you ever been convicted by court of law for any offence?
 - (e) Have you ever been bound down?
 - (f) Have you ever been fined by a court of law?
 - (g) Have you ever been interned, externed or otherwise dealt with under any law in force in India or outside? If so, state particulars.
 - (h) Are you facing any prosecution in any court in India or abroad?
 - (i) Have you ever been debarred from any examination or rusticated by any University or any other educational authority/Institution?
 - (j) Have you ever been debarred/disqualified by any public service commission from appearing at its examination/selection?
 - (k) Is any case pending against you in any University or other educational authority/institution at the time of filling up this enrolment form?
 - (l) Whether discharged/expelled/withdrawn from any training institution under the Government or otherwise."
67. All of the applicable acts and security legislations, which pertain to the branches of the military, have similar provisions concerning the various types of offences and punishments. For example the ITBP Act, Section 16(d) and (e); the SSB Act, Section 16(d) and (e); the Assam Rifles Act, 2006, Section 21 (d) and (e); and the BSF Act, Section 14(d) and (e) have verbatim provisions with respect to offences related to enemy or terrorist. See ITBP Act, 1992, available at: <http://mha.nic.in/pdfs/ITBP-Act1992.pdf>, last accessed on 14 August 2013; see also SSB Act, 2007, available at: <http://mha.nic.in/pdfs/SSB-Act2007.pdf>, last accessed on 14 August 2013; see also Assam Rifles Act, 2006, available at: <http://www.icrc>.

what constitutes an offence and sets out punishment.⁶⁸

ii. Selecting Indian Army for UN Peacekeeping Missions

U.N peacekeeping deployment is based on requests from DPKO. Deployment ranges from six months to one year, depending on the concerned peacekeeping mandate.⁶⁹ Expenses for personnel and equipment are reimbursed by the UN as stipulated in the agreement signed between the member state and the UN.⁷⁰

Selection for the UN missions is considered coveted. Security personnel who serve on UN missions earn approximately four times his/her monthly pay, upwards of \$2,200 a month for an officer and \$1,100 for a Jawan, in addition to other allowances.⁷¹ Compensation for injury or death is far greater than that offered domestically. Should an Indian deployed on UN mission die, then \$70,000 is paid to the next of kin as compensation. Disability compensation is awarded on a sliding scale based on the injury.⁷² The Delhi High Court described the posting with the UN Mission as “the life time opportunity” in the case of *Naib Subedar K.C. Jena vs Union of India & Ors.* on 1 February 2010 [W.P. (C) No.7994/2009 & C.M. No.4481/2009].⁷³

Selection of the Indian Army Personnel: Preference given to those deployed for counter-insurgency in India

The MoD coordinates UN peacekeeping troop selection and deployment. The peacekeepers are selected as a unit, known as a ‘troop contingent’. Additionally, a small number of PBOR are deployed as staff in Mission/Force/Sector headquarters. These are selected from the Corps roster and nominated by the MoD (Army) based on quota rules.⁷⁴

org/applic/ihl/ihl-nat.nsf/0/14e8a1a5f08963b1c12576c000393618/\$FILE/The%20Assam%20Rifles%20Act,%202006.pdf, last accessed on 14 August 2013; see also CRPF Act, 1949, available at: http://crpf.nic.in/crpf_actrule/actre.pdf, last accessed on 14 August 2013; and see also BSF Act, 1968, available at: <http://bsf.nic.in/doc/bsfActRules.pdf>, last accessed on 14 August 2013.

68. The Army Act, 1950 (this list is not intended to be exhaustive, but merely exemplary of the types of crimes that are included in the acts): 1. Offences in relation to enemy or terrorist, 2. Unbecoming/disgraceful conduct, 3. Intoxication, 4. Irregularity in connection with arrest or confinement, 5. Extortion and corruption, 6. Offences in respect to property, 7. Falsifying official documents and false declarations, 8. Violation of good order and discipline, 9. Absence without leave, 10. Insubordination and 11. Miscellaneous offences. See Army Act of 1950, available at: http://indianarmy.nic.in/Site/RTI/rti/DSR/DSR_VOLUME_1/CHAPTER_04/62.htm, last accessed on 12 August 2013; see also ITBP Act, 1992, available at: <http://mha.nic.in/pdfs/ITBP-Act1992.pdf>, last accessed on 14 August 2013; see also SSB Act, 2007, available at: <http://mha.nic.in/pdfs/SSB-Act2007.pdf>, last accessed on 14 August 2013; see also Assam Rifles Act, 2006, available at: [http://www.icrc.org/applic/ihl/ihl-nat.nsf/0/14e8a1a5f08963b1c12576c000393618/\\$FILE/The%20Assam%20Rifles%20Act,%202006.pdf](http://www.icrc.org/applic/ihl/ihl-nat.nsf/0/14e8a1a5f08963b1c12576c000393618/$FILE/The%20Assam%20Rifles%20Act,%202006.pdf), last accessed on 14 August 2013; see also CRPF Act, 1949, available at: http://crpf.nic.in/crpf_actrule/actre.pdf, last accessed on 14 August 2013; and see also BSF Act, 1968, available at: <http://bsf.nic.in/doc/bsfActRules.pdf>, last accessed on 14 August 2013.
69. For example, see UN OIC, Security Council Resolution 2000 (2011, available at: [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2000%20\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2000%20(2011))), last accessed on 12 August 2013.
70. See UN, Peacekeeping Operations, Financing Peacekeeping, available at: <http://www.un.org/en/peacekeeping/operations/financing.shtml>, last accessed on 12 August 2013.
71. Rotting Olives: Corrupt Indian peacekeepers in the Congo are marring a legacy, The Outlook, 02 June 2008 available at <http://www.outlookindia.com/article.aspx?237577>
72. Lok Sabha Starred Question No. 528 answered on 14.05.2012 by Mr. A K Anthony, Defence Minister, Government of India
73. The judgment is available at <http://delhicourts.nic.in/Feb10/Naib%20Subedar%20K.C.%20Jena%20Vs.%20UOI.pdf>
74. These rules are amended from time to time for the EME, AMC and AEC. See RTI reply No.A/810027/RTI/10827 dated 8 October 2012 received from Lt. Col. GSO-1 (RTI) for CPIO of Indian Army.

The MoD has a deployment policy.⁷⁵ The policy states that personnel who are called for U.N service, the only thing that can prevent from deployment is the disciplinary action or who does not fulfill medical or service requirements laid down by the MoD.⁷⁶

The policy sets out the selection criteria for Jawans to join a unit on a UN mission.⁷⁷ PBOR face a selection panel made up of a Colonel as Presiding Officer and two members (one Lieutenant Colonel and one Captain/Major).⁷⁸

The selection panel is instructed to consider the following criteria:

- (i) Seniority of rank,
- (ii) PBOR who meet eligibility criteria laid down by the Army Headquarters, and,
- (iii) Preference to PBOR *who have proven themselves while serving in counter-insurgency operations/Operation Vijay*⁷⁹/*Operation Meghdoot*⁸⁰/*HHA*.⁸¹

The process explicitly favours those who have a proven record in counter-insurgency operations. For example, all of the Indian troops selected for MUNOC were chosen based on performances in counter-insurgency operations.⁸²

75. General Staff Shakh/General Staff Branch SD-3 (UN) Policy on Detailment of Attached Personnel on UN Missions

76. See 71362/Policy/General Staff Branch SD-3 (UN), 22 November 2004 provided in the judgment details of Naib Subedar K.C. Jena v. Uoi & Ors, W.P. (C) No.7994/2009 & C.M. No. 4481/2009, High Court of Delhi at New Delhi, 1 February 2010. The judgment is available at: <http://delhicourts.nic.in/Feb10/Naib%20Subedar%20K.C.%20Jena%20Vs.%20UOI.pdf>, last accessed on 12 August 2013.

77. For example the policy states that a PBOR “(a) [s]hould not have applied for discharge/release/ premature retirement on compassionate grounds; (b) [s]hould have a minimum of six months residual service after return from a UN mission; (c) [s]hould not have served earlier in any mission/assignment abroad except IPKF; (d) [s]hould not be involved in any disciplinary case and there should be no discipline/Criminal case pending against him; (e) [s]hould be medical category SHAPE – 1; (f) PBOR awarded Red Ink Entry under Army Act Section 34, 35, 36, 38, 40(a), 41, 46(a), 52 and 53, will be debarred from participating in UN Missions; (g) PBOR who have been awarded a Red Ink Entry under any other section of the Army Act, will be debarred from participating in UN mission for a period of three years from the date of such award; (h) [a]ll PBOR due for promotion or attending a promotion cadre/career course during the period in which the unit is likely to be away on a UN mission will become eligible only if they render an ‘ADVERSE CAREER CERTIFICATE’ (appx‘A’) duly countersigned by the Officer Commanding their respective units; (i) [t]here should be a clear gap of three months between an individual’s screening for extension of service/age and the convening of a Board of Officers for short listing eligible AEC PBOR for UN missions, failing which the name of that particular individual will be considered only in the next Board of Officers convened for the same purpose; and (j) PBOR not approved for extension of service/age by the Screening Board, will not be posted to units proceedings on UN missions or will not be allowed to accompany the unit on its UN missions.” See 71362/Policy/General Staff Branch SD-3 (UN), 22 November 2004 provided in the judgment details of Naib Subedar K.C. Jena v. Uoi & Ors, W.P. (C) No.7994/2009 & C.M. No. 4481/2009, High Court of Delhi at New Delhi, 1 February 2010. The judgment is available at: <http://delhicourts.nic.in/Feb10/Naib%20Subedar%20K.C.%20Jena%20Vs.%20UOI.pdf>, last accessed on 12 August 2013.

78. See Naib Subedar K.C. Jena v. Uoi & Ors, W.P. (C) No.7994/2009 & C.M. No. 4481/2009, High Court of Delhi at New Delhi, 1 February 2010, available at: <http://delhicourts.nic.in/Feb10/Naib%20Subedar%20K.C.%20Jena%20Vs.%20UOI.pdf>, last accessed on 14 August 2013.

79. Vijay was launched on 16 May 1999 during the Kargil war when Pakistani troops intruded into Indian side. See 1999 Kargil Conflict, GlobalSecurity.Org, available at: <http://www.globalsecurity.org/military/world/war/kargil-99.htm>, last accessed on 12 August 2013.

80. Operation Meghdoot is Indian military’s capture of the majority of Siachen Glacier. See Indian Air Force, Op Meghdoot, available at: http://indianairforce.nic.in/show_page.php?pg_id=72, last accessed on 12 August 2013.

81. As part of the consideration given to PBOR who have served and/or proven themselves in counter-insurgency operations, the policy states that “[a]part from adding up numeral awards earned by each candidate for Honours and Awards and service rendered by them in Counter Insurgency Operations/ Operation Vijay/Operation Meghdoot/HHA, the Selection Panel is required to give “1/12 (mark) X No. of months (01 Mark for each completed year) on Counter Insurgency Operations subject to a minimum of 30 days service”. See 71362/Policy/General Staff Branch SD-3 (UN), 22 November 2004 provided in the judgment details of Naib Subedar K.C. Jena v. Uoi & Ors, W.P. (C) No.7994/2009 & C.M. No. 4481/2009, High Court of Delhi at New Delhi, 1 February 2010. The judgment is available at: <http://delhicourts.nic.in/Feb10/Naib%20Subedar%20K.C.%20Jena%20Vs.%20UOI.pdf>, last accessed on 12 August 2013.

82. The 5th Garhwal Rifles was nominated for their outstanding performances in 1971 War, Op Battle Axe in Mizoram, Op

There are well-documented cases of serious human rights abuses committed by the Army during counter-insurgency operations. Two units who received such nominations, the 5th Garhwal Rifles and 10th Assam Regiment, participated in Operation Rhino from September 1991 to January 1992⁸³ against the United Liberation Front of Assam. The Indian Army carried out massive search-and-arrest operations, leading to arbitrary arrests and detentions and other serious human rights violations, including extrajudicial killings, rape, torture, assault and harassment. Human rights groups in Assam reported that as many as 40 people were killed in army custody in 1991 and early 1992.⁸⁴ Instead of investigations being launched into the actions (or inactions) of these battalions/units, the highly sought after positions in UN peacekeeping missions were given as a reward to these Units for participation in the Operation Rhino.

To further emphasize the extent of importance the Indian Army places on participation in counter-insurgency operations, there are credible instances where security forces, including the army personnel, engaged in extrajudicial executions, (called “fake encounters”), for the purpose of promotion. In a rather infamous case involving the Indian Army, a colonel involved in counter-insurgency operations in 2003 faked the killing of five civilians as militants in his regiment’s custody.⁸⁵ In an effort to boost the image of the brigade and earn awards, the colonel, Harvinder Singh Kohli, received orders to report the five captured militants as “kills.”⁸⁶ Instead of succumbing to his superior’s pressure to kill militants, Kohli had five civilians pose as slain militants (complete with tomato ketchup sprayed on the bodies to resemble blood) near Bara Nagadung under Kachar district of Assam on the night of 17 and 18 August, 2003 in an effort to appease his superiors as the “kill” had already been reported to higher authorities.⁸⁷ Kohli was ultimately dismissed from service for his participation in the faked

Rakshak in the state of Jammu & Kashmir during 1993 – 95, Op Rhino in Assam, Op Vijay and Op Parakram. The 10th Assam Regiment earned its coveted place on the Mission for its outstanding performances in Op Blue Star, Op Falcon, Op Rakshak I & II in the state of Jammu & Kashmir during 1995-97, Op Vijay and Op Rhino. The 19th R&O Flight had participated in all major operations including Op Meghdoot, Op Trident and Op Falcon. The 6th Battalion of the Sikh Regiment which left for UN peacekeeping duties in Congo in January 2008 was nominated for UN duties based on its outstanding performance in the 1971 war and in counter-insurgency operations in the northeastern region and Jammu and Kashmir. The 5th Bihar Regiment was “nominated for the coveted UN Mission in Congo for their outstanding performances in Operation RHINO in Assam during 1995-98 and Op RAKSHAK/Op PARAKRAM. The 18th Grenadiers were chosen and nominated for UN Mission in Sierra Leone (UNAMSIL) due to its excellent performance during operations Rakshak and Vijay. In fact, Colonel Kushar Thakur, Commanding Officer of 18th Grenadiers, after successful capture of the Tiger Hill during the Kargil war, reportedly asked for and obtained, a UN mission as a reward for his battalion. See Press Information Bureau, Government of India, Indian Contingent to UN Peacekeeping Mission in Congo, 20 March 2008, available at: <http://www.india-forums.com/news/national/67517-indian-army-battalion-leaves-for-congo-un-mission.htm>, last accessed on 14 August 2013. See also Press Information Bureau, Government of India, “5 Bihar Infantry Battalion Group, Earmarked to Represent the Country in the Democratic Republic of Congo, Africa, as Part of the United Peace Keeping Mission MONUC,” available at: http://pib.nic.in/release/reprint_page1.asp?relid=49162, last accessed on 12 August 2013. See also Kargil heroes 18 Grenadiers head for Sierra Leone, 15 May 2000, Rediffmail.com, available at <http://www.rediff.com/news/2000/may/15josy1.htm>, last accessed on 12 August 2013.

83. See No End in Sight: Human Rights Violations in Assam, April 18, 1993 Vol. 5 Issue 7, Human Rights Watch, available at: <http://www.hrw.org/reports/pdfs/i/indonesia/indones2934.pdf>, last accessed on 12 August 2013.

84. See Id.

85. See TNN, “Army revisits ‘Ketchup Colonel’ case this week,” Times of India, 7 July 2010, available at: http://articles.timesofindia.indiatimes.com/2010-07-07/india/28311861_1_bosses-defence-ministry-harvinder-singh-kohli, last accessed on 12 August 2013.

86. See Rajat Pandit, TNN, “Govt dismisses leniency plea for ketchup colonel,” Times of India, 4 April 2008, available at: http://articles.timesofindia.indiatimes.com/2008-04-04/india/27762141_1_ketchup-colonel-major-general-ravinder-singh-severe-reprimand-and-loss, last accessed on 13 August 2012.

87. See TNN, “Army revisits ‘Ketchup Colonel’ case this week,” Times of India, 7 July 2010, available at: http://articles.timesofindia.indiatimes.com/2010-07-07/india/28311861_1_bosses-defence-ministry-harvinder-singh-kohli, last accessed on 12 August 2013. See also Judgment of the Armed Forces Tribunal, Col Harvidner Singh Kohli vs Union of India and

killing, but his superior who issued the order in an effort to receive commendations for the battalion was reinstated, receiving only a severe reprimand and a loss of seniority.⁸⁸

As the case of Colonel Kohli demonstrates, the incentive to engage in extrajudicial executions, regardless of whether they actually occur or not for the purpose of promotion exists and is a real motivating force within the Indian Army. Outstanding performances do not only include genuinely countering terrorists but also grave human rights violations including extrajudicial executions.

Further, the Delhi High Court in its 2010 judgement in the case of *Naib Subedar K.C. Jena vs Union of India & Ors* on the Army's policy for deployment in UN missions held that while the policy set forth eligibility requirements, it failed to prescribe a method for selection, therefore allowing room for potential feelings of discrimination or disruption in the cohesion of the battalions to arise.⁸⁹

Pre-Deployment Training and the Centre for UN Peacekeeping

The Indian Army claims to provide 'a comprehensive and progressive training program' structured for military observers, contingent teams, trainers of the contingents and other support units.⁹⁰ At the apex is the Army Headquarters Staff Duties Directorate under the Deputy Chief of Army Staff (Training & Coordination), responsible for developing policy and assigning various contingents and personnel for training and other mission duties. ACHR was unable to obtain any independent assessment of quality of the training.

The Centre for UN Peacekeeping (CUNPK) is charged with the training of UN Peacekeepers. CUNPK was established in 2000 in New Delhi as a joint venture of the Ministries of Defence and External Affairs and United Services Institution of India.⁹¹ CUNPK provides pre-deployment peacekeeping training for the Indian Army. Units undergo peacekeeping orientation training for four to six weeks depending on operational needs. Further, nominated units are concentrated in New Delhi for six months before their deployment in the mission area to undergo mission-orientation

others, TA/254/09 in W.P.C. No.7827/2009, Judgment 11 January 2010, available at: http://aftdelhi.nic.in/benches/principal_bench/judgments/court_2/ta25409harvinder11012010.pdf, last accessed on 12 August 2013.

88. An anonymous complaint was filed about the fake encounter. Initially Col. Kohli pleaded guilty and was dismissed from service despite being promised a plea deal of a two-year seniority loss. After dismissal, Col. Kohli submitted that the fake encounter had been staged on the orders of his superior, Brig. Rao, and that this was done with the knowledge of the brigadier's boss. As a result, Brig. Rao was also court martialled and was "cashiered from service", which basically entails loss of rank and retirement benefits. However in March 2007, the Army revoked the court martial ordered and Brig. Rao's punishment was reduced to a "severe reprimand" and loss of seniority of seven years (later reduced to five years). Kohli asked the Delhi High Court to review his case, and after review the CoAS recommended that Kohli be reinstated with a loss of seniority of five years and a severe reprimand. However the special secretary in the MoD did not recommend Kohli's reinstatement. As a result, Kohli's case was referred to the Armed Forces Tribunal, Principal Bench, New Delhi. The Tribunal in its judgement dated 11 January 2010 dismissed the plea of Kohli stating that the punishment was not disproportionate and shocking, and that Kohli was required to "honest towards his duties." See TNN, "Army revisits 'Ketchup Colonel' case this week," Times of India, 7 July 2010, available at: http://articles.timesofindia.indiatimes.com/2010-07-07/india/28311861_1_bosses-defence-ministry-harvinder-singh-kohli, last accessed on 12 August 2013; see also Rajat Pandit, TNN, "Govt dismisses leniency plea for ketchup colonel," Times of India, 4 April 2008, available at: http://articles.timesofindia.indiatimes.com/2008-04-04/india/27762141_1_ketchup-colonel-major-general-ravinder-singh-severe-reprimand-and-loss, last accessed on 13 August 2012; see also Marching orders for 'Ketchup' Brigadier, The Times of India, 25 June 2006, available at: http://articles.timesofindia.indiatimes.com/2006-06-25/india/27798618_1_marching-orders-ketchup-colonel-court-martial, last accessed on 13 August 2013; see also Judgment of the Armed Forces Tribunal, Col Harvinder Singh Kohli Vs Union of India and others, available at http://aftdelhi.nic.in/benches/principal_bench/judgments/court_2/ta25409harvinder11012010.pdf, last accessed on 12 August 2013.

89. See *Naib Subedar K.C. Jena v. Uoi & Ors*, W.P. (C) No.7994/2009 & C.M. No. 4481/2009, High Court of Delhi at New Delhi, 1 February 2010, available at: <http://delhicourts.nic.in/Feb10/Naib%20Subedar%20K.C.%20Jena%20Vs.%20UOI.pdf>, last accessed on 12 August 2013.

90. See CUNPK, Role, available at: <http://www.usiofindia.org/CUNPK/#Role>, last accessed on 14 August 2013.

91. See *Id.*

training. During training, personnel are made conversant with the history of the UN, past conflicts, background of the mission area, cultural, religious understanding, conflict procedures in the conflict area, in addition to information about other UN organizations operating in the conflict area. The administration behind equipping the contingent for the mission is carried out at CUNPK.⁹²

The centre also prepares contingent officers to train their troops in UN peacekeeping techniques; military observers to monitor cease-fire agreements and withdrawal of forces; staff officers to perform duties in headquarters of peacekeeping missions and other levels; and logistics training.⁹³

In October 2005, CUNPK became the Secretariat of the International Association of Peacekeeping Training Centres (IAPTC) providing various training courses.⁹⁴

92. Detailed information available on the website of CUNPK, New Delhi, India, available at: <http://www.usiofindia.org/CUNPK/>, last accessed on 14 August 2013.

93. Additionally International Training Capsules are conducted for 1) Military Contingent Officers, 2) Military Observers and 3) Staff and Logistics Officers, who have been selected for deployment. The centre also provides similar training facilities to personnel from foreign countries. The main purpose of training capsules is to prepare personnel for specialized duties while serving under the UN flag. Furthermore, seminars, joint working groups and command post exercises at the national and international level are regularly organised. CUNPK, New Delhi, India, available at: <http://www.usiofindia.org/CUNPK/>, last accessed on 14 August 2013.

94. The CUNPK offers international and national courses, including but not limited to, the UN Military Contingent Officers course; UN Military Observers course; and UN Staff & Logistic Officers course. The National UN Course, offered to Indian Armed Forces Officers selected for the UN peacekeeping missions, aims to prepare them for effective execution of their tasks as part of UN peacekeeping missions. The course includes introduction to role, the organisation and function of the UN, the organisation and function of DPKO and Department of Field Support (DFS); principles, techniques and nature of PKOs; the code of conduct for peacekeepers; negotiation and mediation techniques; logistics and administrative aspects in peacekeeping; and mission specific computer-based and/or map exercises. *See* CUNPK, New Delhi, India, available at: <http://www.usiofindia.org/CUNPK/>, last accessed on 14 August 2013.

Chapter 3: Congo Gate: Offences Committed by Indian Forces During UN Assignments

i. Cooperation with the Enemy: Report of the Office of Internal Oversight Services

A confidential report dated 7 February 2008 accessed by Asian Centre for Human Rights into allegations of misconduct by Indian peacekeepers deployed with the U.N in the Democratic Republic of Congo (MONUC) by the UN Office of Internal Oversight Services (ID Case No. 0648/06)” shows that on 4 July 2006, OIOS was notified of allegations of misconduct of the Indian military contingent (INDBATT) deployed with MONUC in North Kivu province. Between July and November 2007, OIOS conducted field-based investigations. The OIOS received a total of 44 allegations.

The OIOS broadly grouped the 44 allegations under five themes:

- (a) Allegations of misconduct against INDBATT forces and the *Forces Democratiques de Liberation du Rwanda* (FDLR);
- (b) Allegations of misconduct between INDBATT forces and the rebel faction led by Laurent Nkunda;
- (c) Allegations of misconduct by General Satyanarayan, the then commander of the North Kivu Brigade;
- (d) Allegations of illicit gold transactions by INDBATT personnel not related to negative forces; and,
- (e) Allegations of misconduct in the handling of UN rations, fuel and other miscellaneous.

Out of the 44 allegations, OIOS found five allegations unfounded, 17 were based on hearsay statements and were not pursued; 12 allegations did have sufficient evidence of INDBATT misconduct, but were not pursued due to time and resource constraints; four were partially supported by circumstantial evidence obtained by OIOS; and six allegations were supported by corroborative evidence.

The six supported allegations included i) the purchase of counterfeit gold and unlawful detention; ii) the sale of UN rations to members of FDLR; iii) the purchase of cannabis by INDBATT from FDLR; iv) the failure to support the Disarmament, Demobilization, Repatriation, Reintegration and Resettlement of armed groups (DDRRR process; v) the exchange of ammunition by INDBATT to FDLR for ivory; and vi) INDBATT’s fraternization with armed members of FDLR. No action is known to have been taken by the Government of India and DPKO on these findings.

Purchase of Counterfeit Gold and Unlawful Detention

OIOS concluded that members of INDBATT had paid an undetermined amount of money to an individual (with FDLR connections) in exchange for unwrought gold, which was later determined to be counterfeit. This incident led to the seller being illegally detained by members of INDBATT until he repaid the money.

Sale of UN Rations to Members of FDLR

OIOS interviewed a number of people who stated that the Indian contingent deployed in the latter part of 2005 was involved in the sale of rations to local people, including members of the FDLR.

These statements were corroborated by a number of witnesses. One witness claimed that he entered into a commercial relationship with a peacekeeper and purchased quantities of UN rations several times a week and sold them at a profit to members of the local community. This witness provided OIOS with a notebook in which he had recorded the details of some of the transactions relating to rations sales. Lastly a former lieutenant colonel in the FDLR claimed that Indian peacekeepers deployed in the latter part of 2005 were either selling UN rations to buy gold or were bartering UN rations for gold.

INDBATT Purchased Cannabis from FDLR

A former major in the a FDLR told OIOS that he had heard reports that a junior FDLR officer in the area of North Kivu had provided cannabis to an Indian officer in exchange for UN rations. OIOS interviewed one witness who claimed to have provided a small quantity of cannabis to an Indian peacekeeper on three occasions in late 2005 or early 2006. A MONUC interpreter who facilitated conversations between the two men corroborated the supply of cannabis by this witness to the peacekeepers.

Failure to Support the Disarmament, Demobilization, Repatriation, Reintegration and Resettlement Process

OIOS received a number of complaints alleging that INDBATT had not supported, and in some cases had deliberately undermined the Disarmament, Demobilization, Repatriation, Reintegration and Resettlement (DDRRR) process in North Kivu. The allegations included handing over of FDLR combatants surrendered to an Indian military facility to their commanders; discouraging FDLR from entering the DDRRR process and advance warning of planned FARDC/MONUC military action given to FDLR officers; among others. OIOS investigation of the allegations were corroborated through witness statements.

INDBATT and FDLR Exchanged Ammunition for Ivory

OIOS investigations with witnesses revealed that INDBATT and FDLR exchanged ammunition for ivory in the Rutshuru area of North Kivu. One of the witnesses told OIOS that one of the FDLR soldiers later provided him with a sample of the same ivory that was allegedly traded for the ammunition brought by INDBATT. OIOS took possession of the sample, which was then examined by the Provincial Director of the Congolese Institute for the Conservation of Nature, who verified that the sample was ivory and estimated it to have come, from a two-year-old elephant.

INDBATT Fraternized with Armed Members of FDLR

OIOS received allegations that members of INDBATT habitually fraternized with armed members of the FDLR and failed to disarm them, despite the latter's categorization as negative forces. OIOS received further information and complaints stating that the FDLR comfortably resided, congregated and patrolled in areas that were under INDBATT control without hindrance or restraint from INDBATT. OIOS investigators personally observed many armed FDLR members openly walking around town, in close proximity to and even in front of the INDBATT camp, seemingly unconcerned about being stopped or disarmed by members of INDBATT.

OIOS found that there was direct corroborative evidence to suggest that INDBATT was complacent to the presence of armed FDLR elements in its area of responsibility.

ii. Sexual Exploitation and Abuse: Indictment by OIOS and India's Court of Inquiry

Sexual exploitation and abuse: The OIOS investigation

In May 2008, following further complaints, OIOS began a second investigation this time relating to allegations of sexual abuse and exploitation by the INDBATT. On 12 August 2008, UN Secretary-General Ban Ki-moon issued a press statement saying that he was “deeply troubled” by the outcome of the OIOS investigation. The report revealed evidence suggesting Indian contingent involvement in sexual exploitation and abuse.⁹⁵ Ban Ki-moon called on the Indian authorities to investigate and where necessary take appropriate legal action.⁹⁶ DNA testing commissioned by the UN in the DRC showed that the children had “distinctive Indian features” confirming the allegations of sexual abuse and exploitation by the INDBATT.⁹⁷

In August 2008, India's Defence Minister A.K. Antony promised a thorough and time-bound probe.⁹⁸ The Government of India repeatedly assured the UN that the allegations if proven, would lead to strict and exemplary action.⁹⁹

The Indian Army, prior to the U.N statement, ordered an internal inquiry. Brigadier Inderjeet Narayan, commander of the North Kivu brigade of Indian peacekeepers, headed the inquiry. The investigation followed a visit to the DRC by the Vice-Chief of Army Staff, Lieutenant-General M L Naidu in May 2008.¹⁰⁰ Given the timing of the investigation it is clear that the Indian authorities were aware of the issues prior to the public statement issued by the UN Secretary General. ACHR is unaware of any action resulting from this inquiry.

The allegations impacted India's standing at the UN. On 19 November 2008, the UN Security Council voted to send 3,000 reinforcements to the DRC. On 21 November 2008, the DRC's Foreign Minister Alexis Tumbwe Mwamba diplomatically requested that no further Indian troops be part of the reinforcements. He stated in a letter to the UN that, “In view of the numerous abuses of power carried out by certain troops within MONUC, the (Congolese) people would not understand if soldiers from the same country would be used to boost numbers within MONUC”.¹⁰¹

In March 2009 after the Sikh Regiment's withdrawal, the UN asked India to send no replacements. India was forced to cancel the deployment of some 200 Indian Air Force personnel.¹⁰² In response,

95. See UN Secretary-General Department of Public Information, *Secretary-General Concerned by Probe Outcome Indicating Peacekeepers Previously in Democratic Republic of Congo May Have Committed Sexual Exploitation*, 12 August 2008, available at: <http://www.un.org/News/Press/docs/2008/sgsm11741.doc.htm>, last accessed on 14 August 2013.

96. See Id.

97. See Varinder Bhatia, *Indian Army probes reports of its UN peacekeepers fathering kids in Congo*, The Indian Express, 07 June 2011, available at: <http://www.indianexpress.com/news/indian-army-probes-reports-of-its-un-peacekeepers-fathering-kids-in-congo/800244/>, last accessed on 14 August 2013.

98. See Agency, *Antony orders swift probe into Congo charge*, The Times of India, 14 August 2008, available at: http://articles.timesofindia.indiatimes.com/2008-08-14/india/27925519_1_indian-soldiers-monuc-congolese, last accessed on 14 August 2013.

99. See UN Secretary-General Department of Public Information, *Secretary-General Concerned by Probe Outcome Indicating Peacekeepers Previously in Democratic Republic of Congo May Have Committed Sexual Exploitation*, 12 August 2008, available at: <http://www.un.org/News/Press/docs/2008/sgsm11741.doc.htm>, last accessed on 14 August 2013.

100. See Agency, *Antony orders swift probe into Congo charge*, The Times of India, 14 August 2008, available at: http://articles.timesofindia.indiatimes.com/2008-08-14/india/27925519_1_indian-soldiers-monuc-congolese, last accessed on 14 August 2013.

101. See AFP, *No more Indian troops please - Congo tells UN chief*, The Daily Star, Dhaka, Bangladesh, 27 November 2008, available at: <http://archive.thedailystar.net/newDesign/news-details.php?nid=65073>, last accessed on 14 August 2013.

102. See China View, *India cancels new UN peacekeeping mission in Congo over scandal*, 9 March 2009, Xinhua, available at <http://>

India reportedly threatened to withdraw all its troops, potentially collapsing the UN peacekeeping mission in the DRC. DRC President Joseph Kabila responded with a letter to the Indian Prime Minister expressing gratitude for the Indian contribution to peacekeeping in the DRC.¹⁰³ In June 2009, 285 Indian Air Force officers were dispatched to join the UN peacekeeping mission in the DRC.¹⁰⁴

The response of Indian Army

India initially only recalled the 6th Sikh Battalion from the peacekeeping mission in the DRC. But no investigation was carried out on their return to India. In August 2010 the UN communicated with India reminding the Government of India of its public commitment to investigate. In January 2011, the Army Headquarters wrote to the Western Command to conduct an inquiry.¹⁰⁵

In May 2011, the Army ordered a Court of Inquiry (CoI) into the conduct of the 6th Sikh Battalion. The investigation focused on 12 officers and 39 soldiers allegedly involved in cases of sexual abuse and fathering children while in the DRC.¹⁰⁶

There are serious concerns over the way the CoI conducted its investigation. ACHR consistently maintained that the CoI constituted by the Indian Army was biased and did not intend to establish culpability. *First*, the CoI was being conducted in India and not at the place of offence, i.e. DRC, where the victims were allegedly sexually abused. *Second*, the victims who were allegedly sexually abused and gave birth to the children in DRC were not given any opportunity to testify before the CoI. ACHR filed a complaint with the National Human Rights Commission of India (NHRC) on 24 August 2011 to address these shortcomings. The NHRC took no action and merely passed the complaint onto the Ministry of Defence.¹⁰⁷

In November 2012, Chief of the Army Staff (CoAS) General Bikram Singh claimed that the CoI had concluded its investigation. He stated that the DNA sample of one Jawan had matched with one of the children allegedly fathered by Indian troops in the DRC. The CoI found three other personnel responsible for a Command and Control failure.¹⁰⁸ One of the officials includes a Major, while other two are a JCO and a Havildar (equivalent to the rank of sergeant). According to the CoI, three personnel would face administrative action for Command and Control failure and the jawan would face disciplinary action.¹⁰⁹

news.xinhuanet.com/english/2009-03/09/content_10975745.htm, last accessed on 14 August 2013.

103. See Varun Vira, *India and UN Peacekeeping: Declining Interest with Grave Implications*, Small War Journal, 13 July 2012 available at: <http://smallwarsjournal.com/node/12949>, last accessed on 14 August 2013.

104. See Press Information Bureau, Government of India, *LAF contingent for UN peacekeeping mission at Congo flagged off*, 18 June 2009, available at: <http://pib.nic.in/newsite/erelease.aspx?relid=49236>, last accessed on 14 August 2013.

105. See Varinder Bhatia, *Indian Army probes reports of its UN peacekeepers fathering kids in Congo*, The Indian Express, 07 June 2011, available at: <http://www.indianexpress.com/news/indian-army-probes-reports-of-its-un-peacekeepers-fathering-kids-in-congo/800244/>, last accessed on 14 August 2013.

106. The CoI was presided over by Brig. M M Masur, Cdr, 9th Artillery Brigade, and includes Col. Sunil, Deputy Commander, 32nd Infantry Brigade and Col. P V Ramakrishnan, Commanding Officer, 299th Fd Regt. See Varinder Bhatia, *Indian Army probes reports of its UN peacekeepers fathering kids in Congo*, The Indian Express, 07 June 2011, available at: <http://www.indianexpress.com/news/indian-army-probes-reports-of-its-un-peacekeepers-fathering-kids-in-congo/800244/>, last accessed on 14 August 2013. It was reported that Major R.S. Ghuman, who was part of the UN peacekeeping force in Congo, slashed his wrists in an attempt to commit suicide after the probe against him was ordered. He has been accused of hiring sex workers in Congo and violating curfew rules. See Gautam Datt, *Indian army's shame: Indictment of 4 Indian peacekeepers for 'sexual misconduct' on a UN posting in Congo dents the army's honour*, Indian Military News, 25 November 2012, available at: <http://indianmilitarynews.wordpress.com/tag/congo-sex-abuse-case/>, last accessed on 14 August 2013.

107. Please refer to <http://nhrc.nic.in/display.asp?fno=219/99/4/2011-AF>

108. <http://www.thesundayindian.com/en/story/congo-sex-scandal-four-army-men-indicted/254/43787/>

109. See Gautam Datt, *Indian army's shame: Indictment of 4 Indian peacekeepers for 'sexual misconduct' on a UN posting in Congo*

However, Major General Anil Mehta of the Army Headquarters contradicted the CoAS on 1 April 2013. On 27 December 2012, ACHR had filed an application under the Right to Information Act with the Army Headquarters seeking a copy of the CoI report. In a reply of 1 April 2013, Major General Anil Mehta stated that the “investigation on the subject incident is still not completed and disclosure of information at this stage is likely to impede the process of investigation”.¹¹⁰

2004 OIOS inquiry at Bunia, DRC and the issue of command failure

As per the OIOS, media reports in early 2004 indicated the recurrence of acts of sexual exploitation and abuse of DRC women and girls by UN peacekeepers serving with MONUC in Bunia. Between May and September 2004, the OIOS carried out an investigation at the request of MONUC and DPKO.¹¹¹

Interviews with Congolese women and girls confirmed that sexual relations with peacekeepers were a regular occurrence, usually in exchange for food or small sums of money. The allegations involved girls under the age of 18, with some as young as 13.¹¹²

The OIOS report submitted to the UN General Assembly stated, “Many of the 72 allegations originally reported to MONUC could not be substantiated or even fully investigated because of their non-specific nature.”¹¹³

Nevertheless, OIOS was able to compile 20 case reports. One substantiated case involved an international civilian post. The remaining 19 cases involved peacekeepers from 3 contingents. Of those, six cases were fully substantiated. In another two cases, the identification of the perpetrators was not fully corroborated. In the remaining 11 cases, the victims and witnesses were unable to clearly identify the perpetrators.

However, dozens of interviews with the girls themselves and with the young Congolese men who facilitated the encounters, as well as with aid workers, revealed a pattern of sexual exploitation by peacekeepers contrary to the standards set by the DPKO’s “Ten Rules: Code of Personal Conduct for Blue Helmets and the Mission’s own code of conduct”.¹¹⁴

It is not clear whether “19 cases involved peacekeepers from 3 contingents” that included peacekeepers from India. The MUNOC in a press release of 11 September 2003 reported that “so far, over 2,500

dents the army’s honour, India Today, 25 November 2012, available at: <http://indiatoday.intoday.in/story/indian-army-shamed-action-against-jawan-for-fathering-child-congo-india-today/1/234613.html>, last accessed on 14 August 2013.

110. See RTI Reply to Mr Suhas Chakma by Major General Anil Mehta Vide No.B/87008/AG/PM/RTI2356 dated 1 April 2013.

111. Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, UN General Assembly Document No. A/59/661 dated 5 January 2005.

112. Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, UN General Assembly Document No. A/59/661 dated 5 January 2005.

113. Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, UN General Assembly Document No. A/59/661 dated 5 January 2005.

114. Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, UN General Assembly Document No. A/59/661 dated 5 January 2005.

troops from Bangladesh, Uruguay, Indonesia and India have been deployed in Bunia” in addition to 280 Pakistanis troops.”¹¹⁵

However, what is clear is that the OIOS made eight specific recommendations including that senior MONUC managers must become more involved and demand accountability from both civilian administrators and contingent commanders in the Mission and that MONUC must take steps to ensure that administrators and officers demonstrate implementation of all existing regulations and policies aimed at preventing sexual abuse and exploitation (Recommendation 3). It also recommended that DPKOs and MONUC should undertake a programme to provide regular briefings for troops on their responsibilities to the local population and on prohibited behaviours and to ensure that all troops and civilians on UN missions were fully conversant with UN policies on the subject of sexual exploitation and abuse (Recommendation 4); and that the MONUC Force Commander, in conjunction with contingent commanders, should enforce strict discipline over the personnel under their command (Recommendation 5).¹¹⁶

However, the inquiry or recommendations by the OIOS had little impact on the Indian troops as the OIOS in the following years had to order further investigation into sexual exploitation and misconduct by Indian troops.

Further abuses

On 12 March 2008, South African Police detained three Indian officers serving with MONUC after a woman was allegedly raped. The accused, a Lieutenant Colonel and two Majors of the Indian Army posted with the North Kivu brigade of the Mission had gone on a holiday to Pretoria. The accused were released following intervention of the Indian Embassy in Johannesburg. Rather than seeking action against allegations of sexual abuse India's Defence Minister Mr A K Antony reportedly asked the UN to report on why officers had been able to go to an unsecured location.¹¹⁷ UN Secretary General Ban Ki-moon publicly demanded “disciplinary action” against them.¹¹⁸

In July 2010, an inquiry was launched by the Conduct and Discipline Unit of the UN against Major R.S. Ghumman of the Jammu and Kashmir Rifles on charges of sexual exploitation and abuse after he was allegedly found in the company of sex workers in the DRC. Major Ghumman was reportedly found accompanying sex workers on 6 July 2010 while leaving a pub in North Kivu province. Peacekeeping rules expressly forbid visiting sex workers. The Indian CoAS and the Adjutant General's Branch were informed of the investigations.¹¹⁹

iii. Indian national context for the crimes in the Democratic Republic of the Congo

The conduct of the Indian troops in the DRC is unsurprising given poor respect for human rights within the Indian Army while deployed in counter insurgency operations in India.

115. DR of Congo: UN continues to boost troop strength in Bunia, UN News Centre, 11 September 2003, available at <http://www.un.org/apps/news/story.asp?NewsID=8220&Cr=democratic&Cr1=congo>

116. DR of Congo: UN continues to boost troop strength in Bunia, UN News Centre, 11 September 2003, available at <http://www.un.org/apps/news/story.asp?NewsID=8220&Cr=democratic&Cr1=congo>

117. 3 Army officers on UN Congo mission accused of rape, The Indian Express, 18 March 2008, available at: <http://www.indianexpress.com/news/3-army-officers-on-un-congo-mission-accused-of-rape/285654/#sthash.BtjbPNkV.dpuf>

118. UN sex glare on major, The Telegraph, 16 July 2010 available at http://www.telegraphindia.com/1100716/jsp/nation/story_12690103.jsp

119. UN sex glare on major, The Telegraph, 16 July 2010 available at http://www.telegraphindia.com/1100716/jsp/nation/story_12690103.jsp

India rightly rewards its soldiers for their performance in counter insurgency operations but it does not sufficiently examine how performance is being defined within the security forces during counter insurgency.

The Indian Army has been deployed in counter insurgency since its independence. There is now a vast body of well-documented evidence that demonstrates that violations of international human rights norms and humanitarian law appear to be part of the *modus operandi* of counter insurgency strategy operations in India.

Hence, if deployment to UN peacekeeping is reward for combat performance it implies the strong possibility that the soldier in question is being rewarded for what may often constitute not just crimes under Indian law but equally international crimes.

It can be stated with certitude that offences committed in the DRC were nothing new and are regularly committed in India.

Selling Illegal Arms: Is it Anything New?

One of the issues on which the UN found corroborative evidence relates to Indian army “exchanging ammunition for ivory” with the *Forces Democratiques de Liberation du Rwanda* (FDLR) in the DRC.

This is replicated in practice in the domestic sphere. There are regular reports of the involvement of security personnel in arms sales to insurgents in India. A 2007 PIL filed before the Supreme Court of India exposed the extent of illegal arm sales by the Indian Army. The PIL raised the issue of the illegal sale of weapons by Indian Army Officers and government officials to arm traders and others in sensitive districts of Rajasthan.

The PIL argued that the weapons sold could fall in the hands of criminals and terrorists. On 7 September 2007, the Supreme Court issued notices to the MoD and the Rajasthan Government. On 8 September 2007 the Army ordered a CoI into the matter.¹²⁰ In 2010, the Army reported to the Supreme Court that 72 officers, including a serving Colonel and three Lt Colonels, posted in sensitive border districts of Rajasthan, and in the Indian Army Training Team (IMTRAT) in Bhutan had been involved in illegal arms sales. In the 2008 CoI report, the Army also provided the names of the Colonel and three Lt. Colonels along with the number of weapons sold.¹²¹

In July 2011, the MoD informed the Supreme Court that it had initiated court-martial proceedings against 10 officers involved in weapons sales to arm dealers and others in Rajasthan.¹²² In July 2012, the Supreme Court asked the MoD to report on the action taken against the 72 personnel found guilty in Army proceedings of illegal sale of weapons. The Court also directed the Rajasthan

120. See Satya Prakash, *Gunrunning scandal: Army indicts 65 officers*, The Hindustan Times, 14 July 2011, available at: <http://www.hindustantimes.com/India-news/NewDelhi/Gunrunning-scandal-Army-indicts-65-officers/Article1-721234.aspx>, last accessed on 14 August 2013.

121. Colonel Neeraj Rana (five weapons of army officers), Lt. Col. V S Rathore, a Sena Medal recipient, Lt. Col. VS Rathore (a Sena Medal recipient), (17 weapons of army officers including his own weapon), Lt. Col. S S Rathore (five weapons of army officers including his own) and Lt. Col B S Shekhawat (11 weapons of army officers). Forty-five officers and one JCO had sold their non service pattern weapons without taking sanction of competent authority in violation of SAO 1/S/96 and the Arms Act 1959. Of these, 10 officers had since retired. Twenty-five officers who were posted at IMTRAT, Bhutan, were found to have imported ammunition excess of their authorization. See Dhananjay Mahapatra, *Court martial against 10 army men starts*, The Times of India, 15 July 2011, available at: http://articles.timesofindia.indiatimes.com/2011-07-15/india/29777530_1_nsp-weapons-weapons-and-deposit-col-s-s-rathore, last accessed on 14 August 2013.

122. See Id.

government to report on the progress of investigation into 14 FIRs registered against government officials, who had allegedly aided and abetted the illegal weapon sales.

The State Government of Rajasthan through its affidavit informed the Supreme Court in February 2013 that the State police had registered 14 FIRs, of which the one filed by the Jaipur anti-corruption bureau on 18 July 2007 pertained to 284 cases of illegal sale of weapons by the Army. During investigation, 304 more cases of illegal sale of arms came to light on perusal of records as well as 41 cases pertaining to licences issued from the state of Punjab. The investigation in 13 cases was complete.¹²³

The Army informed the Supreme Court about the court martial proceedings and punishment given to 72 officers and a Junior Commissioned Officer (JCO) found involved in the illegal sale and purchase of non-service weapons. Of the 29 officers of the rank of lieutenant colonel, colonel and major found involved in the sale of weapons, 15 were “*punished*” with “*severe reprimand and a fine of Rs 500*”, two were “*reprimanded*” and the rest were awarded punishment ranging from one to three years’ loss of service either of promotion or pension. The 25 officers posted in IMTRAT, who were found to have imported ammunition in excess of the authorized 50 rounds, were all let off with “*severe displeasure (non-recordable)*”.¹²⁴

During the hearing in February 2013, the Supreme Court observed that “the punishment awarded does not appear to be adequate” and directed the Army headquarters to submit records of Court of Inquiry proceedings and the General Court Martial (GCMs) records and asked Additional Solicitor General to elaborate on his proposition that the courts must be very circumspect while interfering with the findings of CoIs and GCMs.¹²⁵

Paramilitary forces and police are also regularly reported to have been involved in illegal arms sales. In April 2010, the Special Task Force of Uttar Pradesh Police arrested five security personnel, including two members of the CRPF and a retired police sub-inspector. They were arrested on suspicion of supplying arms and ammunition to anti-social groups, including Maoist insurgents. The police reported that they had recovered over 5,000 live cartridges and 16 magazines for Insas rifles, .25 bore guns, SLR and AK-47s and 245 kg of empty shells.¹²⁶

Sexual Assaults: A Regular Feature

The accusation of rape and other sexual assault against the Indian Army personnel deployed during counter insurgency operations are also frequently reported.

The Justice J S Verma Committee set up by the Prime Minister of India in the wake of 16th December 2012 gang rape of Nirbhaya recognised occurrences of sexual offences against women in border areas/conflict zones (Jammu & Kashmir (J&K), the North-East, Chhattisgarh, Odisha and Andhra Pradesh). It stated that

123. Why jail for common man and reprimand for Army men? SC asks, The Times of India, 20 February 2013 available at http://articles.timesofindia.indiatimes.com/2013-02-20/india/37199904_1_army-officers-army-personnel-reprimand

124. Why jail for common man and reprimand for Army men? SC asks, The Times of India, 20 February 2013 available at http://articles.timesofindia.indiatimes.com/2013-02-20/india/37199904_1_army-officers-army-personnel-reprimand

125. *Ibid*

126. See HT Correspondents, *CRPF men held for supplying arms to Naxals*, Hindustan Times, 1 May 2010, available at: <http://www.hindustantimes.com/India-news/NewDelhi/CRPF-men-held-for-supplying-arms-to-Naxals/Article1-537807.aspx>, last accessed on 14 August 2013.

“impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country.... The brutalities of the armed forces faced by residents in the border areas have led to a deep disenchantment, and the lack of mainstreaming of such persons into civil society. Serious allegations of persistent sexual assault on the women in such areas and conflict areas are causing more alienation”.¹²⁷

In J&K, anywhere between 23 and 100 women and girls from Kunan Poshpora were allegedly raped by the Rajputna Rifles during cordon and search operation on the night of 23-24 February 1991. The Army denied the allegations. The J&K State Human Rights Commission which registered the case in 2004 in its concluding order in October 2011 acknowledged that the then Director Prosecution had severely botched up the investigations to exonerate the involved armed forces, and ordered his prosecution, together with ordering compensation to the victims, but passed no direction for prosecution against the soldiers involved.¹²⁸

On 7 April 2013, Mr Wajahat Habibullah, current chairman of the National Commission for Minorities, stated that the government “*deleted important portions of his confidential report*” on the Konan Pushpora mass rape case in which he had recommended a police probe, upgradation of the level of investigation, entrusting the case to a gazetted police officer and seeking an order from the 15th Corps Commander to ensure Army cooperation in the probe. Habibullah was Divisional Commissioner, Kashmir when troops of the Rajputna Rifles allegedly raped the women in Kunan Poshpora. The government used his report to give a clean chit to the Army.¹²⁹ It is pertinent to mention that the Second Battalion of the Rajputna Rifles were nominated for the UN mission in DRC in 2006 and deployed between the third week of July and the second week of August 2006.¹³⁰

127. See Full Text of the Justice Verma Committee Report, 23 January 2013, available at: <http://www.prsindia.org/uploads/media/Justice%20verma%20committec/js%20verma%20committe%20report.pdf>, last accessed on 14 August 2013.

128. Human rights panel asks Jammu and Kashmir govt to reopen army mass rape case, India Today, 21 October 2011

129. See Muzamil Jaleel, *Habibullah breaks silence: Govt deleted key portions of my report on J&K mass rape case*, The Indian Express, 7 July 2013, available at: <http://www.indianexpress.com/news/habibullah-breaks-silence-govt-deleted-key-portions-of-my-report-on-j-k-mass-rape-case/1138601/0>

130. See in, *Rajputna Rifles battalion for UN mission in Congo*, The Hindu, 15 July 2006, available at: [http](http://www.thehindu.com), last accessed on 14 August 2013.

Chapter 4: Overview of Indian Police and UN peacekeeping

India follows federal set up and the law and order is a subject of the State Governments while the Central Government also has its own Central Armed Forces to aid the State Governments.

The Indian Police Act, 1861 governs the Indian Police. It was enacted expressly as a punitive response to the Sepoy Mutiny of 1857. The Act was designed to establish a paramilitary force that could act without accountability. This Act has not been reformed adequately.

There is little dispute that the police perpetrated what would be described today as a pattern of systematic and widespread human rights violations under the British. But after independence the police remain largely unreformed. Sporadic attempts to reform have been made but were not sustained. Unsurprisingly human rights violations remain systemic and perpetrated with high levels of impunity.

The massive human rights violations perpetrated by the Police during the emergency imposed by Mrs Indira Gandhi in June 1975 raised public debate about the need for police reform. The first government formed after the Emergency under the Janata Party attempted reform including the establishment of the National Police Commission (NPC) on 15 November 1977. The NPC produced eight reports between February 1979 and May 1981 containing recommendations for wide reforms.¹³¹ Successive governments failed to implement the recommendations of the NPC.

In 1996, a retired police officer filed a Writ Petition ((civil) 310 of 1996) before the Supreme Court of India seeking implementation of the recommendations of the NPC. In 2006 the Indian Supreme Court ruled on five issues ordering the:

- (i) establishment of State Security Commissions to select the Director General of Police
- (ii) Selection and Minimum Tenure of Director General of Police, Minimum Tenure of the Inspector General of Police & other officers
- (iii) Separation of Investigation
- (iv) Establishment of Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police and
- (v) Police Complaints Authority.¹³²

While these measures were supported by the police, the issue of impunity enjoyed by the police through the requirement of prior sanction under Section 197 of the Criminal Procedure Code has not been addressed. Nonetheless, from 2007, various State governments began enacting legislation in keeping with the Supreme Court's decision¹³³ but the amendments to the Police Act failed to

131. The National Police Commission (NPC), Commonwealth Human Rights Initiative, available at http://www.human-rightsinitiative.org/index.php?option=com_content&view=article&catid=91%3AAshiva&id=686%3Apolice-india-national-police-commission&Itemid=100

132. Prakash Singh & Ors vs Union Of India And Ors available at <http://www.indiankanoon.org/doc/1090328/>

133. For example see the following: Assam Police Act 2007, Bihar Police Act 2007, Chhattisgarh Police Act 2007, Haryana Police Act 2007, Himachal Pradesh Police Act 2007, Punjab Police Act 2007, Rajasthan Police Act 2007, Sikkim Police Act 2007, Tripura Police Act 2007, Uttarakhand Police Act 2007, Delhi Police Amendment Bill 2010, Goa Police Bill

address the lack of accountability.

State Police in India fall under the jurisdiction of the respective State governments.¹³⁴ As a result, police organizations are identified by the name of the State to which they belong for example Rajasthan Police. The police in each State are divided into armed and unarmed branches.

The Central Government of India has created seven Central Police Forces (CPFs) i.e. para-military forces under the Ministry of Home Affairs (MoHA). These are primarily paramilitary in nature, to assist State Governments in exceptional circumstances. The seven CPFs are the Assam Rifles (AR), the Border Security Force (BSF), the Central Industrial Security Force (CISF), the Central Reserve Police Force (CRPF), the Indo-Tibetan Border Police (ITBP), the Sashastra Seema Bal (SSB) and the National Security Guard (NSG). A number of these CPFs are deployed in counter-insurgency operations.

The Assam Rifles is under the operational control of the Indian Army. All other paramilitary forces are led by India Police Service officers. Each paramilitary force is governed by a separate legislation.

i. Central Police Forces Recruitment and Selection criteria

Recruitment of Officers

Recruitment for Officer rank in all seven CPFs is done by direct recruitment, transfer on deputation from the Defence Forces, any other armed forces of the central government/state government, promotion, transfer or reemployment.

Recruitment in CPFs is an ongoing process. The UPSC and the Staff Selection Commission (SSC) are in charge of the recruitment process.

The UPSC and the SSC recruit officers through written examinations. Graduates are eligible to apply. Entry to the forces starts at the Sub-Inspector level. There are vacancies for technical graduates, education officers, medical officers, and other specialists.¹³⁵

Written examinations are followed by a Physical Standards Test (PST), a Physical Efficiency Test (PET) and a Medical Standards Test conducted by the Ministry of Home Affairs and the Personality Test/Interview conducted by UPSC/SSC.¹³⁶ The final selection is based on the merit list, which is drawn up on the basis of marks obtained by the candidates in the Written Examination and Interview/Personality Test and satisfactory police background checks.¹³⁷

2008, Karnataka Police (Amendment) Bill 2007, Karnataka Police Draft Act 2007, Kerala Police Draft Act 2008, Kerala Police Bill 2008, Kerala Police (Amendment Act) 2007, Tamil Nadu Police Bill 2008 and West Bengal Police Draft Act 2007; available at: http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=597&Itemid=502, last accessed on 14 August 2013.

134. "According to article 246 of the Indian Constitution and section 3 of the IPA, the police force is a state subject and is not dealt with at the central [government] level. Each state government has the responsibility to draw guidelines, rule and regulations for their [respective] police forces. These regulations are found in the state police manuals." See Commonwealth Human Rights Initiative, *Police Reforms: India – Police Structure and Organisation*, available at <http://www.humanrightsinitiative.org/programs/ai/police/india/history/default.htm>, last accessed on 14 August 2013, and *Report of the Review Committee on the Recommendations of National Police Commission & Other Commissions/Committees on Police Reform* (March 2005), p. ii, as cited in Ebba Marlensson, *The Indian Police System – a reform proposal*, Foundation for Democratic Reforms, available at: http://www.fdrindia.org/publications/IndianPoliceSystem_PR.pdf, last accessed on 14 August 2013.

135. See Information available on the websites of the UPSC, available at: <http://upsc.gov.in/> and the SSC, available at: <http://ssc.nic.in/SSC.html>, last accessed on 12 August 2013.

136. See Id.

137. See Id.

Recruitment of Constables

Recruitment is done through the SSC and the relevant Force Recruitment Boards, who conduct recruitment rallies. Recently, the MoHA has issued a modified scheme for common recruitment of Constables in CPFs to be conducted by SSC. The new scheme, according to the MoHA, aims at making the process of recruitment more fair, objective, efficient, effective and transparent by maximizing the use of technology, including biometric technology, in the recruitment process.¹³⁸

Candidates, who are enrolled in or have completed Class X, are between 18 to 23 years of age and meet the other requisite eligibility criteria may apply for the posts of constable. Those who meet the eligibility criteria then go through the PST and the PET followed by written examinations and medical tests. The final selection of the candidates is made in order of merit and upon a successful completion of his background and character investigation.¹³⁹

ii. State Police Recruitment and Selection criteria

Recruitment of State Police

There are four levels of recruitment for the State Police. These include:

1. The Indian Police Service (IPS),
2. Deputy Superintendent of Police level,
3. Sub-Inspector/Assistant Sub-Inspector level, and,
4. Constable level.¹⁴⁰

Police Constable is the lowest rank in the force and recruitment for this rank is conducted directly. While for other ranks, vacancies are filled either by direct recruitment or by promotion.¹⁴¹

Each level of recruitment has varying qualifications, age limits, physical standards and educational qualifications. For example, an applicant for the constable level must be between the ages of 18 to 20-27 (depending on the state) and only requires a high school certificate to qualify. Additionally, the selection process for constables involves physical measurement, efficiency test, written examination, interview, medical examination and police background checks.¹⁴²

138. See Government of India, Ministry of Home Affairs, *Vacancies in CPFs*, Statement by the Minister of State in the MoHA, Shri Mullappally Ramachandran, 8 March 2011, available at: <http://pib.nic.in/newsite/erelease.aspx?relid=70706>, last accessed on 14 August 2013.

139. See Government of India, Ministry of Home Affairs Police – II Division, Revised Scheme for Common Recruitment of Constables in Central Police Forces (CAPFs) & ABOs to be conducted by Staff Selection Commission, available at: <http://>, last accessed on 14 August 2013.

140. See Ebba Martensson, *The Indian Police System – a reform proposal*, Foundation for Democratic Reforms, available at: http://www.fdrindia.org/publications/IndianPoliceSystem_PR.pdf, last accessed on 14 August 2013.

141. See Commonwealth Human Rights Initiative, *Police Reforms: India – Police Structure and Organisation*, available at <http://www.humanrightsinitiative.org/programs/aj/police/india/history/default.htm>, last accessed on 14 August 2013.

142. See Commonwealth Human Rights Initiative, *Police Reforms: India – Police Structure and Organisation*, available at <http://www.humanrightsinitiative.org/programs/aj/police/india/history/default.htm>, last accessed on 14 August 2013, and *Report of the Review Committee on the Recommendations of National Police Commission & Other Commissions/Committees on Police Reform* (March 2005), p. ii, as cited in Ebba Marlensson, *The Indian Police System – a reform proposal*, Foundation for Democratic Reforms, available at: http://www.fdrindia.org/publications/IndianPoliceSystem_PR.pdf, last accessed on 14 August 2013.

Recruitment to the post of Deputy Superintendent of Police requires a written examination followed by an interview. Both the Deputy Superintendent of Police and the Sub-Inspectors are either directly recruited or promoted.

Normally the State Public Service Commission recruits Sub-Inspectors. For these positions, the selection process includes physical efficiency test, written examination, and mental ability test, followed by an interview.¹⁴³

IPS recruits are selected through written tests, personality tests and interviews. A person can either be directly recruited through the Combined Civil Services Examination conducted by the UPSC every year and by promotion of the State Police Service (SPS) officers. Directly recruited IPS officers are allocated to the different State cadres/Joint cadres.¹⁴⁴ At minimum, applicants to the IPS must have graduation degree.¹⁴⁵

Training for Central and State Police Forces

The MoHA makes very broad claims over the importance of training within the IPS. One of the important requirements is effective and efficient discharge of duties by the police forces.¹⁴⁶ ACHR is unaware of any independent assessment of this claim.

Training includes recruits training at the time of induction in service, specialised training in different disciplines, in-service training to improve the skills of the police personnel and to sensitise them about a range of policing issues, e.g. human rights, gender sensitization and community participation.¹⁴⁷

Most of the Central/State Police Forces have established training institutions. The training curricula and schedules are designed to support the role and tasks of the respective forces.¹⁴⁸ A number of training institutes set up for the Central Armed Police Forces (CAPFs) provide specialised skills, not only to the personnel of the CAPFs, but also to personnel from the State Police Forces. The Police personnel of States/UTs/CAPFs/CPOs are also sent abroad for training.

Training for IPS Officers

IPS officer recruits have 15 weeks 'Foundational Course' training at the Lal Bahadur Shastri National Academy of Administration at Mussorie in Uttarakhand. A further 44 weeks basic/professional training is provided at the Sardar Vallabhbhai Patel National Police Academy (SVPNPA) in Hyderabad, Andhra Pradesh.

143. *See Id.*

144. The promotion of SPS officers to IPS is done on the basis of recommendations made by a Selection Committee constituted under the chairmanship of Chairman/Member, UPSC. The Government of India, in consultation with the concerned State Government, decides the total number of vacancies for directly recruited and promoted officers in a particular year. *See* Government of India, Ministry of Home Affairs, Annual Report 2007-2008, Chapter VII, Page 69, <http://www.mha.nic.in/pdfs/ar0708-Eng.pdf>, last accessed on 14 August 2013. *See also* Commonwealth Human Rights Initiative, *Police Reforms: India – Police Structure and Organisation*, available at <http://www.humanrightsinitiative.org/programs/aj/police/india/history/default.htm>, last accessed on 14 August 2013. The promoted officers, however, serve in the same cadre. *See* Government of India, Ministry of Home Affairs, Annual Report 2007-2008, Chapter VII, Page 69, <http://www.mha.nic.in/pdfs/ar0708-Eng.pdf>, last accessed on 14 August 2013.

145. *See* Government of India, Ministry of Home Affairs, Annual Report 2007-2008, Chapter VII, Page 69, <http://www.mha.nic.in/pdfs/ar0708-Eng.pdf>, last accessed on 14 August 2013.

146. *See* Government of India, Ministry of Home Affairs, Annual Report 2007-2008, Chapter VII, Page 80, <http://www.mha.nic.in/pdfs/ar0708-Eng.pdf>, last accessed on 14 August 2013.

147. *See Id.*

148. *See Id.*

Officers then have 34 weeks Practical Training in the States where they will serve. SPS officers on their promotion to IPS also have six weeks induction training at SVPNPA, Hyderabad. Selected IPS officers are also given specialized training in different fields related to policing institutions in India and abroad.¹⁴⁹

Periodic compulsory training for the IPS officers is being imparted and linked to promotion and the functional requirements of the prospective assignments of the officers. Currently, these are carried out in five phases as compared to the earlier two-phase compulsory training given to the officers within the first two years of their service. The next three phases of training are given to the officers during the period seven to nine years, 14 to 16 years and 24 to 26 years of service.¹⁵⁰

iii. Selection of Central Police Forces and State Police for UN Peacekeeping

The MoHA, Government of India is responsible for the deployment of police personnel for UN assignments. The peacekeepers deployed as police in these missions come from various state police and central police forces.

The MoHA notifies the State governments/UTs/CPOs/other organisations requesting them to nominate police officers to constitute a panel of officers to be nominated for deployment with various UN peacekeeping missions. The nominated officers have to fulfill eligibility conditions (listed in footnote).¹⁵¹ The sponsoring organizations have the responsibility to ensure that the nominated officers fulfill these eligibility conditions. Failure to meet the eligibility conditions may result in the cancellation of the candidature and even repatriation of the officer at his own cost.

No one can apply without nomination from a police force. Nominated officers are further short-listed. These shortlisted officers are then called to undergo a week long English training, left hand driving, shooting skills and finally to appear before the UN Selection Assistance and Assessment Team (SAAT) for the UN SAAT Test. The nominated candidate has to bring UN Personal History Profile (P-11) personal history form. The form includes declarations about prior criminal conviction.

149. See Government of India, Ministry of Home Affairs, Annual Report 2007-2008, Chapter VII, Page 70, <http://www.mha.nic.in/pdfs/ar0708-Eng.pdf>, last accessed on 14 August 2013.

150. See Id.

151. The eligibility criterion includes the following: i) The Level of officers deputed-from Head Constables to SSP from all States, Union Territories (TIs), CAPFs and other organizations; ii) The candidate should be at least a graduate; iii) Possesses a four wheeler valid driving license; iv) Must have completed 08 years of active police service/experience including training period as on date of calling nominations; v) Above 25 years of age as on date of calling nominations; vi) Must have good command over English Language (spoken as well as written); vii) IPS officer as per the batch prescribed in the vacancy circular (IPS officers should not be debarred from Central Deputation/ Foreign training); viii) Nominated officers should be clear from disciplinary/ vigilance angle; ix) Necessary cadre clearance from the State Government/ CAPFs/any other lending organization concerned should be available; x) The officers, having previously done a UN mission, must have completed a cooling off period of three years as on the date of issue of circular starting from the date of repatriation/ end of previous UN mission; xi) Female police officers may be given preference; xii) Officers proceeding on retirement/ superannuation within a period of three years from the date of issue of the circular calling nominations may not be nominated; xiii) The officers whose names are received through proper channel will be further short listed depending upon the eligibility criteria so that a panel of officers proportionate to the number of anticipated vacancies is prepared. These short listed officers will then be called to undergo one week training in English, left hand driving and shooting skill and subsequently to appear before the UN SAT for the UN SAAT Test; xiv) The nominated candidate should bring UN P-11 personal history form, duly filled, and Bio data form in soft and hard copies as per the specimen circulated with the call letter for nominations. See Government of India, Ministry of Home Affairs (Police Division – II) PMA Cell, *Nomination of Police Officers for deployment with UN Peacekeeping Missions (UN SAT 2012-2013)*, No.21023/21/2012-PMA, 24 April 2012, available at: <http://www.police.mizoram.gov.in/uploads/attachments/UNSAT-240412.pdf>, last accessed on 14 August 2013.

There are three types of UN assignments for which the MoHA makes nominations. These include 1) deployment of UN CIVPOL (Civilian Police Officers); 2) deployment of officers on secondment with UN missions; and 3) deployment of Formed Police Units (FPUs) from CAPFs with UN missions.

Deployment of Formed Police Units from Central Armed Police Forces

The deployment of FPUs is made after a UN-administered Special Police Assessment Teams (SPAT) test. Passing the SPAT is the minimum requirement for any FPU deployment with a UN Mission. Passing the test does not guarantee deployment. The selection of officers who qualify to sit in SPAT is carried out according to the procedure established.¹⁵²

Selection criteria for the CAPFs: Minimum two years in insurgency affected areas

The CAPFs are selected by the Departmental Screening Committee based on various criteria. The criteria state that, "Preference shall be given to such personnel, who have served for at least two years in the hard/extreme hard areas like Jammu and Kashmir, North East region or Naxal Affected states".¹⁵³

152. Policy Guidelines for Considering Officers for Various UN Assignments, Ministry of Home Affairs, Government of India dated February 27th, 2013 available at <http://mha.nic.in/pdfs/PolicyGuid-270213.pdf>. As per the policy:

- a) It is the responsibility of CAPFs to carry out the selection process and prepare a main panel of equal numbers of troops to be deployed with the UN Mission. A reserve panel of 25 personnel is also presented for the SPAT test.
- b) Both the main panel and the reserve panel then take the UN SPAT assessment;
- c) While preparing the panel, CAPFs should include reserve panelists who passed the SPAT test in the previous year but could not be deployed, if such personnel wish to be considered for UN deployment;
- e) The selection process should be carried out at least two months in advance of actual deployment to expedite deployment;
- f) Immediately after the SPAT assessment, the list of personnel should be provided to the MoHA to obtain political clearance from Ministry of External Affairs (MEA) and for obtaining the approval of the competent authority i.e. UN for rotation;
- g) In the case, where an advance party is required for deployment, the MoHA needs to be informed promptly with the list of personnel to obtain UN DPKO approval to transport personnel to the U.N mission; and,
- h) Once the rotation process has been started, the concerned CAPFs will detail a focal point (a gazetted officer) and he will be responsible for-
 Coordinating the visit of UN SPAT for the assessment
 Liaise with UN DPKO office in Delhi, Airport authorities to get exception of Passengers Service Fee and Airport Development Fee during their rotation; and
 Liaise with MEA for speedy political clearance and preparation of Passports and completing visa formalities including flight landing clearance etc, name of focal point along with his official telephone number, mobile number and e-mail ID may be intimated to MHA for further submission to UN DPKO.
 However, the following categories of personnel are not included in the panel:-
 Low Medical Category;
 Officers/personnel required undergoing mandatory promotion/ professional courses for their eventual promotion to higher ranks;
 Officers/ men whose integrity is doubtful; and,
 Officers/ men against whom disciplinary/vigilance case is pending/contemplated.

153. See criteria for selection of officers for deployment with UN/Foreign Missions, available at <http://bsf.nic.in/doc/recruitment/r46.pdf>. It provides the following criteria:

Eligibility: The nomination is made centrally by Force Headquarters strictly on seniority basis by selecting them as per the gradation list.
 APAR: The required bench mark/grade for consideration is "Very Good" and at least three APARs out of the last five should be in the bench mark/grade of "Very Good." For remaining two APARs, APARs graded as "Good" can be considered. However, there should be no adverse remarks in the APARs being considered for deputation.
 Service: Service condition will also be taken into consideration as per the requirement/directive received from MHA for the particular UN/ Foreign mission.
 Disciplinary/Vigilance: Must be clear from disciplinary/vigilance angle.
 Decoration: Due weightage shall be given to gallantry awardees.
 Preference shall be given to such personnel, who have served for at least 02 years in the hard/extreme hard areas like Jammu and Kashmir, North East region or Naxal Affected states.
 Screening Committee: A Departmental Screening Committee comprising of the following will scrutinize the nominations and made appropriate recommendations for consideration by the DG:

It is clear that all the CPFs deployed for UN duties are selected because of their posting in the Jammu and Kashmir, North East region or the Naxal Affected states.

As on 25 October 2012, the ITBP have been involved in 3243 counter insurgency operations,¹⁵⁴ and have been deployed with the UN mission in Angola (1997-1998), Bosnia & Herzegovina, Cambodia (1992, 1993, 1997), Congo, Haiti, Kosovo, Mozambique (1992-1994), Namibia (1989-1990), Sierra Leone, Sudan and Western Sahara.¹⁵⁵ One company of the ITBP has been deployed in UN Peace Keeping Mission in DRC since November 2005.¹⁵⁶

The BSF personnel have participated in various peacekeeping missions in Namibia (1989), Cambodia (1992), Mozambique (1994), Angola (1995), Bosnia and Herzegovina (1996, 1997, 1998, 1999), Haiti (1997), Kosovo (2003), etc.¹⁵⁷ Currently, a BSF contingent of 135 personnel is deployed with the United Nations Organisation Stabilisation Mission (UNOSM) and in MONUSCO. The contingent, part of an FPU, comprises seven officers, seven subordinate officers and 121 members of other ranks. The current contingent is the seventh consecutive contingent sent to Congo.¹⁵⁸

The CRPF personnel have been deployed in Namibia, Somalia, Haiti, and Bosnia. Presently, a contingent of 240 personnel of the CRPF is deployed with the UN Mission in Kosovo, assisting the activities of the International Criminal Tribunal for the former Yugoslavia.¹⁵⁹

In 2010, the Assam Rifles, the only paramilitary force which is under operational control of the Indian Army, sent its personnel for its first UN assignment for the UN's stabilisation mission in Haiti. Since then, an Assam Rifles contingent has been deployed there every year¹⁶⁰ on a rotational basis.

Deployment of UN Civilian Police Officers

Deployment of UN CIVPOL officers is made after UN SAAT test conducted by the UN. Passing the UN SAAT test is the minimum requirement for CIVPOL deployments with UN missions. However, passing of the UN SAAT does not guarantee deployment.

The MoHA adopted "policy guidelines for considering officers for various UN assignment" on 27 February 2013. These laid down the selection procedure and conditions of deployment for UN CIVPOL.¹⁶¹

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- i) In case of FPUs
Chairman - Addl DG
Members - IG (Pers), FHQ
IG of one of Frontier (or) FHQ
 - ii) In case of independent observers/ on secondment basis
Chairman - SDG, FHQ
Members - IG (Pers), FHQ
IG(G), FHQ

154. ITBP turns 50, ITPB Press Release dated 25 October 2012, available at: [http://itbpolicen.nic.in/eKiosk/writeReadData/PRESS/Press%20Release%20%20on%20date%2025-10-12.pdf](http://itbpolicen.nic.in/eKiosk/writeReadData/PRESS/Press%20Release%20%20on%20date%202025-10-12.pdf)

155. Sentinels at the summit, The Hindu, 6 August 2012

156. Central Police Organisations, Part II, Editor, D Banerjee, 2005

157. See <http://bsf.nic.in/en/un.html>

158. See http://forceindia.net/servicenews8_sep2012.aspx

159. See <http://crpf.gov.in/Pages/UNMissions.aspx>

160. Assam Rifles team leaves for Haiti, The Hindu, 28 June 2012

161. The policy guidelines for considering officers for various UN assignment provides:

- i) Based on the results of the UN SAAT, a panel of officers is prepared in order of merit. Validity of UN SAAT test is generally for a period of 18 months;

The national UN CIVPOL Centre, New Delhi functioning under an ITBP Battalion is responsible for the UN SAAT test and pre-departure formalities of officers selected for UN CIVPOL deployments.

The national UN CIVPOL Centre examines the documents of personnel viz. surrender certificate of personal passport, disciplinary/vigilance clearance, names in the identity card with selection order, Arms/ Ammunitions/Validity of Driving Licence, etc.

Deployment of Officers on Secondment with UN Missions

Seconded police officers are deployed to UN mission as and when DPKO circulates vacancies via the Permanent Mission of India to the UN. The eligibility criteria and terms and conditions of each post are detailed by DPKO. The MoHA carries out a selection process for these positions.¹⁶²

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- ii) The names of UN SAAT cleared officers are forwarded to UN However, UN does not consider the merit position of a candidate as the sole criteria for selection for deployment;
 - iii) The general period of deployment of a UN CIVPOL officer in the mission is 12 months. In order to give exposure to maximum number of officers, generally, no extension beyond this period of 12 months is given. However, in exceptional cases, on the basis of recommendations of the UN peacekeeping operations, the cases for short-term technical extension may be considered by MoHA based on individual merit;
 - iv) On being selected, the officers are liable to accept the UN Mission assignments as offered by the UN DPKO. No individual request for deployment with any desired mission by an officer will be entertained;
 - v) If any officer leaves the mission prematurely at his own or on any other personal reasons, he/she is liable to bear all the expenses, including travel cost from the mission field. To this extent, an undertaking is obtained from all the CIVPOL Officers prior to their departure, clearly stating that in the case of their pre-mature repatriation from the mission due to failure in the mission driving test or any other reasons, they will bear the repatriation expenses at their own;
 - vi) The cases of such officers, who are selected for the deployment but are not relieved by the state governments/organizations due to operational exigencies, may be re-considered for further deployment depending upon the availability of officers in the UN SAAT list and other considerations;
 - vii) The officers, who were selected for deployment with UN mission(s) and did not accept the offer of appointment at their own due to their personal reasons, will not be eligible for further deployment;
 - viii) The officers, who qualified UN SAAT and could not be deployed during the validity of UN SAAT, are eligible to re-appear in the fresh UN SAAT
 - ix) An undertaking is obtained from all the officers prior to their UN CIVPOL deployment that, they will not overstay in mission;
 - x) Officers overstaying mission without specific approval of the competent authority will be dealt with strictly and the authorities/organizations concerned shall initiate disciplinary proceedings against such officers on receipt of instructions from MHA;
 - xi) All officers on completion of their tour of duty will report to national UN CIVPOL Centre for de-briefing and getting relieving order after depositing the official passport; and,
 - xii) State governments/organizations' should not allow any officer to re-join the duty at their home state/ parent department without the proper relieving orders and surrender certificate of the official passport issued by the national UN CIVPOL Centre, ITBP, Madangir, New Delhi.
162. The MoHA guidelines provide:
- (a) All the vacancies so received are circulated amongst all the CAPFs, CPOs and other organizations as well as all State Governments and UT Administrations through Registered Speed Post, e-mail and also posted on the MoHA website. All positions are also sent through e-mail to the relevant authorities including Directors General of Police of State Governments and UT Administrations;
 - (b) The level of secondment vacancies being circulated by UN DPKO shall have the eligibility as under:-
 - (i) D-1 & D-2 IGP/ADG or equivalent.
 - (ii) P-5 DIG/IG.
 - (iii) P-4 SP /DIG
 - (iv) P-3 Dy SP/SP
 - (v) P-2 Inspector/Dy.SP
 - (c) The eligible officers may apply for the level equivalent to their ranks or one level below;
 - (d) All vacancies are time bound and the nominations of eligible and willing officers are to be submitted to MHA by the given date itself;
 - (e) The nominations received after due date will not be considered;
 - (f) In case of CAPFs officers, only the nominations forwarded by Director Generals of the force concerned shall be considered;
 - (g) In case of State Governments and UT Administrations' Police Officers, including IPS officers, only the nominations received through the State Governments and UT Administrations authority concerned will be accepted and considered. The nominations received directly from the Director General of Police or copy endorsed to this Ministry will be treated as applied directly and will not be considered;

Selection by States

Information received from Delhi Police under the Right to Information Act, 2005 states that the selection of police personnel for deployment to UN peacekeeping mission is being made through a Screening Committee constituted by the Commissioner of Police, Delhi.¹⁶³

This is the standard practice for all the State governments and Union Territories.

iv. Selection through UNSAAT Test: No verification to exclude human rights violators

Despite the rigorous procedures for selection through the UN SAAT Test, those accused of serious human rights violations have been selected by India. The Merit List of the UN SAAT held in UN CIVPOL Centre from 23 to 30 May 2013 includes those who have been charged for rash driving against requirement of driving skill, custodial torture, carrying of unauthorized cartridges, rape and custodial death as detailed below.

Case 1: Case of rash driving against Inspector Ajay Khajuria, CISF

On 3 April 2010, a case of rash driving was registered against Inspector Ajay Khajuria of the Central Industrial Security Force (CISF) at Seemapuri police station in Northeast Delhi. Inspector Khajuria had allegedly hit a scooter driven by a 70-year-old man at Dilshad Garden under Seemapuri Police Station with his car. Following the incident, Inspector Khajuria denied the charge and alleged that he was beaten up and stabbed by two youths called up by the senior citizen. However, according

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- (h) In the case of State/ UT Cadre IPS Officers on central deputation, the nominations of eligible/ willing officers be forwarded to this Ministry by the Head of the department/Directors General of CAPFs concerned;
 - (i) The nominations in respect of State Cadre Officers who are on central deputation and on the verge of their repatriation to parent cadre after completion of central deputation tenure should not be considered/forwarded to this Ministry;
 - (j) In the cases of IPS officers, their nominations are forwarded but their final deployment shall be subject to disciplinary/ vigilance clearance to be received from the Police Division (IPS-II) of MHA;
 - (k) The nominations of Arunachal Pradesh, Goa-Mizoram-Union Territory cadre officers posted in NCT of Delhi/ UTs forwarded by the Commissioner of Police, Delhi Police will be considered subject to the disciplinary/ vigilance clearance from the UT Division, MHA and cadre clearance from the Joint Secretary (UT), MHA;
 - (l) On receipt of nominations, the same is put-up for obtaining approval of SS(IS)/Home Secretary for nominating suitable officers as per the eligibility criterion of UN DPKO. In case, where there are large numbers of applications/ posts are to be considered, a meeting under the Chairmanship of SS (IS) may be called. The names are selected based, *inter alia*, on the following criterion:
 - a. For every vacancy, normally a maximum of three names are forwarded to UN,
 - b. The name of any officer is forwarded for a maximum of two secondment positions in a calendar year,
 - c. The education criterion laid by UN, the requirements of previous UN experience required, if any as well as cooling off requirements and language requirements for the post are the main criterion followed for nomination, and,
 - d. Instructions issued by the Department of Personnel and Training [DoP&T] from time to time are kept in view.
 - (m) Officers, who after nomination do not go for the deployment without any reasonable justification, will be debarred for 03 years from applying for UN deployment; and,
 - (n) On nomination by MHA, the officials shall ensure the following:
 - i) Fill-up the P-11 properly. Some vacancy positions are circulated with P-11 especially endorsed by UN DPKO for that position. In such, cases, the endorsed P-11 form should only be used.
 - ii) Signatures of the candidate have to be endorsed on the P-11 form both in hard as well as soft copies.
 - iii) Photographs have to be affixed on the P-11 form both in hard as well as soft copies.
 - iv) Employment and Academic Certificate, in which vacancy announcement number is to be mentioned, should be attached wherever required.
 - (v) P-11 (CV) and bio-data in respect of nominated officers should be sent through soft & hard copy through electronic mail to MHA.
 - vi) Officers are required to follow utmost precautions and care while filling their P-11 (CV) as this can become a cause for resection of their nominations even after recommendation of their names by MHA.

163. See RTI reply No.XXIV/29/Spl/ID-1351/2012/13333/RTI/Estt./PHQ dated 19.12.2012 received from Public Information Officer cum Additional Deputy Commissioner of Police Establishment PHQ: Delhi

to Deputy Commissioner of Police, SS Yadav, a police investigation found that prima facie it was Inspector Khajuria who hit the scooter.¹⁶⁴

Inspector Ajay Khajuria was selected for the UN Selection and Assistance and Assessment Team (UN SAAT) test held at UN CIVPOL Centre in New Delhi from 23 to 30 May 2013. Inspector Ajay Khajuria with ID No. 104517 passed the test and was put on the merit list.¹⁶⁵ Driving skill is one of the requirements for deployment in UN peacekeeping mission.

Case 2: Case of custodial torture against ASI (LR) Sanjeev Kumar of Punjab Police

In February 2005, a case was registered by police against Sanjeev Kumar, Assistant Sub Inspector (ASI) of Punjab Police for custodial torture of three persons at Division No. 2 Police Station, Pathankot, Punjab. ASI Kumar while he was posted in the police station allegedly took out three detainees identified as Subhash Chander, Raj Kumar and Gurmail Singh in an inebriated condition and forced them to strip and dance in the nude before subjecting them to physical torture.¹⁶⁶

ASI (LR) Sanjeev Kumar of Punjab Police was selected for the UN SAAT test held at UN CIVPOL Centre in New Delhi from 23 to 30 May 2013. ASI Kumar with ID No. 26/FIU passed the test and was put in the merit list.¹⁶⁷

Case 3: Arrest of Inspector Atul Soni of Punjab Police for carrying unauthorized live cartridges

On 12 June 2012, Inspector Atul Soni of Punjab Police was arrested and a case under Section 25 of the Arms Act was registered against him for carrying 52 live cartridges of different calibers at the Indira Gandhi International Airport in New Delhi. The CISF officials upon physically checking Soni's bag seized 46 live 9mm rounds, three live 7.65 mm rounds, three live .32 mm rounds, four empty 8mm cartridges and one magazine of a 9mm pistol. Soni was to board a Philippines Airlines flight to Manila along with his family members. He was granted bail by a city court on 13 June 2012, but was directed not to leave the country and his passport was seized. A police officer is authorised only to carry cartridges of a single bore and that too while on duty. Inspector Soni did not have any authorization for carrying the seized ammunition.¹⁶⁸

Inspector Atul Soni of Punjab Police was selected for the UN SAAT test held at UN CIVPOL Centre in New Delhi from 23 to 30 May 2013. Inspector Soni with ID No. 921712963 cleared the UN SAAT test.¹⁶⁹

164. CISF inspector beaten up, but FIR not lodged, *The Times of India*, 9 April 2010

http://articles.timesofindia.indiatimes.com/2010-04-09/delhi/28133906_1_senior-citizen-police-station-cisf-inspector

165. Merit List of UN SAAT (UN Selection and Assistance and Assessment Team) held in UN CIVPOL Centre from 23 to 30 May 2013

166. ASI booked for making inmates dance in nude, *The Tribune*, 7 February 2005

<http://www.tribuneindia.com/2005/20050207/punjab1.htm#32>

167. Merit List of UN SAAT (UN Selection and Assistance and Assessment Team) held in UN CIVPOL Centre from 23 to 30 May 2013

168. Held with live ammo, Punjab cop gets bail, *The Tribune*, 14 June 2012, available at: <http://www.tribuneindia.com/2012/20120614/punjab.htm#12>

169. Merit List of UN SAAT (UN Selection and Assistance and Assessment Team) held in UN CIVPOL Centre from 23 to 30 May 2013

Case 4: Gallantry awards to SP Altaf Ahmad Khan of Jammu & Kashmir Police accused of rape and custodial death

On 15 August 2012, Superintendent of Police Altaf Ahmad Khan of Jammu and Kashmir Police was awarded the President's Police Medal for Gallantry. This is despite the fact that the police officer, then Deputy Superintendent of Police, Handwara, was accused of raping a minor girl in custody at Handwara police station on 3 July 2004. The victim was hospitalised for nearly 50 days and her uterus had to be removed. The State Human Rights Commission, which intervened in the case, indicted the officer. The officer was also accused in the custodial death of a youth identified as Nazim Rashid Shalla in Sopore in North Kashmir in 2011.¹⁷⁰ Earlier in January 2012, SP Altaf Ahmad Khan was also conferred gallantry award by the Army.¹⁷¹

SP Altaf Ahmad Khan was selected for the UN SAAT test held at UN CIVPOL Centre in New Delhi from 23 to 30 May 2013. SP Khan with ID No. KPS 993595 cleared the UN SAAT test.¹⁷²

Case 5: Kidnapping and extortion charges against Head Constable Shiv Charan of Chandigarh Police

In February 2006, Head Constable Shiv Charan of Chandigarh Police was arrested by police on the charge of kidnapping and extortion. He was produced before court on 26 February 2006, which remanded him to 14 days judicial custody. Head Constable Shiv Charan kidnapped a person identified as Partap Singh and demanded a ransom of Rs. 70,000 for his release.¹⁷³ Head Constable Shiv Charan was nominated for the 6th Batch of Pre SAT Training from 18 October 2010 to 22 October 2010.¹⁷⁴

170. Lesson in irony: Gallantry award goes to rape accused, *Tehelka*, 17 August 2012, available at: http://archive.tehelka.com/story_main53.asp?filename=Wsl70812JK.asp

171. 2 controversial J&K policemen on army honour list, *The Hindustan Times*, 25 January 2012, available at: <http://www.hindustantimes.com/India-news/Srinagar/2-controversial-J-amp-K-policemen-on-army-honour-list/Article1-802190.aspx>

172. Merit List of UN SAAT (UN Selection and Assistance and Assessment Team) held in UN CIVPOL Centre from 23 to 30 May 2013

173. Head Constable held for kidnapping, extortion, *The Tribune*, 27 February 2006

174. HC orders transfer of 7 cops for assaulting girl, *The Indian Express*, 19 March 2013, available at: <http://m.indianexpress.com/news/hc-orders-transfer-of-7-cops-for-assaulting-girl/1090083/>

Chapter 5: Impunity for sexual abuses in India and its impact on UN Peacekeeping missions

i. The extent of human rights violations by the Army, paramilitary forces and police

India has faced a range of insurgencies almost since independence. As of March 2013, 197 out of total 640 districts are formally declared as affected by internal armed conflicts. These 197 districts include: 71 districts notified as “disturbed” under the Armed Forces Special Powers Act (AFSPA) in Assam,¹⁷⁵ Arunachal Pradesh,¹⁷⁶ Manipur,¹⁷⁷ Meghalaya,¹⁷⁸ Nagaland,¹⁷⁹ and Tripura¹⁸⁰ in north east India and 20 out of 22 districts in Jammu and Kashmir; and 106 districts declared as Left Wing Extremism affected in nine states of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh and West Bengal.¹⁸¹ The MoHA has banned around 35 armed opposition groups (AOGs) as terrorist organisations under the Unlawful Activities (Prevention) Act, 1967.¹⁸²

The intensity of the conflicts can be measured by the number of fatalities suffered in the conflicts. According to the MoHA, a total of 13,846 civilians and 4,807 security force personnel have been killed in Jammu and Kashmir (up to 2011) since the inception of the insurgency in the state.¹⁸³ The Government has also claimed that as many as 8,873 terrorists were killed in Jammu and Kashmir from 2001 to 2010.¹⁸⁴

In North East India, around 3,986 civilians and 855 security forces were killed from 2001 to 2010,¹⁸⁵ while 2,870 extremists were killed according to official data available from 2001 to 2006.¹⁸⁶

Further, in the Naxalite conflict, which has been described as the “single biggest internal security challenge” ever faced by the country by Prime Minister Dr. Manmohan Singh, at least 9,060 persons including 5,159 civilians, 1,676 security forces and 1,661 Naxalites have been killed from 2002 to 2010 in more than nine states namely Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Uttar Pradesh and West Bengal.¹⁸⁷

175. Entire state of Assam with 27 districts is notified as disturbed.

176. Three districts are notified as disturbed in Arunachal Pradesh while eight districts share border with Assam.

177. Entire state of Manipur with nine districts, except Imphal Municipality area, is notified as disturbed.

178. As per the notification of the Ministry of Home Affairs, ‘Disturbed Area’ under the AFSPA includes areas that fall within a 20-km belt in Arunachal Pradesh and Meghalaya along their border with Assam. Five districts of Meghalaya share border with Assam.

179. Entire state of Nagaland with 11 districts is notified as disturbed.

180. In Tripura, 34 out of 70 police Stations in eight districts are notified as fully disturbed and six police stations as partially disturbed.

181. For details on the disturbed areas and Naxal affected areas, see “Nobody’s children Juveniles of Conflict Affected Districts of India”, Asian Centre for Human Rights, 22 March 2013 available at http://www.achrweb.org/reports/india/JJ-Nobodys_Children2013.pdf

182. See http://www.mha.nic.in/uniquepage.asp?Id_Pk=292 for the list of the organizations banned by the Ministry of Home affairs.

183. Ministry of Home Affairs, Government of India, Annual Report 2011-2012, P 7, available at [http://www.mha.nic.in/pdfs/AR\(E\)1112.pdf](http://www.mha.nic.in/pdfs/AR(E)1112.pdf)

184. Annual reports of Ministry of Home Affairs from 2001 to 2010, Government of India

185. Annual Reports, 2001-2010 of the Ministry of Home Affairs, Government of India

186. 2006-2007 Annual Report of Ministry of Home Affairs, Government of India

187. Annual Reports of Ministry of Home Affairs from 2001-2010 and Naxal Management Division of Ministry of Home Affairs available at: (http://mha.nic.in/uniquepage.asp?Id_Pk=540)

The claim of the Indian Army that it has a zero tolerance policy towards human rights violations is not supported by evidence. The Indian Army's Human Rights Cell claims that out of the 1,508 allegations investigated from 1993 to December 2001, 1,454 allegations were false. Out of the 54 allegations found to have merit, a total of 129 Army personnel, including 36 officers, were found guilty of human rights violations. Most of these violations occurred in J&K involving 59 personnel and the North-East involving 70 personnel. Compensation was awarded in only 34 cases with 15 cases being from Jammu and Kashmir and 19 from the North-East.¹⁸⁸ The Indian Army however never disclosed the names of the guilty or the nature of human rights violations committed by them.

The figures of human rights violations of the India Army sit uneasily with the scale of allegations of human rights violations committed by them.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions voiced concerns "*on unmarked graves found in Jammu and Kashmir containing bodies of victims of extrajudicial executions from the 1990 to 2009 period...A total of 2,700 unmarked graves containing over 2,943 bodies have been discovered, some of these graves containing more than one body.*"¹⁸⁹ Since October 2012, the Supreme Court of India has been adjudicating a PIL, which alleged that a total of 1,528 extrajudicial killings have been committed in Manipur alone since 1979.¹⁹⁰

However, the Assam Rifles, a paramilitary force whose personnel have been deployed in the counter-insurgency operations in North East India including Manipur claimed that there was only one case of human rights violation by the force from 2002 to August 2011¹⁹¹

In the areas where the India Army are deployed after declaring those areas as disturbed in North East India and Jammu and Kashmir, the Army operates alongside the central paramilitary forces like the ARs, BSF, CRPF, ITBP, SSB and the State Police. Further, the central paramilitary forces and many of State paramilitary forces like Mizoram Reserve Battalion and Nagaland Reserve Battalion have been exclusively deployed to counter the Naxals in nine Naxal affected States.

Human rights violations by the Army, paramilitary forces and the State Police have been rampant and widespread.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns noted that, "According to the NHRC, 2,560 deaths during encounters with police were reported between 1993 and 2008. Of this number, 1,224 cases were regarded by the NHRC as "fake encounters". The police, the central armed police forces, and the armed forces have been accused of "fake encounters". Complaints have been lodged, particularly against the Central Reserve Police Force, the Border Security Forces, and the armed forces acting under the Armed Forces (Special Powers)

188. Since its inception, the Human Rights Cell of the Indian Army has received 1,532 allegations of human rights violations against its personnel as on 31 December 2011. Investigations have been carried out in 1508 allegations, while 24 allegations were under investigation. See Indian Army, Human Rights Cell and Handling of Human Rights Violation Cases in the Army, Annexure I, available at: <http://indianarmy.nic.in/Site/FormTemplate/fmTempSimple.aspx?MnId=nQjxBck+038W2DHiW6kG8Q==&ParentID=PopFg45UpU0Gpy+a22KR9g==>, last accessed on 14 August 2014.

189. UN Human Rights Council Document No. A/HRC/23/47/Add.1 dated 26 April 2013 available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

190. 1,528 victims of fake encounters in Manipur: PIL, The Times of India, 2 October 2012 available at http://articles.time-sofindia.indiatimes.com/2012-10-02/india/34217532_1_fake-encounters-security-forces-killings

191. 1 Proven Rights Violation Case by Assam Rifles in 9 Yrs, The Outlook, 26 August 2011, available at: <http://news.outlookindia.com/items.aspx?artid=732651>

Act (AFSPA).....”¹⁹² In fact, the National Human Rights Commission of India in 2004 stated that extrajudicial executions, euphemistically called ‘encounter killings’ “have become virtually a part of unofficial State policy”.¹⁹³ The NHRC stated that a total of 1,504 cases of deaths in police custody and 12,727 cases of deaths in judicial custody were reported from 2001 to 2010.¹⁹⁴ The BSF posted along the Indo-Bangladesh borders in West Bengal alone reportedly killed about 1,000 people – both Indian and Bangladeshi nationals during 2001 to 2010.¹⁹⁵

The Police in India are also involved in counter-insurgency operations. The Punjab Police, for instance, was responsible for counter-insurgency operations in the State from 1985 to 1995. It committed “flagrant violation of human rights on a mass scale” according to the Supreme Court of India. India’s Central Bureau of Investigation following inquiry into illegal mass cremations of those arrested and killed by Punjab Police found that “585 fully identified bodies, 274 partially identified bodies and 1238 unidentified bodies (total 2097) had been cremated by the Punjab Police in the three crematoriums of Amritsar, Tarn Taran and Majitha.”¹⁹⁶

There has been no accountability for these offences. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated, “*The situation is aggravated by the fact that security officers who committed human rights violations are frequently promoted rather than brought to justice. The Special Rapporteur has heard of the case of Mr. Sumedh Singh Saini, accused of human rights violations committed in Punjab in the 1990s, who was promoted in March 2012 to Director General of Police in Punjab. Promoting rather than prosecuting perpetrators of human rights violations is not unique to Punjab. The Special Rapporteur heard this complaint from families of victims throughout the country*”.¹⁹⁷

ii. Impunity to the armed forces

Impunity for public servants was an integral part of colonial administration by the British in India. After independence, India embedded “good faith” clause in all the legislations to protect virtually all illegal and criminal acts by public servants through requirement of prior sanction from the concerned

192. UN Human Rights Council Document No. A/HRC/23/47/Add.1 dated 26 April 2013 available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

193. NHRC, Report on Prevention of Atrocities Against Scheduled Castes & Scheduled Tribes, 2004, p.106.

194. Torture in India 2011, Asian Centre for Human Rights, available at <http://www.achrweb.org/reports/india/torture2011.pdf>

195. Trigger Happy: Excessive Use of Force by Indian Troops at the Bangladesh Border, Human Rights Watch, See <http://www.hrw.org/sites/default/files/reports/bangladesh1210Web.pdf>

196. See orders of the National Human Rights Commission of India at <http://nhrc.nic.in/punjab.htm>. Two writ petitions were filed before the Supreme Court of India being W.P. (Crl.) No. 497/95, Paramjit Kaur Vs. State of Punjab and others; and Writ Petition (Crl.) No. 447/95, Committee for Information and Initiative on Punjab Vs. State of Punjab. Serious allegations were made in the writ petitions about large scale cremations resorted to by the Punjab Police of persons allegedly killed in what were alleged as “encounters”. The main thrust of the Writ Petitions was that there were ‘extra-judicial executions’ and hasty and ‘secret cremations’ rendering the State liable for action. The two writ petitions relied upon a Press Note issued on 16th January 1995 by the Human Rights Wing of the Shiromani Akali Dal under the caption “Disappeared” “cremation ground”. The Press Note had alleged that a large number of human bodies had been cremated by the Punjab Police after labelling them as “unidentified”. The Supreme Court was apparently disturbed by the gravity of the allegations and it ordered an inquiry by the CBI into the allegations. Accordingly, the CBI, after completing its enquiry, submitted its fifth and final report to the Supreme Court on 9th December 1996. The Supreme Court after examining the report relating to cremation of dead bodies on December 11, 1996 after examining the final report (5th) of the CBI observed: “The report indicates that 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified. Needless to say that the report discloses flagrant violation of human rights on a mass scale”, and directed “the CBI to take further action into the matter and register the cases, where necessary, hold investigations and proceed in accordance with law on the basis of the material collected during investigation ... The CBI shall, after every three months, place a status report regarding the investigation in this Court.”

197. UN Human Rights Council Document No. A/HRC/23/47/Add.1 dated 26 April 2013 available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

authorities for prosecution or institution of suit or other legal proceeding. In fact, other public servants who are tried by judges have been given the same protection as judges under Section 197 of the Criminal Procedure Code.

In the context of armed conflicts, India provides special protection to its armed forces. India has been facing insurgency almost since its independence. The first major insurgency in the post independent India was in erstwhile Assam in 1950s by the Nagas who demanded independence from India. India responded by enacting the Armed Forces Special Powers Act, 1958,¹⁹⁸ a far more draconian version of the Armed Forces Special Powers Ordinance, 1942¹⁹⁹ introduced by the British to deal with civilian protests called by Mahatma Gandhi asking Britain to leave India.

The AFSPA, among others, empowers non-commissioned officers to "...fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area". Section 6 of the AFSPA guarantees immunity to the armed forces as it provided that "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."

As the insurgency spread to the remaining part of the North Eastern States i.e. Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, the AFSPA was imposed in all these States.

By the 1980s, insurgency by Sikh separatist groups demanding secession from India rocked Punjab. In October 1983, Punjab was put under President's rule and the Armed Forces (Punjab and Chandigarh) Special Power Act, 1983 was enacted on 8 December 1983.²⁰⁰ As the insurgency began in Jammu and Kashmir in late 1989, the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 was enacted on 11 September 1991.²⁰¹

198. Section 4 of AFSPA provided the following special powers to the armed forces: "Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area,- (a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances; (b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence; (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest; (d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary".

199. See the Armed Forces Special Power Ordinance at http://indianarmy.nic.in/Site/RTI/rTI/MML/MML_VOLUME_3/CHAPTER_01/452.htm. Section 2 of the Ordinance provides, Power to certain officers of the armed forces to order use of force in certain circumstances.— (1) Any officer not below the rank of Captain in (the Indian) Military Forces and any officer holding equivalent rank either in (the Indian) Naval or Air Forces may, if in his opinion it is necessary for the proper performance of his duty so to do, by general or special order in writing require any personnel under his command to use such force as may be necessary, even to the causing of death, against any person who—

(a) fails to halt when challenged by a sentry, or

(b) does, attempts to do, or appears to be about to do, any such act as would endanger or damage any property of any description whatsoever which it is the duty of such officer to protect; and it shall be lawful for such personnel, when so ordered, to use such force against such person.

200. See <http://punjabrevenue.nic.in/armsact.htm>

201. See http://mha.nic.in/pdfs/Armed%20forces%20J&K_%20Spl.%20powers%20act,%201990.pdf

As Punjab, Jammu and Kashmir and many others States were put under the President's rule, the Government of India amended Section 197 of the Code of Criminal Procedure²⁰² and took away the powers of the State Governments for providing sanction for prosecution when the State was under President's rule. This amendment made obtaining sanction to proceed with investigations virtually impossible.

In fact, when India established the National Human Rights Commission in 1993 to address increasing international concerns, the army and the Central Armed Forces were kept out of the purview of the NHRC under Section 19 of the Protection of Human Rights Act (PHRA) of 1993.²⁰³ The NHRC has been barred from investigating human rights violations by the armed forces as it does with human rights violations by the police under Section 13 of the PHRA.

The UN Human Rights Committee examined human rights violations in these conflict situations and the measures taken by the Government of India to provide impunity to the law enforcement personnel while examining India's third periodic report on 24-25 July 1997.

The UN Human Rights Committee regretted "*that some parts of India have remained subject to declaration as disturbed areas over many years - for example the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant*". The Committee also held the bar to commence "*criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, without the sanction of the central Government contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant*". It recommended that, "*the requirement of governmental sanction for civil proceedings be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive. It urges that judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commission of Enquiry Act of 1952, be empowered to direct the prosecution of security and armed forces personnel.*" The Committee regretted that the National Human Rights Commission is

202. The following amendments were enacted on 2 May 1997

"[(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon."

203. Section 19 of the Protection of Human Rights Act provides that "19. Procedure with respect to armed forces
(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:-
(a) it may either on its own motion or on receipt of a petition, seek a report from the Central Government;
(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be make its recommendations to that Government.
(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.
(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.
(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative."

prevented from investigating directly complaints of human rights violations against the armed forces and recommended that *“these restrictions be removed and that the National Human Rights Commission be authorized to investigate all allegations of violations by agents of the State”*.²⁰⁴

India until today has not implemented any of these recommendations. It refused to submit any further report until today. Its Fourth Periodic report to the UN Human Rights Committee has been pending since 31 December 2001.²⁰⁵

iii. India's refusal to remove the requirement of prior sanction for sexual violence committed by the armed forces

The brutal gang rape of Nirbhaya on 16 December 2012 in Delhi²⁰⁶ shocked India and the international community. The Government of India set up a Committee headed by Justice J S Verma. The Justice Verma Committee in its report submitted on 23 January 2013 recommended that in case of sexual offences by the public servants, prior sanction shall not be required and the relevant legal provision be amended.²⁰⁷

Thereafter, the Government of India enacted the Criminal Law Amendment Act 2013 and complied with the recommendations of the Justice Verma Committee to amend Section 197 of the Criminal Procedure Code. The Amendment states that for “the removal of doubts that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed” for various sexual offences as defined under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code” under Section 18 of the Criminal Law (Amendment) Act, 2013.²⁰⁸

However, the Government of India refused to implement another key recommendation of Justice Verma Committee to amend Section 6 of the Armed Forces (Special Powers) Act, 1958 which provides immunity to the security forces including in cases of sexual violence including rape.²⁰⁹

In a reply dated 8 May 2013 to a question in the Rajya Sabha, the Minister of State in the MoHA stated that the recommendations of amending the Armed Forces (Special Powers) Act, 1958 have not been incorporated in the Criminal Law (Amendment) Ordinance, and subsequent Criminal Law (Amendment) Act 2013 because of multitude and divergence of opinion on the issues.²¹⁰

204. *Concluding observations of the Human Rights Committee: India*, 08/04/1997, CCPR/C/79/Add.81 are available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument)

205. See <http://www.unhchr.ch/tbs/doc.nsf/5038ebdcb712174dc1256a2a002796da/80256404004ff315c125638c005dca9f?OpenDocument>

206. See http://en.wikipedia.org/wiki/2012_Delhi_gang_rape_case

207. See Full Text of the Justice Verma Committee Report, 23 January 2013, available at: <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>, last accessed on 14 August 2013.

208. The Criminal Law (Amendment) Act, 2013 is available at http://egazette.nic.in/WriteReadData/2013/E_17_2013_212.pdf

209. See Full Text of the Justice Verma Committee Report, 23 January 2013, available at: <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>, last accessed on 14 August 2013.

210. Rajya Sabha Unstarred Question No. 4590 dated 8 May 2013 asked by Member of Parliament Smt. Jharna Das and answered by Shri R.P.N. Singh, Minister of State in the Ministry of Home Affairs, available at: <http://mha.nic.in/par2013/par2013-pdfs/rs-080513/4590.pdf>

The Government of India has essentially legalised rape by the armed forces in conflict situations by making it mandatory to seek prior sanction of the Government of India for prosecution of the accused security personnel. A sanction that is rarely, if ever given.

iv. No need to adjudicate good faith, prior sanction is absolute: Pathribal killings and the Supreme Court of India

In Chittising Pora village, District Anantnag, Jammu and Kashmir (J&K), 36 Sikhs were killed by terrorists on 20 March 2000. Immediately thereafter, a search for the terrorists started in the entire area and 5 persons, purported to be terrorists, were killed at village Pathribal Panchalthan under Anantnag district by personnel of the 7th Rashtriya Rifles (RR) on 25 March 2000 in an encounter.

The 7th RR on 25 March 2000 claimed the 5 persons to be responsible for massacre of the Sikhs at Chittising Pora and Major Amit Saxena, the then Adjutant, 7th RR sent a complaint bearing No. 241/GS(Ops.) dated 25 March 2000 to Police Station Achchabal, District Anantnag for lodging FIR stating that during a special cordon and search operation in the forests of Panchalthan from 0515 hr. to 1500 hrs. on 25.3.2000, an encounter took place between terrorists and troops of that unit and that 5 unidentified terrorists were killed in the said operation. On the receipt of the complaint, FIR No. 15/2000 under Section 307 of Ranbir Penal Code (RPC) and Sections 7/25 of the Arms Act, 1959 was registered against unknown persons. A seizure memo was prepared by Major Amit Saxena on 25 March 2000 showing seizure of arms and ammunition from all the 5 unidentified terrorists killed in the aforesaid operation which included AK-47 rifles (5), AK-47 Magazine rifles (12), radio sets (2), AK-48 ammunition (44 rounds), hand grenades (2) detonators (4) and detonator time devices (2). The said seizure memo was signed by witnesses, Farooq Ahmad Gujjar and Mohammed Ayub Gujjar, residents of Wuzukhan, Panchalthan, J&K.

The 7th RR deposited these recovered weapons and ammunition with 2 Field Ordnance Depot. However, the local police insisted that the Army failed to hand over the arms and ammunition allegedly recovered from the terrorists killed in the encounter, which tantamount to causing the disappearance of evidence, constituting an offence under Section 201 of the RPC. In this regard, there had been correspondence and a Special Situation Report dated 25.3.2000 was sent by Major Amit Saxena, the then Adjutant, to Head Quarter-I, Sector RR stating that, based on police inputs, a joint operation with STF was launched in the forest of Pathribal valley on 25 March 2000, as a consequence, the said incident occurred. However, it was added that ammunition allegedly recovered from the killed militants had been taken away by the STF.

There had been a series of processions in Kashmir to protest against the killing of these 5 persons alleging that they were civilians and had been killed by the RR personnel in a fake encounter. The local population treated it to be a barbaric act of violence and there had been a demand for independent inquiry into the whole incident. On the request of the Government of J&K, a Notification dated 19.12.2000 under Section 6 of Delhi Police Special Establishment Act, 1946 (hereinafter called as "Act 1946") was issued. In pursuance thereof, Ministry of Personnel, Government of India, also issued Notification dated 22.1.2003 under Section 5 of the Act 1946 asking the Central Bureau of Investigation (CBI) to investigate four cases including the alleged encounter at Pathribal resulting in the death of 5 persons on 25.3.2000.

The CBI conducted the investigation into the Pathribal incident and filed a chargesheet in the court of Chief Judicial Magistrate-cum- Special Magistrate, CBI, (hereinafter called the 'CJM') Srinagar,

on 9.5.2006, alleging that it was a fake encounter, an outcome of criminal conspiracy hatched by Colonel Ajay Saxena, Major Brajendra Pratap Singh, Major Sourabh Sharma, Subedar Idrees Khan and some members of the troops of 7th RR who were responsible for killing of innocent persons. Major Amit Saxena prepared a false seizure memo showing recovery of arms and ammunition in the said incident, and also gave a false complaint to the police station for registration of the case against the said five civilians showing some of them as foreign militants and passed false information to the senior officers to create an impression that the encounter was genuine and, therefore, caused disappearance of the evidence of commission of the offence under Section 120-B read with Sections 342, 304, 302, 201 RPC and substantive offences thereof. Major Amit Saxena was further alleged to have committed offence punishable under Section 120-B read with Section 201 RPC and substantive offence under Section 201 RPC with regard to the aforesaid offences.

The CJM on consideration of the matter found that veracity of the allegations made in the chargesheet and the analysis of the evidence cannot be gone into as it would be tantamount to assuming jurisdiction not vested in him in view of the provisions of Armed Forces J&K (Special Powers) Act, 1990, which offer protection to persons acting under the said Act.²¹¹

The CJM, Srinagar, granted opportunity to the Army to exercise the option as to whether the competent military authority would prefer to try the case by way of court-martial by taking over the case under the provisions of Section 125 of the Army Act, 1950. On 24 May 2006, the Army officers filed an application before the court pointing out that no prosecution could be instituted except with the previous sanction of the Central Government in view of the provisions of Section 7 of the Act 1990 and, therefore, the proceedings should be closed by returning the chargesheet to the CBI.

The CJM in his order of 24 August 2006 dismissed the application holding that the said court had no jurisdiction to go into the documents filed by the investigating agency and it was for the trial court to find out whether the action complained of falls within the ambit of the discharge of official duty or not. The CJM himself could not analyse the evidence and other material produced with the chargesheet for considering the fact, as to whether the officials had committed the act in good faith in discharge of their official duty; otherwise the act of such officials was illegal or unlawful in view of the nature of the offence.

Aggrieved by the order of CJM, the General Officer Commanding of the 7th RR filed a revision petition before the Sessions Court, Srinagar and the Sessions Court directed the CJM to give one more opportunity to the Army officials for exercise of option under Section 125 of the Army Act.

The General Officer Commanding of the 7th RR approached the High Court against the order of the Sessions Court. The High Court vide impugned order dated 10.7.2007 affirmed the orders of the courts below and held that the very objective of sanctions is to enable the Army officers to perform their duties fearlessly by protecting them from vexatious, malafide and false prosecution for the act done in performance of their duties. However, it has to be examined as to whether their action falls under the Act 1990. The CJM does not have the power to examine such an issue at the committal

211. Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, "7. *Protection of persons acting in good faith under this Act. No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act*".

proceedings. At this stage, the Committal Court has to examine only as to whether any case is made out and, if so, the offence is triable.

Thereafter an appeal was filed before the Supreme Court of India by the GOC of the 7th RR, among others, claiming immunity under Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

Though the CBI contented that “killing innocent persons in a fake encounter in execution of a conspiracy cannot be a part of official duty and thus, in view of the facts of the case no sanction is required”, the Supreme Court in May 2012 held that it has “no hesitation to hold that sanction of the Central Government is required in the facts and circumstances of the case and the court concerned lacks jurisdiction to take cognizance unless sanction is granted by the Central Government.”²¹²

ACHR is of the opinion that the Supreme Court had failed to appreciate that “protection” is provided to “persons acting in good faith”. How extrajudicial executions of innocent persons after entering into criminal conspiracy become an act of good faith has not been explained by the Supreme Court in its judgement on the Pathribal killings.

212. Judgement of the Supreme Court of India dated 1 May 2012 in CRIMINAL APPEAL NO. 257 of 2011 General Officer Commanding ...Appellant Versus CBI & Anr. With CRIMINAL APPEAL NO.55 of 2006 available at <http://www.indiankanoon.org/doc/69000120/>

Chapter 6: Conclusions and recommendations

There is no doubt that India pays significant importance to UN peacekeeping operations. This is demonstrated for instance by India's then President Dr APJ Abdul Kalam administering a six point oath on 5 February 2007 to over 3,500 Indian Army troops deployed with the UN peacekeeping missions in the DRC and Sudan. The oath stressed the traditions of the Indian Army and the role of each individual in the peacekeeping missions. It reminded the Peacekeepers that they represent India, a great nation. It spoke about moral character and regimental coordination. It emphasised the role of the Peacekeepers to assist the citizens of the nations in which they are deployed for peacekeeping. Then the CoAS assured the President that the troops would uphold the oath administered to them and all troops being deployed on UN mission would also be administered this oath.²¹³

About a year later, the scandals of the UN peacekeepers in the DRC exploded. India's image as a prominent UN peacekeeping nation remains tainted and the government has failed to take appropriate steps to address the issue.

On paper, there is vetting for selection of the PBOR while officials are required to fill up P-11 form of the UN. Among others, all PBOR who have any disciplinary case and criminal case pending against them or have been awarded Red Ink Entry under Section 34 of the Army Act of 1950 relating to offences pertaining to the enemy and punishable with death, Section 35 pertaining to offences in relation to the enemy and not punishable with death, Section 36 on offences punishable more severely on active service than at other times, Section 38 on desertion and aiding desertion, Section 40(a) relating to use of criminal force to or assaults his superior officer, Section 41 relating to disobedience to superior officer, Section 46 relating to certain forms of disgraceful conduct, Section 52 on offences in respect of property and Section 53 relating to extortion and corruption will not qualify for UN peacekeeping duties.

However, in practice the army personnel enjoy virtual impunity. Special laws such as the Armed Forces Special Powers Act, 1958 and Section 197 of the Criminal Procedure Code makes prior permission from the concerned Government mandatory for prosecution of the accused army and police personnel and the permission is seldom given. The army personnel and the police continue with the same sense of impunity in their places of deployment on UN peacekeeping missions.

If any incident of violations during peacekeeping operations is found following inquiry, the UN is faced with a *fait accompli* as it is the troop contributing countries which are expected to take necessary actions as per the national laws. The secrecy with respect to the Court of Inquiry into sexual offences by the 6th Sikh Regiment in the Democratic Republic of Congo shows that all actions are geared towards shielding the guilty.

India's engagement with United Nations peacekeeping operations is here to stay. It forms part of the strategic engagement with Africa²¹⁴ and the Middle East.

213. See Government of India, Press Information Bureau, *Dr. APJ Abdul Kalam Administers Six Points Oath to Indian Troops Bound for UN Peacekeeping Missions*, 5 February 2007, available at: http://pib.nic.in/release/rel_print_page1.asp?relid=24571, last accessed on 14 August 2013.

214. See "The Second Africa-India Forum Summit 2011: Addis Ababa Declaration at <http://www.indiaafricasummit.nic.in/?1503> which at Para 14 provides that "Africa recalls, with appreciation, India's principled support to and continuing

It is in India's national interest to promote better national vetting mechanisms prior to sending the troops for the UN peacekeeping operations to ensure that criminal elements in the Army do not blemish India's track record on peacekeeping.

At national level, India has in place such vetting procedures such as policy clearance for any criminal cases for appointments for members of the Army and paramilitary forces. There is no reason why the Government of India cannot ask similar questions for each and every army/police being deployed for UN missions as provided in the Acts establishing the forces and in conformity with the Code of Conduct for UN peacekeepers and the December 2012 UN policy on human rights screening.

Asian Centre for Human Rights recommends the following to the Government of India:

- Considering the problems of selecting troop contingents which does not provide for verification of individuals, put in place effective human rights screening policies for the selection and deployment of security forces personnel on peacekeeping duties, and make them publicly available;
- Introduce national vetting procedures to comply with "ANNEX H: WE ARE UNITED NATIONS PEACEKEEPING PERSONNEL" of the Memorandum of Understanding signed with the UN and the December 2012 UN policy for human rights screening of UN personnel;
- Ensure that army and police personnel engaged in counter-insurgency operations are subjected to vetting by the National Human Rights Commission with respect to allegations of human rights violations;
- Issue necessary guidelines/instructions to provide that no immunity shall be provided for any offence committed as part of UN peacekeeping operations;
- File charges against the Army personnel deployed as peacekeepers in DRC against whom there is evidence of involvement in rape and sexual violence under the Army Act of 1950 as per the report (ID Case No. 0648/06) of the Investigations Division of the Office of Internal Oversight Services (OIOS) received from the Conduct and Discipline Team of the UN Mission in the DRC; and
- Make public the army's Court of Inquiry (CoI) report into sexual abuse by the personnel of the 6th Sikh Battalion during their deployment with the MONUC.

Asian Centre for Human Rights recommends the following to the United Nations, in particular, the Department of the Peacekeeping Operations:

- Withhold the salaries of those suspected of involvement in serious human rights violations and establish criminal accountability;
- Name and shame the peacekeepers who are found responsible for sexual exploitation and abuse while in UN Peacekeeping missions; and
- Make all the reports of inquiry into sexual exploitation and abuses by the OIOS public.

involvement with UN peacekeeping operations, especially in the African continent, India appreciates the role of African countries in maintaining peace and security in the Continent and their participation in peace keeping missions in other parts of the world".

Annex 1: Patterns of deployment for the UN Keeping Missions by India

Patterns of deployment of Indian peacekeepers

Available as on 10th November 2013 at : <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>

Year	JAN	FEB	MAR	APL	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2013	7,840	7,845	7,812	7,795	7,868	7,878	7,859	7,858	7,860	7,864		
2012	8,093	8,110	8,134	8,133	8,134	8,145	8,109	8,104	7,889	7,899	7,846	7,839
2011	8,680	8,665	8,657	8,513	8,488	8,504	8,423	8,408	8,192	8,093	8,174	8,115
2010	8,759	8,783	8,765	8,771	8,775	8,920	8,919	8,925	8,935	8,704	8,711	8,691
2009	8,640	8,633	8,631	8,617	8,612	8,607	8,753	8,767	8,752	8,759	8,759	8,757
2008	9,376	9,379	8,964	8,998	8,862	8,896	8,875	8,719	8,724	8,834	8,738	8,693
2007	9,612	9,608	9,471	9,387	9,342	9,332	9,348	9,345	9,352	9,316	9,343	9,357
2006	7,339	8,996	9,061	9,057	9,061	9,054	9,290	9,279	9,246	9,276	9,256	9,483
2005	5,154	5,908	6,009	6,081	6,001	6,176	6,191	6,321	6,505	6,878	7,200	7,284
2004	2,922	2,919	2,919	2,930	2,925	2,928	2,934	2,937	3,044	3,042	3,490	3,912
2003	2,750	2,748	2,742	2,735	2,761	2,719	2,870	2,933	2,922	2,922	2,945	2,882
2002	2,885	2,883	2,877	3,029	3,019	3,022	3,016	2,857	3,013	2,942	2,855	2,746
2001	0	0	0	1,761	2,099	2,791	2,796	2,772	2,852	2,853	2,843	2,883
2000	2,297	1,359	2,520	2,548	4,662	4,471	4,371	4,283	4,507	4,469	4,407	2,738
1999	891	886	865	742	768	722	775	780	787	796	799	1,998
1998	369	337	347	347	343	340	297	311	305	302	919	0
1997	1,209	1,211	1,082	871	879	652	649	636	585	584	347	353
1996	1,986	1,987	1,750	1,180	1,209	1,214	1,166	1,203	1,200	1,201	1,208	1,211
1995	856	857	1,024	1,119	1,343	1,388	2,189	2,188	2,198	2,199	2,084	2,078
1994	5,882	5,897	5,891	5,864	5,914	5,462	5,411	5,173	5,163	4,906	5,209	540
1993	1,799	1,796	1,787	1,795	2,647	2,664	2,687	2,473	5,064	5,935	5,883	5,904
1992	47	38	65	96	0	0	0	1,455	1,559	1,753	1,749	1,750
1991	0	0	18	26	24	24	33	33	33	33	35	35
1990	0	0	0	0	0	0	0	0	0	0	40	0

Patterns of deployment of Indian Army

Available as on 10th November 2013 at : <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>

Year	JAN	FEB	MAR	APL	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2013	6,743	6,764	6,754	6,736	6,816	6,821	6,819	6,818	6,814	6,812		
2012	6,994	7,000	7,010	7,017	7,021	7,018	7,003	6,992	6,777	6,783	6,745	6,744
2011	7,539	7,531	7,538	7,400	7,383	7,381	7,364	7,307	7,098	7,008	7,004	6,997
2010	7,944	7,973	7,970	7,975	7,975	7,971	7,969	7,966	7,976	7,727	7,725	7,550
2009	7,956	7,958	7,962	7,959	7,945	7,945	7,962	7,964	7,942	7,941	7,946	7,942
2008	8,779	8,779	8,343	8,380	8,228	8,232	8,230	8,079	8,079	8,080	7,964	7,963
2007	9,037	9,034	8,902	8,816	8,772	8,764	8,768	8,769	8,778	8,776	8,776	8,775
2006	6,849	8,510	8,572	8,568	8,573	8,570	8,798	8,797	8,823	8,830	8,825	9,039
2005	4,756	5,550	5,649	5,713	5,730	5,901	5,918	6,049	6,337	6,668	6,728	6,810
2004	2,534	2,536	2,528	2,541	2,536	2,540	2,547	2,546	2,666	2,664	3,093	3,515
2003	2,205	2,205	2,205	2,200	2,241	2,198	2,350	2,534	2,533	2,529	2,543	2,530
2002	2,216	2,217	2,217	2,371	2,381	2,379	2,377	2,377	2,376	2,375	2,292	2,203
2001	0	0	0	1,114	1,426	2,117	2,119	2,120	2,177	2,175	2,183	2,215
2000	2,047	2,109	2,272	2,278	3,957	3,766	3,765	3,677	3,816	3,818	3,745	2,098
1999	765	760	752	619	647	621	622	622	635	635	635	1,745
1998	169	149	157	157	156	146	146	161	161	161	778	0
1997	1,081	1,080	949	740	730	452	450	443	390	390	150	150
1996	1,917	1,916	1,634	1,070	1,100	1,099	1,043	1,080	1,081	1,081	1,081	1,081
1995	823	808	956	1,050	1,271	1,320	2,120	2,120	2,129	2,134	2,018	2,012
1994	5,854	5,849	5,843	5,835	5,885	5,340	5,289	5,051	5,041	4,797	5,101	432
1993	1,342	1,338	1,334	1,339	2,178	2,192	2,227	2,420	5,016	5,901	5,854	5,876
1992	47	38	65	20	0	0	0	1,350	1,319	1,347	1,346	1,348
1991	0	0	18	26	24	24	33	33	33	33	35	35
1990	0	0	0	0	0	0	0	0	0	0	40	0

Patterns of deployment of Indian Military Experts on Mission

Available as on 10th November 2013 at : <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2013	75	48	50	51	46	45	48	48	51	51		
2012	77	72	76	77	69	73	67	74	74	77	77	73
2011	84	85	85	85	86	88	71	89	86	81	81	79
2010	78	79	83	79	84	74	76	87	86	84	82	84
2009	84	82	81	73	74	74	81	69	78	76	73	77
2008	89	90	86	86	84	84	80	82	85	84	85	90
2007	84	85	81	86	89	86	88	82	89	89	89	89
2006	97	97	96	97	96	94	102	94	94	91	88	83
2005	55	55	57	59	59	63	64	63	61	81	91	93
2004	41	36	41	40	44	45	44	48	51	51	51	54
2003	41	41	33	31	37	38	38	39	41	44	45	45
2002	33	33	35	35	34	37	34	36	35	40	36	39
2001	0	0	0	29	29	29	33	32	32	36	32	32
2000	26	26	28	30	32	32	32	32	30	20	22	23
1999	11	12	11	11	9	9	8	12	15	24	27	27
1998	20	10	11	11	10	10	16	15	15	15	15	0
1997	37	40	39	39	39	39	39	27	26	25	25	23
1996	56	58	39	29	29	29	28	28	28	28	33	38
1995	33	49	49	50	52	49	50	50	51	50	53	53
1994	28	48	48	29	29	47	47	47	47	34	33	33
1993	28	30	28	33	48	55	47	49	47	32	29	28
1992	0	0	0	76	0	0	0	45	43	40	37	36
1991	0	0	0	0	0	0	0	0	0	0	0	0
1990	0	0	0	0	0	0	0	0	0	0	0	0

Patterns of deployment of Indian Police

Available as on 10th November 2013 at : <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2013	1,022	1,033	1,008	1,008	1,006	1,012	992	992	995	1,001		
2012	1,022	1,038	1,048	1,039	1,044	1,054	1,039	1,038	1,038	1,039	1,024	1,022
2011	1,057	1,049	1,034	1,028	1,019	1,035	988	1,012	1,008	1,004	1,089	1,039
2010	737	731	712	717	716	875	874	872	873	893	904	1,057
2009	600	593	588	585	593	588	710	734	732	742	740	738
2008	508	510	535	532	550	580	565	558	560	670	689	640
2007	491	489	488	485	481	482	492	494	485	451	478	493
2006	393	389	393	392	392	390	390	388	329	355	343	361
2005	343	303	303	309	212	212	209	209	107	129	381	381
2004	347	347	350	349	345	343	343	343	327	327	346	343
2003	504	502	504	504	483	483	482	360	348	349	357	307
2002	636	633	625	623	604	606	605	444	602	527	527	504
2001	0	0	0	618	644	645	644	620	643	642	628	636
2000	224	224	220	240	673	673	574	574	661	631	640	617
1999	115	114	102	112	112	92	145	146	137	137	137	226
1998	180	178	179	179	177	184	135	135	129	126	126	0
1997	91	91	94	92	110	161	160	166	169	169	172	180
1996	13	13	77	81	80	86	95	95	91	92	94	92
1995	0	0	19	19	20	19	19	18	18	15	13	13
1994	0	0	0	0	0	75	75	75	75	75	75	75
1993	429	428	425	423	421	417	413	4	1	2	0	0
1992	0	0	0	0	0	0	0	60	197	366	366	366
1991	0	0	0	0	0	0	0	0	0	0	0	0
1990	0	0	0	0	0	0	0	0	0	0	0	0

Annex 2: Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, 5 January 2005

United Nations

A/59/661



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Human resources management

Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Financing of the United Nations Organization Mission in the Democratic Republic of the Congo

Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo

Summary

Media reports in early 2004 indicated the recurrence of acts of sexual exploitation and abuse of Congolese women and girls by United Nations peacekeepers serving with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) in Bunia. MONUC and the Department of Peacekeeping Operations subsequently approached the Office of Internal Oversight Services (OIOS) to conduct an investigation into the allegations. The investigation was conducted in Bunia between May and September 2004.

Interviews with Congolese women and girls confirmed that sexual contact with peacekeepers occurred with regularity, usually in exchange for food or small sums of money. Many of these contacts, which were further confirmed by evidence from others adduced by the OIOS team, involved girls under the age of 18, with some as young as 13.

Many of the 72 allegations originally reported to MONUC could not be substantiated or even fully investigated because of their non-specific nature. Nevertheless, OIOS was able to compile 20 case reports. One case that was substantiated involved an international civilian post. The remaining 19 cases involved peacekeepers from 3 contingents. Of those, six cases were fully substantiated. In another two cases, the identification of the perpetrators was not fully corroborated. In the remaining 11 cases, the victims and witnesses were unable

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to clearly identify the perpetrators. However, dozens of interviews with the girls themselves and with the young Congolese men who facilitated the encounters, as well as with aid workers, revealed a pattern of sexual exploitation by peacekeepers contrary to the standards set by the Department of Peacekeeping Operations in its Ten Rules: Code of Personal Conduct for Blue Helmets and the Mission's own code of conduct.

OIOS has made recommendations for corrective action based on the investigative findings, which are set out in 20 reports submitted to the Department of Peacekeeping Operations and MONUC. The recommendations have all been accepted by the Department. OIOS wishes to express its appreciation to the management of the Department of Peacekeeping Operations and MONUC for their assistance with the investigation.

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I. Introduction

1. Two reports, in March and May 2004, from Congolese women and a media organization alleged that United Nations peacekeepers with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) in Bunia were involved in the sexual abuse and exploitation of local Congolese girls. In April 2004, the MONUC External Affairs/Code of Conduct Officer reviewed the situation in Bunia and reported to the Special Representative of the Secretary-General for MONUC. According to that report, 24 allegations had been received involving soldiers from almost all of the Bunia-based contingents, as well as military observers and civilian staff.

2. Because of the scope and seriousness of the allegations, the Special Representative of the Secretary-General and the Under-Secretary-General for Peacekeeping Operations requested the Office of Internal Oversight Services (OIOS) to undertake a full investigation. Three OIOS investigators conducted an assessment mission in MONUC, including in Bunia, in May 2004. The investigators met with parties having knowledge of the allegations, observed the environment, prepared an investigation plan and assembled an investigation team.

3. In total, the investigation team consisted of 11 male and female investigators from nine nationalities and with varied professional skills; there were at least six investigators on the ground in Bunia at any given time. The team, while predominately composed of OIOS investigators, included one MONUC security officer, one civilian police officer and three female Congolese interpreters. In addition, the Ituri Brigade Military Police Commander served as the military liaison officer with the team. The team operated in Bunia for four months, from June to September 2004.

4. Bunia is situated in the Ituri District in the far north-eastern part of the Democratic Republic of the Congo and serves as the headquarters and logistics base of MONUC, sector 6. At the time of the investigation, nearly 11,000 military personnel were deployed by MONUC in the Democratic Republic of the Congo and of that number some 4,500 were deployed in Ituri.

II. Investigative activities

A. Methodology

5. Both before and during the investigation, OIOS held meetings with concerned parties at United Nations Headquarters and at MONUC, including military personnel from the office of the MONUC Force Commander, the contingent commanders in Bunia, MONUC senior managers, staff of United Nations agencies and non-governmental organizations with responsibilities in the region, and Congolese citizens, as well as staff of the Department of Peacekeeping Operations and the Office of Legal Affairs at Headquarters. The purpose was to discuss the strategies for the investigation, answer procedural questions and seek support and general assistance.

6. In an effort to satisfy confidentiality requirements, as strictly stipulated in the mandate of OIOS (ST/SGB/273, para. 18 (b) and (c)), the investigation team also

made a special effort to protect the identities of the vulnerable victims and witnesses, especially because many were under 18 years of age, by assigning numbers instead of using their names.

B. Allegations

7. A total of 72 allegations, received primarily by MONUC staff, were investigated. For the most part, the allegations lacked specifics as to names of victims, witnesses and perpetrators. The investigation team set out to gather sufficient information on which to base its investigations, which included talking to the original sources of the allegations. Allegations that could lead to the identification of potential witnesses, victims or perpetrators were given priority and investigations of those cases were conducted by the team. A small unit continued to try to identify sources, victims and others in connection with the remaining allegations.

8. Of the 72 allegations, 68 concerned military contingent personnel and 4 involved international civilian posts. Three of the allegations involving civilians were not substantiated, but in the fourth the team determined that the person had acted inappropriately towards local women employed by the Mission and had downloaded and stored pornographic material on his office computer.

9. Of the 68 allegations involving military contingent personnel, OIOS closed 44 cases after preliminary investigations established that the victims and/or witnesses could not be identified or traced. OIOS closed seven additional cases that had been previously investigated and the results brought to the attention of MONUC administrators. Similarly, OIOS closed three other cases that could not proceed to the identification stage because the alleged perpetrators had already been rotated out of the mission area.

10. From the remaining 14 allegations, OIOS developed 19 cases involving military personnel. In six cases, the allegations against the peacekeepers were fully substantiated, and under-age girls were involved in all of them. In two cases, the evidence was convincing but not fully substantiated. In the remaining 11 cases, evidence was received of sexual exploitation by peacekeepers, but it was not corroborated. MONUC and the Department of Peacekeeping Operations have received reports of the 19 cases for action. In none of those cases did the peacekeepers admit to the alleged sexual contact.

11. In many of the interviews conducted by the investigation team during its four months of field work, particularly of the younger girls, aged 11 to 14 years, it became clear that for most of them, having sex with the peacekeepers was a means of getting food and sometimes small sums of money. The boys and young men who facilitated sexual encounters between peacekeepers and the girls sometimes received food as payment for their services as well. In addition to the corroborated cases reported in the next section, interviews with other girls and women indicated the widespread nature of the sexual activity occurring in Bunia between peacekeepers and the local population. Although many of them could not identify the particular peacekeepers involved, their reports of regular sexual contact were detailed and convincing. A number of the girls said that they had never looked at the faces of the peacekeepers or that they were not able to differentiate among non-Congolese. For the youngest of the girls, recounting the events was extremely difficult. Many of

them had been raped during the conflict and the trauma of their lives made pressing them for evidence in these cases very delicate. In future, the likelihood that victims will be able to identify perpetrators and that witnesses will be able to corroborate the evidence can be increased by ensuring that incidents are reported shortly after their occurrence (rather than weeks or months later as in the present cases), by facilitating more contact between the girls and skilled, sensitive investigators able to draw the girls out and by developing programmes to make the girls feel safe. Examples of the cases demonstrate the nature of the sexual exploitation and the extreme youth of many of the girls. None of the peacekeepers identified admitted to the contacts, but the evidence against them is strong and has been corroborated.

C. Case studies

Case A

12. The girl, identified by OIOS as V046A, was 14 years old and lived with her family. Owing to a lack of funds, she did not attend school. She told the OIOS investigators that she had had sexual relations with a MONUC soldier who was known to her (PK1). Each time this soldier gave her \$1 or \$2 or two eggs in return. A witness, W046A, age 15, had introduced V046A to the soldier in return for bread. Another witness, W046B, age 12, had also helped the soldier to meet with V046A for sex.

13. The victim and two witnesses clearly described the soldier and noted that he had a broken arm. OIOS investigators, through the Ituri Brigade Military Police Commander, were able to trace the medical records of a soldier who had been treated for a broken arm at the contingent hospital in Bunia. The name and MONUC identification number of this soldier matched those of the soldier identified by the witnesses. OIOS investigators could not interview the soldier because he had been repatriated.

Case B

14. The victim in case A, V046A, also told OIOS that one of the witnesses, W046B, had introduced her to another MONUC soldier (PK2). She had had sexual intercourse with this soldier in return for \$3 and a packet of milk. V046A further stated that PK2 had wanted to have sexual intercourse with her on a second occasion, but she had refused as he did not have money or food for her. The witness admitted to having facilitated sex between V046A and the soldier in return for bread and jam. The victim and witness positively identified the soldier both in the photo array and during the physical line-up. In his interview with OIOS investigators, the soldier denied having had sexual relations with any Congolese women or girls.

Case C

15. The girl, V030A, was 14 years old and did not attend school. She said that a MONUC soldier whom she had met at a camp behind the Médecins sans frontières hospital had given her food during their first four meetings but did not have sex with her. On the fifth occasion he requested her to have sex and she agreed. In return for sex, the soldier gave her \$2, chocolate and bread. The victim's statement was corroborated by two other girls, aged 11 and 15, and two male witnesses, aged 18

and 20. The soldier was identified by V030A. The two witnesses confirmed the identification and stated that they had brought V030A to him for the purpose of sexual relations. The soldier was interviewed by OIOS investigators and denied having had any involvement with local Congolese girls or women.

Case D

16. The girl, V002B, who was 13 years old, told the OIOS investigators that she had had sex with a MONUC soldier who was known to her (PK3) at Ndoromo camp on at least four occasions. She reported that she and her friends would go to the camp to have sex with different soldiers. She stated that she had received cash ranging from \$3 to \$5 after each sexual encounter. Another victim, V002A, who was 14 years old, confirmed the statement of V002B. Both victims were able to identify the soldier from photographs and line-ups. The soldier was interviewed by OIOS investigators and denied any involvement with local Congolese women or girls.

Case E

17. The witness, W054A, is a local Congolese male, age 25, and a former militia soldier who confirmed to the OIOS investigators that he had been procuring girls for MONUC soldiers for sexual relations. Those soldiers were involved in sexual activity with a group of four girls: two aged 17, one 16 and another 14, who were supplied by W054A. The evidence established that one soldier, PK4, had had sexual relations several times with V054B, age 17, and in return he had given her some food. Witness W054A was able to identify the soldier in a photo array and corroborated his identification in a physical line-up. The victim was also able to identify the soldier in the line-up. The soldier was interviewed by OIOS investigators and denied any involvement with local Congolese women and girls.

Case F

18. In this case, the evidence established that a MONUC soldier had had sex with victim V054C, 14 years old, on several occasions. In exchange for sex, he gave her food. Witness W054A identified the soldier in both the photo array and the line-up. The victim corroborated this identification in the line-up.

III. Applicable legal provisions

19. The evidence in these cases demonstrates that peacekeepers were involved in exploitative behaviour by having sexual relations with local Congolese girls, all of whom in these cases were younger than 18, with five of the six victims being 14 years of age or younger. In addition, the MONUC code of conduct and the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) provide that sexual activity with children (persons under 18) is prohibited regardless of the local age of majority or consent and that the mistaken belief in the age of the child is not a defence.

20. Sexual exploitation and abuse is prohibited conduct under rule 4 of the Code of Personal Conduct for Blue Helmets and the MONUC code of conduct. The MONUC code of conduct specifically defines an act of sexual abuse and/or exploitation as any exchange of money, employment, goods or services for sex. In each of the substantiated cases, the perpetrators effectively breached the Code of

Personal Conduct for Blue Helmets and the MONUC code of conduct by exchanging money and food for sex with girls under 18 years of age. Failure to observe these strict standards of conduct renders the perpetrators liable to disciplinary action for serious misconduct as defined in section III of the Department of Peacekeeping Operations Directives for Disciplinary Matters Involving Military Members of National Contingents. All troop-contributing countries recognize the Code of Personal Conduct for Blue Helmets as binding.

21. Subsequent to the establishment of the MONUC code of conduct, the Secretary-General promulgated the bulletin on special measures for protection from sexual exploitation and sexual abuse (see para. 19 above). This bulletin is binding on United Nations staff and its provisions are similar to those contained in the MONUC Code of Conduct. Both documents elaborate on the standards found in the Code of Personal Conduct for Blue Helmets. Section 1 of the bulletin defines sexual exploitation as “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another”. Sexual abuse is defined as “actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions”. Section 2 of the MONUC code of conduct has similar provisions and also provides that sexual exploitation and abuse is defined, among other things, as any sexual misconduct that has a detrimental effect on the image, credibility, impartiality or integrity of the United Nations. As the cases reported above demonstrate, those factors were present in abundance in Bunia.

22. By section 7 of the Secretary-General’s bulletin on observance by United Nations forces of international humanitarian law (ST/SGB/1999/13), United Nations forces conducting operations under United Nations command and control are prohibited from committing acts of sexual exploitation and abuse and have a particular duty to protect women and children from such assaults. Thus such sexual contact is not only prohibited, but also is a significant failure in the responsibility of peacekeepers to protect the most vulnerable members of Congolese society. The need for the contingents to be close to the local population in order to protect them from militia attacks provides not only an opportunity to supply the required care, but also, unfortunately, an opportunity to exploit the dire needs of vulnerable children, thereby violating the directive.

23. Similarly, in demanding or seeking sexual favours from these vulnerable victims, the peacekeepers abused their positions of power. By virtue of not only their unequal social positions but also their relative wealth — the ability to bestow small amounts of money or food on the girls and the facilitators — the peacekeepers could take advantage of the local population, which has little means of its own.

IV. Investigative findings

A. Problem of sexual exploitation and abuse

24. The sexual exploitation and abuse of young girls in Bunia by local factions arose during the conflict that erupted in that region, in which numerous girls were raped and many were left without families or means of support. The later presence of international peacekeepers added another dimension and augmented the problem.

In the existing conditions, many children were rendered homeless and orphaned or their families were unable to provide basic necessities, thereby causing them to resort to other means of support.

25. Although there were allegations involving women over the age of 18, the majority of the victims identified in the investigation were between 12 and 16 years of age. They were poor village children whose lives had been significantly affected by civil war and whose encounters with foreigners prior to the arrival of MONUC in their land had been limited. Most were illiterate, with only a handful reportedly having attended school. OIOS had difficulty gaining full access to most of these young victims, some of whom were under care and receiving psychological counselling, while others lived outside Bunia's secure zone.

26. The Congolese males who helped to introduce the girls to the peacekeepers were mainly young boys aged 8 to 18, and a few young men aged 20 to 25. They facilitated the peacekeepers' access to the girls and so functioned as procurers or pimps while living at the internally displaced persons camp or on the streets. They reported having been paid \$1 and/or food for each girl brought to the peacekeepers. However, in many cases, they said, the peacekeepers gave nothing in exchange for the girls. Some of them were former child soldiers from the Congolese militia. A few of the boys attended school; the rest had dropped out because of a lack of funds for school fees or a lack of interest. Some of the older ones did manual labour at the military camps and therefore were familiar with the peacekeepers.

27. The venues for the sexual activities were identified as various prearranged meeting places, such as inside the guard posts, in mostly rundown shelters, in the bush near the military camps at rented or abandoned accommodations, or even on bare ground behind buildings, under mango trees. The activities usually occurred just after dark, normally between 7 and 10 p.m.

28. The peacekeepers implicated in the allegations and interviewed by OIOS were not officers but rather enlisted or non-commissioned personnel serving at guard posts or at the camps. They were between 24 and 45 years of age. For most of them, MONUC was their first mission assignment. Although the cases investigated by the OIOS team involved only some peacekeepers from three of the Bunia-based contingents, it cannot be assumed that members of other contingents did not engage in similar improper activities, given the credible reports received by the OIOS team from many of those interviewed, including victims, witnesses and others in the region. Nor can it be assumed that some contingents were necessarily more involved in those activities than others. Often, though, it is the demands and requirements of the contingent commanders that have the greatest impact on the conduct of the contingent troops. OIOS reports only on the cases it has investigated.

29. It should be noted that it was the intention of OIOS to name the troop-contributing countries whose soldiers had been identified as having exploited and abused the local female population in Bunia. Instead, however, the Department of Peacekeeping Operations has, as recommended in the present report, provided the relevant troop-contributing countries with the investigative reports on the cases concerning their contingents so that they can take appropriate action. At the same time, the Department of Peacekeeping Operations is currently developing a more robust policy to address sexual exploitation and abuse issues.

B. Environmental factors contributing to sexual abuse

30. As a result of the ethnic conflict that broke out in the Ituri District in May 2003, many area residents were displaced and impoverished. The internally displaced persons camp, sheltering 10,000 people, is located inside the boundary of Bunia town, adjacent to the MONUC logistics base. The military camps are also located in close proximity to the local population. Although this provides the necessary security buffer against the militias, it also allows for informal interaction between peacekeepers and the local population, creating an environment for exploitation and abuse to occur.

31. One of the major causes encouraging the abuse is poverty resulting from the separation of families by internal conflict. Most of the victims and witnesses are extremely vulnerable, not only because of their youth, but also because they are living alone, with other children or with older relatives in extended families who are unable to provide for them. The victims and a significant number of the boys are not in school because they cannot afford the fees.

32. Hunger has encouraged children to try to make contact with members of the MONUC troops to seek food or a little money. Food insecurity is brought about by the population's inability to access their farmlands because of fear of attacks from the militia. Consequently, the population that was once self-sufficient in food supplies is finding it difficult to subsist. There is a scarcity of employment opportunity in the town, and the food supply in the camp is reportedly inadequate. A breakdown of family and community structures is the result.

33. OIOS also noted the paucity of programmes and facilities to empower, protect or assist vulnerable women and children. Lacking work opportunities, many are without alternative sources of food, clothing and other necessities.

34. At present, the inadequate security perimeter fencing around the military camps also enables the peacekeepers, and their illegal visitors, to move about the camp unnoticed by their supervisors or the few camp guards. Patrols by the military police were insufficient to discourage peacekeepers from engaging in sexual misconduct. The efforts of contingent commanders to enforce discipline were also found to be inadequate. Although the contingent commanders had asserted that their troops were not allowed outside their camps unless on duty, the OIOS team observed peacekeepers in public places, especially restaurants, in the town, not always in uniform. This created not only opportunities for interaction with the local populace, but also potential security problems. For example, in September 2004, an incident occurred where Congolese militia abducted a MONUC peacekeeper who was allegedly in civilian attire among the local population in an area outside the designated secure zone.

35. Although MONUC has prepared directives on the prevention of sexual exploitation and abuse, at present, little has been done to implement an effective prevention programme in Bunia. Although an instruction circular was issued establishing the MONUC Personnel Conduct Committee, the Committee exists only on paper, as no agreement on its terms of reference has been reached by those responsible for finalizing it.

36. The team's interviews with the implicated peacekeepers also raised doubts as to whether they had received an adequate briefing on the Code of Personal Conduct

for Blue Helmets before being deployed in the Mission. They claimed that they had not been apprised of the Code of Conduct, although some of their senior officers maintained that a briefing had been held. Moreover, at present, it does not appear that even after the allegations surfaced the standards of conduct were reinforced with the troops. Such gaps have contributed greatly to the problem; if they are not addressed, the problem is likely to escalate, especially with the expected influx of additional troops to be deployed in the country.

C. Problems in obtaining cooperation from the contingents

37. At the start of the investigation, OIOS investigators met with representatives of the contingents in Bunia to advise them formally of the investigation and to elicit their assistance and cooperation. The contingent commanders agreed and expressed their willingness to provide the necessary cooperation.

38. As the investigation progressed, contact was maintained with the contingents both directly and through the assistance of the Bunia Brigade Commander, Chief of Staff of Administration, Legal Adviser, Provost Marshal and Deputy Provost Marshal. Although one contingent was timely in responding to OIOS requests for assistance, issues arose with two of the other contingents concerning their willingness to assist in identifying possible perpetrators. On several occasions, the commanders of these contingents either failed to provide the requested information or assistance or actively interfered with the investigation. In order to resolve such problems, OIOS sought and received direct support from a number of senior managers of the Department of Peacekeeping Operations.

V. Conclusions

39. The OIOS investigation into allegations of sexual exploitation and abuse of local Congolese women and girls found that the problem was serious and ongoing. Equally disturbing was the lack of a protection and deterrence programme even at the present time.

40. The investigation was hampered by problems in obtaining the requisite assistance and cooperation from two military contingents and in obtaining access to some of the witnesses and victims. Nonetheless, the OIOS team was able to investigate 72 allegations against both military and civilian MONUC personnel. This resulted in 20 case reports. One case involved an international civilian post, while the other 19 cases involved military personnel. In six of those cases, the perpetrators were positively identified. In another two cases the identification was not fully corroborated. In the remaining 11 cases, the victims and witnesses were unable to clearly identify the perpetrators.

41. The majority of the cases were closed after a preliminary investigation, largely because they were duplicative or too vague to allow for positive identification of a victim, witness or perpetrator. Very few of the allegations involved civilian personnel, and in three of the four cases that did, the allegations were not substantiated. In the fourth, the person was found to have engaged in inappropriate conduct with two female Congolese MONUC staff members, as well as to have downloaded and stored pornographic material on his office computer.

42. The OIOS investigation also addressed factors that influenced the lack of corroboration in the identification of perpetrators. The investigators found that most victims were unable to make positive identifications because, for example, they had had only one encounter with the perpetrator and did not take note of identifying characteristics; they had met the perpetrators in the dark and either did not look at their faces or did not see them properly; they were very young and unfamiliar with those not native to their areas and were therefore unable to distinguish one non-Congolese person from another; and they did not recall events weeks or months later.

43. OIOS identified the following factors as contributing to the problem of sexual exploitation of the local community: poverty affecting the general population, especially the internally displaced persons at the camp; food insecurity of the general population; idleness among non-school-going children; the erosion of family and community structures; discrimination against women and girls; insecurity of the perimeter fencing, encouraging interaction between the military and the general population; inadequate patrols by military police and insufficient enforcement of military discipline; the absence of any programmes for off-duty peacekeepers; the lack of a sexual harassment and abuse prevention programme in MONUC; and a lack of facilities or programmes aimed at protecting the vulnerable population.

44. The troop rotations also have kept many of the peacekeepers from having to account for their actions. OIOS noted with great concern that, despite knowledge that the investigation was ongoing, sexual activities between the military and the local population apparently continued. This was evidenced by the presence of freshly used condoms near military camps and guard posts and by the additional allegations of recent cases of solicitations brought to the attention of the OIOS team during the last days of the investigation. It was clear that the investigation did not act as a deterrent for some of the troops, perhaps because they had not been made aware of the severe penalties for engaging in such conduct, nor had they seen any evidence of a negative impact on individual peacekeepers for such behaviour. Without strong reinforcement of the legal requirements and prompt sanctions for violations, they may well continue this behaviour.

45. Of equal concern is the fact that the prevention programme required by the Under-Secretary-General for Peacekeeping Operations and the Special Representative of the Secretary-General for MONUC has not been put in place in the Mission. Few military or civilian staff seemed aware of the directives, policies, rules and regulations governing sexual contact that they were obligated to follow. Although many peacekeepers are conducting themselves appropriately under difficult circumstances, those who engage in conduct that violates legal norms must be made aware that there will be sanctions and penalties. The hundreds of interviews conducted by the OIOS team reveal a pattern of activity that cannot be allowed to continue.

46. The Special Representative of the Secretary-General for MONUC provided the following comments:

I firmly believe that emphasis needs to be placed on the accountability of the officers of contingents to which the perpetrators belong, from contingent to company and platoon commanders. It is clearly evident that while there has been no shortcoming insofar as disseminating the code of conduct and the Secretary-General's zero-tolerance policy on matters of sexual exploitation and abuse, the same cannot be said for the enforcement of this. In certain

instances, it is apparent that the feeling of impunity is such that not only have the policies not been enforced, but the command structures have not always given investigators their full cooperation. I also consider it imperative that the results of Member States' actions against the perpetrators of these abuses be made available to the United Nations and that the Mission highlight to incoming commanders the gravity and extent of the problem and underscore the commanders' responsibility to prevent similar acts during their mandate. Only such stern deterrents, in my view, will enable us to stamp out sexual exploitation and sexual abuse in the peacekeeping environment.

47. OIOS concurs with the position outlined by the Special Representative of the Secretary-General for MONUC and looks forward to collaborative efforts between Member States and the Department of Peacekeeping Operations on deterrence modalities.

VI. Recommendations

48. Based on the findings of this investigation, OIOS offers recommendations that may alleviate the problem, at least at MONUC, but that may be applied in other missions as well. OIOS is aware of the substantial work being done by the adviser to the Secretary-General on this issue and, in particular, notes that his work will address the responses of the troop-contributing countries to this problem.

Recommendation 1

49. Upon review of the individual cases in which peacekeepers have been implicated, the Department of Peacekeeping Operations should request the relevant troop-contributing country to take appropriate action against the military personnel identified and to advise the Department as to the action undertaken (ID Rec. No. IV04/141/01);¹

Recommendation 2

50. The Department of Peacekeeping Operations and MONUC, as a matter of high priority, should implement a strong prevention programme, with emphasis on protecting the most vulnerable girls (those under 18 years of age), and establish a rapid-response detection programme, utilizing personnel experienced in such cases, beginning in Bunia on an expedited basis and then expanding to the other regions of MONUC (ID Rec. No. IV04/141/02);

Recommendation 3

51. Senior MONUC managers must become more involved and demand accountability from both civilian administrators and contingent commanders in the Mission. MONUC must take steps to ensure that administrators and officers demonstrate implementation of all existing regulations and policies aimed at preventing sexual abuse and exploitation (ID Rec. No. IV04/141/03);

¹ The symbols in parentheses in this section refer to an internal code used by OIOS for recording recommendations.

Recommendation 4

52. The Department of Peacekeeping Operations and MONUC should undertake a programme to provide regular briefings for troops on their responsibilities to the local population and on prohibited behaviours and to ensure that all troops and civilians on United Nations missions are fully conversant with United Nations policies on the subject of sexual exploitation and abuse (ID Rec. No. IV04/141/04);

Recommendation 5

53. The MONUC Force Commander, in conjunction with contingent commanders, should enforce strict discipline over the personnel under their command (ID Rec. No. IV04/141/05);

Recommendation 6

54. MONUC should identify and implement measures that ensure that all military compounds are adequately secured to prevent unauthorized entry and egress as well as ad hoc trading between troops and the local population (ID Rec. No. IV04/141/06);

Recommendation 7

55. MONUC should collaborate, perhaps under the auspices of the Office for the Coordination of Humanitarian Affairs, with other non-governmental organizations and United Nations agencies in the Bunia area to find ways of strengthening the existing programmes to empower and protect the vulnerable population to allow for alternative means of survival (ID Rec. No. IV04/141/07);

Recommendation 8

56. Given that this problem is not unique to MONUC, and with new missions being opened in areas where similar problems can arise, it is recommended that the Department of Peacekeeping Operations consider a wider application of prevention and detection policies to protect against sexual abuse and exploitation by peacekeepers. This may include the designation of local officials or non-governmental organizations to receive reports of sexual exploitation and abuse; the central reporting of all cases to mission senior management on an expedited basis; the development of mission-based rapid-response teams; the development of educational programmes for the troops on their responsibilities and on sanctions for sexual exploitation and abuse; the public naming and shaming of those found to have engaged in sexual exploitation and abuse; and the permanent exclusion from peacekeeping missions of those troops who engage in sexual exploitation and abuse and of their contingents' commanders (ID Rec. No. IV04/141/08).

57. The Department of Peacekeeping Operations has agreed with all eight of the recommendations, which it feels will help guide it in moving forward to establish procedures to attempt to eliminate the problem.

(Signed) Dileep Nair
Under-Secretary-General for Internal Oversight Services

Annex 3: Overview report of allegations of misconduct by Indian peacekeepers deployed with the United Nations Mission in the Democratic Republic of Congo by the OIOS (ID Case No. 0648/06), 7 February 2008



United Nations

Nations Unies

OFFICE OF INTERNAL OVERSIGHT SERVICES
INVESTIGATIONS DIVISION

*This Report is protected under paragraph 18 of
ST/SGB/273 of 7 September 1994*

Overview report of allegations of misconduct by Indian peacekeepers
deployed with the United Nations Mission in the Democratic
Republic of the Congo

ID Case No. 0648/06

STRICTLY
CONFIDENTIAL

7 February 2008

I. Introduction

1. On 4 July 2006, the Investigations Division of the Office of Internal Oversight Services (OIOS) received from the Conduct and Discipline Team (CDT) of the United Nations Mission in the Democratic Republic of the Congo (MONUC), allegations of misconduct by peacekeepers of the Indian military contingent (INDBATT) deployed with MONUC and based in the North Kivu province.

2. In the original complaint, it was alleged that:

- a) members of INDBATT may have been maintaining an inappropriate relationship with negative forces, particularly representatives of the *Forces démocratiques de libération du Rwanda* (FDLR);
- b) members of INDBATT deployed to the North Kivu village of Nyabiondo provided confidential information to representatives of FDLR on planned military operations by Congolese armed forces;
- c) members of INDBATT deployed to Nyabiondo traded United Nations rations with members of the FDLR for United States currency and unwrought gold;
- d) members of INDBATT deployed to Nyabiondo may have engaged in the trafficking of minerals with members of the FDLR.

3. In July 2007, these allegations gained international attention after a report by the French-based news agency *Agence France-Presse* released some details of the complaint.

4. On 9 August 2007¹, the Secretariat of the United Nations wrote to the Permanent Mission of India to the United Nations requesting its assistance in the investigation of these allegations. On 9 October 2007², the Permanent Mission of India to the United Nations responded and advised that it had appointed Lieutenant [REDACTED] to lead a joint investigation into the allegations of misconduct in the North Kivu Brigade. In this regard, the Permanent Mission requested that a UN team be sent to India to discuss and finalize terms of reference for a joint investigation and to communicate the findings of initial investigations carried out by the United Nations and India. It was agreed that ID/OIOS would conduct further field-based investigations to determine whether the allegations are credible and require full investigation by India and the United Nations.

5. OIOS conducted initial field-based inquiries between July and November 2007, in order to establish the relative merit of the allegations. During the course of these inquiries, a number of additional allegations were received. The new complaints brought the total number of allegations received to forty-four.

6. The purpose of this report is to provide an overview of the allegations and their current status; the practical difficulties associated with investigating these allegations and their likely impact on future investigative activity. The report will also make recommendations on the way forward.

¹ "Note verbale from Indian Permanent Mission to DFS," referenced in Citrix document no. 56

² Case file, document no. 203 provided to ID/OIOS by Phillip Cooper/DFS.

1 Background Information

North Kivu – Political Context

1 North Kivu is one of the most strategic provinces of the Democratic Republic of the Congo (DRC), located on the border with Uganda and Rwanda, whose security concerns, as well as economic and political interests, have twice forced the DRC into armed conflict since 1996. North Kivu is controlled by a number of different, largely ethnic-based, Congolese armed political groups, each supported at one time or another by the three governments and their national armies. The province is home to a mix of ethnic groups with historically troubled relations. It is also of prime economic importance with substantial mineral deposits and evolving agriculture and livestock industries.

8 One of the key armed political groups is the *Forces Démocratiques de libération du Rwanda* (FDLR). The FDLR is based in eastern DRC and is comprised of key perpetrators of the Rwandan genocide of 1994, plus Hutu members of the former Rwandan army, as well as a mix of displaced Rwandan Hutus. The group has been based in eastern Congo for many years, fighting alongside Congolese armed forces against rebel movements backed by the Tutsi-dominated Rwandan government.

9 The United Nations Mission in the Democratic Republic of Congo has been attempting to repatriate the estimated 15,000 FDLR members to Rwanda. Many of these fighters are now fully integrated into Congolese life. They have married Congolese women, fathered children and established profitable businesses in the region. One of the factors inhibiting repatriation is the possibility of prosecution in Rwanda for crimes committed by FDLR members during the genocide.

10 General Laurent Nkunda leads a second major North Kivu based militia group. Nkunda was an officer in the Congolese Rally for Democracy (RCD) fighting on the side of Rwandan, Ugandan, Burundian and other Tutsi-aligned forces. In 2003, with the official end of the Second Congo War, Nkunda joined the integrated national army of the Transitional Government of the DRC and by 2004 was promoted to General. He subsequently rejected the authority of the Congolese government and retreated with some of the RCD troops to the forests of North Kivu.

11 Nkunda is perceived to be sympathetic to Congolese Tutsis and the Tutsi-dominated government of Rwanda. Along with his supporters in the Rwandan government he is suspected of smuggling minerals out of North Kivu to Rwanda. The sources of these minerals lie near Walikale, Masisi and Rutshuru, all areas in which Nkunda has been active.

12 In early 2007, the Congolese government attempted to reduce the threat posed by Nkunda by trying to integrate his troops into the *Forces Armées de la République Démocratique du Congo* (FARDC) in what was referred to as a 'mixage' process. In late August 2007, Nkunda withdrew his troops from the mixed brigades and began attacking government soldiers whom he accused of aiding Hutu forces targeting Tutsis living in the Kivu region. The increased instability in North Kivu is largely attributed to fighting between Nkunda elements and Hutu militias including FDLR.

6. How best to deal with the issue of foreign armed forces operating in eastern DRC has been the subject of debate by the Tripartite Commission Plus One. Comprised of the DRC, Uganda, Rwanda and Burundi, the Commission has designated the Nkunda elements and the FDLR as negative forces and has appealed to MONUC to intensify efforts to work with the FARDC to reduce the security threat posed by these negative forces in eastern DRC. Peacekeepers from India make up the bulk of the MONUC forces in North Kivu and so it has been largely their responsibility to promote the United Nations mandate in the region.

III. Methodology

14. OIOS conducted an initial assessment into the allegations between July and October 2007. This first phase of the assessment inquiry involved collection and analysis of background information intended to form a foundation for further investigative activity. Intensive field-based inquiries commenced on 24 October 2007, when a small team of investigators was dispatched to eastern DRC. This second phase was initiated to explore specific allegations selected from the analysis done in Phase I. The field-based inquiries were completed on 30 November 2007 and included deployments to Rutshuru, Walikale, Masisi and Nyabiondo. The purpose of this deployment was to assess the relative merit of the allegations so as to inform any future more comprehensive investigative activity.

15. The security environment and limited time and resources precluded the careful examination of all forty-four allegations. Initially, a broad approach was employed. Investigators interviewed a range of UN and non-UN personnel and conducted a number of site examinations. However, as the assessment advanced, investigative resources were gradually allocated to more focused lines of inquiry. The aim of pursuing a smaller number of allegations was to establish, without delay, if there was any *prima facie* evidence of specific misconduct by INDBATT personnel.

A. Impediments to Investigation

16. The initial inquiries conducted by OIOS were encumbered by several factors unique to North Kivu. These factors are largely attributable to the tensions amongst the various regional actors, most prominent amongst them the Hutu and Tutsi ethnic groups. The Tutsi Nkunda elements and the Hutu FDLR rebel group receive widespread support from their respective ethnic bases in the region. Investigators cannot discount the possibility that the intensity of the hostility between these two elements resulted in the provision of false information intended to disadvantage the rival group.

17. It is also apparent that widespread dissatisfaction with the role played by MONUC in North Kivu has fueled and added another dimension to these pre-existing biases. For example, elements of the FARDC, already largely divided along ethnic lines, expressed frustration at MONUC's reluctance to provide support to military operations targeting negative forces. In the context of these rivalries, MONUC action or inaction is often perceived as the UN providing tacit or real support to negative forces. Once again, investigators cannot discount the possibility that in some instances, this has led to the provision of false or misleading information.

18. This animosity towards MONUC also negatively impacted on the willingness of many witnesses to cooperate with any UN-based inquiry. A number of the witnesses interviewed by OIOS resided in areas dominated by Nkunda elements or FDLR and were reluctant to provide information that would adversely affect the interests of the dominant negative force. In order to obtain their cooperation, it was necessary for investigators to spend considerable time establishing rapport with witnesses prior to the conduct of a formal interview. This significantly impacted on the projected time frame for the completion of the initial investigation and will have to be factored into plans for further investigative activity in the region.

19. Another factor affecting time projections is that many of the witnesses reside in remote locations not easily accessible by road or air. Because these remote locations often have no mobile phone coverage, it was not unusual for investigators to expend resources and time traveling to a location only to find that the witness was not available. Alternative strategies such as extricating such witnesses to a neutral location proved to be both problematic and a time-consuming process.

20. Two of the themes emerging from the initial investigation centre on allegations that members of the Indian Battalion engaged in misconduct with negative forces. To assess those allegations, investigators established contact with representatives of the FDLR in order to interview those militia members suspected of maintaining corrupt relationships with members of the Indian contingent. Whilst they were initially receptive to such contact, this changed following circulation of the so-called 'Nairobi communiqué', signed on 9 November 2007.

21. In this document, representatives of the governments of the DRC and Rwanda pledged 'a common approach to address the threat posed to our common security and stability by the [FDLR]'. The agreement was facilitated by the United Nations and witnessed by the United States and European Union. It calls for military action by FARDC with MONUC support to dismantle illegal armed groups. The involvement of the United Nations in facilitating the communication, coupled with the threat of military action derailed OIOS attempts to interview senior members of the FDLR.

22. The Nairobi communication has increased tensions in North Kivu, which was already experiencing armed clashes between Nkunda's elements and the FARDC. The communication draws special attention to the need to contain Nkunda, whose military campaigns have been a major contributing factor in the humanitarian disaster. Also ranged against Nkunda are the Mayi Mayi militia, and the *Patriotes Résistants du Congo* (PARCO), a militia force essentially made up of Congolese Hutus, both working in close collaboration with the FDLR. The deteriorating security situation will make it difficult to conduct inquiries without significant force protection. The widespread distrust of MONUC, and by extension INDBATT, will make it difficult to use UN forces for protection and still achieve the investigative objectives.

IV. Assessment of the Allegations

21. The forty-four allegations catalogued by OIOS can be broadly grouped under five themes:

- a) Allegations of misconduct against INDBATT forces and the *Forces Démocratiques de Libération du Rwanda* (FDLR)

- b) Allegations of misconduct between INDBATT forces and the rebel faction led by Laurent Nkunda
- c) Allegations of misconduct by General Satyanarayan, the former commander of the North Kivu Brigade
- d) Allegations of illicit gold transactions by INDBATT personnel not related to negative forces
- e) Allegations of misconduct in the handling of UN rations, fuel and other miscellaneous allegations

2. Details of the forty-four allegations, a summary of the evidence / information obtained to date and the status of each allegation is attached to this report at 'Annex A'.

3. Of those forty-four allegations, five of the matters were unfounded, that is, credible evidence was adduced to conclude that the alleged misconduct did not occur; seventeen of the allegations were based only on hearsay statements and were not actively pursued; twelve of the allegations contained direct evidence of misconduct by INDBATT personnel, but were unable to be pursued due to time and resource constraints; four of the allegations were partially supported by circumstantial evidence obtained by OIOS; and corroborative evidence was adduced through the OIOS inquiry to support the remaining six allegations.

A. Corroborated Allegations

24. This section will provide an overview of the six allegations for which there is corroborative evidence. It should be noted that these allegations have not been the subject of full investigation. All will require additional investigative activity before a final determination on the disposition of the allegation.

a. Purchase of counterfeit gold and unlawful detention

25. During the initial stages of the inquiry, OIOS received information from a number of sources that members of the INDBATT company stationed at [REDACTED] had procured unwrought gold from a member of the FDLR. It was further alleged that the gold, in question was determined to be counterfeit, resulting in the dealer's illegal arrest and detention in the INDBATT camp. The dealer was allegedly released when other FDLR members paid INDBATT for his release.

26. While corroborative of each other's accounts, the sources that provided the initial information were generally reporting hearsay evidence. OIOS aggressively sought out and eventually succeeded in locating and interviewing the alleged gold dealer as well as several independent witnesses involved in various aspects of the alleged transaction.

27. The direct evidence obtained from the seller of the gold and other individuals involved in various stages of the incident is generally consistent. However, there are contradictions regarding some significant aspects. Abundant direct evidence indicates that an individual living in a village called [REDACTED] which was a regular stop along the INDBATT patrol route, procured a small glass bottle of what appeared to be

powdered, unwrought gold and sold it to members of INDBATT stationed at [REDACTED]. Statements diverge as to the origin of the gold, whether a middleman was involved in the transaction, and whether or not the gold was authentic.

20. OIOS interviewed an interpreter for INDBATT in [REDACTED] who purported to have brought two members of the contingent, whom he believes to be the buyers of the gold, to an appraiser in Goma, where it was determined that the "gold" was actually a pulverized gold-colored padlock. This same witness provided the names of the two individuals in question and upon viewing a photographic identification parade, identified [REDACTED]

[REDACTED] as the officers in question. Pursuant to this discovery, the witness stated that [REDACTED] ordered the arrest of the dealer.

21. The circumstances of the dealer's arrest are generally corroborated but significant differences exist in the recounting of the details. Generally speaking it is agreed that the dealer was arrested in his home by members of INDBATT, who were again conducting a patrol in the area. He was brought back to the [REDACTED] where the Indian buyer(s) accused him, through interpreters (interviewed by OIOS), of selling them counterfeit gold. He was then detained in a dilapidated building within the camp perimeter and told that his release was contingent on his turning of the money he had been paid for the gold. The dealer has told investigators that whilst in detention he was subject to a number of physical assaults, was required to perform menial tasks in the camp and was propositioned for sex by one of the peacekeepers.

30. The dealer was able to describe the details of the building where he alleged to have been detained, including very specific details that could not be known to someone who had never been inside that building. The allegation that the dealer was detained, against his will, in the INDBATT [REDACTED] camp, is corroborated by many parties, including interpreters working in the camp, visitors, and MONUC personnel. The discrepancies lie in the length of his detention, the source(s) of the order to detain him, and the exact circumstances of his release. Specifically, there is broad corroboration for the fact that he was released only after he returned the money to the Indian buyers who paid for the gold; however, this amount is in question, as are the identities of those who provided the release money.

31. Identification of the subjects remains incomplete, but during a photographic identification procedure, the seller positively identified [REDACTED] and [REDACTED] as two of the prominent participants in the transaction. The seller also implicated an individual he believed to be the commander of the [REDACTED] company in his detention and eventual release. Shown a photographic identification parade, he identified [REDACTED] as the individual who was in command of the camp during his detention and who ultimately authorized his release. Two other witnesses corroborated the involvement of these three men in this incident.

32. Another factor that remains unclear is the degree to which the seller is associated with the FDLR – a point that is significant given the implicit misconduct in INDBATT's engaging in financial and illegal mineral transactions with a member of a negative force. While some parties describe the dealer as being a member of the FDLR military branch, there is more support for the notion that he is a 'civilian FDLR

member. Even for those on the ground, however, this seems to be a term that proves elusive to define. While military FDLR members are issued and carry identification cards labeling them as such, civilian members are generally defined in terms of various nebulous factors, including familial, business or friendly association, ideological accord and/or physical proximity coupled with any of the former factors.

3. Inquiries conducted so far have yielded sufficient evidence to conclude that members of the Indian company in [REDACTED] paid a certain undetermined amount of money to an individual who has FDLR connections, in exchange for what was presented to them as authentic unwrought gold, but that was later deemed to be counterfeit. This transaction led to the detention of the seller for an undetermined length of time with his release made contingent on his repayment of the money provided by the Indian contingent members. The detainee was ultimately able to collect sufficient money to regain his freedom and was released after paying a total of US\$480.

b. Sale of United Nations rations to members of FDLR

4. A number of people spoken to by OIOS said that the Indian contingent deployed to [REDACTED] in the latter part of 2005 was involved in the sale of rations to local people including members of the FDLR.

5. A former lieutenant colonel in the FDLR claimed that Indian peacekeepers deployed to [REDACTED] in the latter part of 2005 were selling UN rations to fund gold purchases or in some cases, were exchanging UN rations directly for gold. In early 2006, an Indian officer, later identified as Major [REDACTED], allegedly asked him to source a quantity of gold. The witness stated that he entered the Disarmament, Demobilization, Repatriation, Resettlement and Reintegration (DDRRR) program before he had the opportunity to actually supply the officer with gold.

6. A second FDLR defector claimed to have seen an FDLR intelligence officer in possession of food items that the intelligence officer said were provided to him by members of the Indian contingent at [REDACTED].

7. The involvement of peacekeepers in the sale of UN rations was corroborated by a number of witnesses. One witness – the same witness allegedly detained by INDBATT at [REDACTED] – claimed that in the late 2005 he personally saw INDBATT selling rations at towns between [REDACTED] and [REDACTED]. He said he later entered into a commercial relationship with a peacekeeper he identified as [REDACTED] in which he said he purchased quantities of UN rations several times a week from [REDACTED] and then sold them at a profit to members of the local community. This witness provided OIOS with a notebook in which he had recorded the details of some of the transactions relating to rations sales.

8. The sale of these rations and the involvement of this person in a commercial relationship with INDBATT at [REDACTED] was corroborated by two of the MONUC interpreters deployed to that company at the time. They identified the two Indian officers principally involved in these sales as [REDACTED] and [REDACTED]. Two residents of [REDACTED] also told investigators that INDBATT peacekeepers were involved in the sale of UN rations in their town in the latter part of 2005.

c. INDBATT purchased cannabis from FDLR

9. A former major in the FDLR told OIOS that he had heard reports that a junior FDLR officer in the [REDACTED] area of North Kivu had provided cannabis to an Indian officer in exchange for UN rations.

10. OIOS interviewed one witness who claimed to have provided a small quantity of cannabis to an Indian peacekeeper at [REDACTED] identified as [REDACTED] on three occasions in late 2005 or early 2006. It was apparently provided to [REDACTED] at the witness's house where he smoked a portion of it prior to leaving the premises. A MONUC interpreter who facilitated conversations between the two men corroborated the supply of cannabis by this witness to this peacekeeper.

d. Failure to support the DDRRR process

41. OIOS received a number of complaints about INDBATT from former and current members of the DDRRR Section at MONUC. These complaints alleged that INDBATT had not supported and in some cases had deliberately undermined the DDRRR process in North Kivu.

42. A number of interviews were conducted with a view to establishing the relative merits of these allegations. One witness, a former Lieutenant Colonel in the FDLR, told investigators that he heard reports that two junior FDLR combatants surrendered to an Indian military facility only to be handed back to their commanders in unclear circumstances. The witness said that he suspected the two men had then been summarily executed but he was unable to provide any further detail.

43. A second witness told OIOS that he had heard reports that the Indian contingent at [REDACTED] had refused to accept unarmed militia members seeking to demobilize. He claimed to have received general information that these combatants were sometimes arrested by the local authorities and summarily executed.

44. A former major in the FDLR told OIOS that he attended meetings - dates unknown - chaired by an unidentified INDBATT captain at [REDACTED] who openly discouraged FDLR from entering the DDRRR process. This witness stated that he had also heard reports that INDBATT were giving some FDLR officers advance warning of planned FARDC/MONUC military action. This was supposedly done so that FDLR could avoid incurring casualties.

45. Another witness, a sensitizer with DDRRR, told investigators that an FDLR combatant attempting to demobilize was refused entry to the INDBATT camp at [REDACTED]. The witness could not recollect the date of this incident. He said the man was forced to hide in nearby bush until the witness could extricate him and enter him in the DDRRR program. This incident was corroborated by a second DDRRR sensitizer who also claimed that there were two additional incidents where INDBATT at [REDACTED] had refused to accept persons claiming to be FDLR combatants. In the first incident, the witness claimed that he was forced to house an FDLR husband and wife in his own residence until they could be repatriated. In the second incident, he claimed he

secured an FDLR combatant in the Military Observers premises at [REDACTED] pending the person's transfer to the DDRRR facility in Goma.

e. INDBATT and FDLR exchanged ammunition for ivory

46. OIOS interviewed two individuals who claimed to have been in the vicinity of Virunga National Park, which is located in the Rutshuru area of North Kivu, when a UN helicopter landed in the park. One of the individuals, standing on a nearby ridge at the time, saw the helicopter fly overhead and descend into the park. The second witness, a sensitizer working for the MONUC DDRRR Section, stated that he observed the helicopter land near an FDLR camp in the same area of the park. Neither witness was able to provide a specific date other than to speculate that it may have occurred in October 2006. Without a specific date, OIOS was unable to identify the movement in question through an inspection of flight manifests.

47. One of the witnesses stated that several FDLR soldiers and two FDLR officers met an Indian officer who exited from the helicopter. Several members of INDBATT exited the helicopter and unloaded multiple boxes that the witness believed to contain ammunition, as they were consistent in appearance to ammunition boxes he had seen in the past. In addition many boxes believed to contain food rations were also unloaded. The witness then observed the INDBATT personnel and the FDLR soldiers load several sacks containing what he believed to be ivory tusks into the helicopter. He stated that he was later told by one of the FDLR soldiers that indeed the sacks did contain ivory.

48. The witness told OIOS that one of the FDLR soldiers later provided him with a sample of the same ivory that was allegedly traded for the ammunition brought by INDBATT. OIOS took possession of the sample, which was then examined by the Provincial Director of the Congolese Institute for the Conservation of Nature, who verified that the sample was indeed ivory and estimated it to have come from a two-year-old elephant.

f. INDBATT fraternization with armed members of FDLR

49. OIOS received allegations that members of INDBATT in the [REDACTED] territories, specifically in [REDACTED] and [REDACTED] towns, habitually fraternize with armed members of the FDLR and fail to disarm them, despite the latter's categorization as negative forces. Two individuals interviewed, one of them a commander from the [REDACTED] contingent based in Goma, provided direct statements to the effect that they had seen INDBATT personnel associating and fraternizing with armed FDLR members.

50. Further information and complaints were received stating that the FDLR comfortably resides, congregates and patrols in areas that are under INDBATT control without any hindrance or restraint from INDBATT.

51. OIOS investigators personally observed many armed FDLR members openly walking around [REDACTED] town, in close proximity to and even in front of the [REDACTED] INDBATT camp, seemingly not concerned about being stopped or disarmed by members of INDBATT.

52. The issue in regards to this allegation becomes one of mandate and obligations to which the Indian contingent in these areas is subject. While direct corroborative evidence exists to suggest that INDBATT is complacent to the presence of armed FDLR elements in its area of responsibility, it remains to be clarified whether the MONUC forces present in these particular locations are mandated to actively disarm these elements. Further inquiries are necessary to clarify these issues.

V. Assessment

53. Based on the information developed during the OIOS assessment, OIOS is of the view that there exists sufficient evidence with respect to the six allegations detailed in this report that Indian peacekeepers previously deployed to North Kivu have engaged in misconduct. In the absence of a completed investigation, this is only a preliminary position.

54. There are considerable practical difficulties associated with investigating these allegations. The lack of infrastructure, remote nature of many of the key locations and the risks arising from the prevailing security environment will present a number of significant challenges. The information adduced from any further investigative activity will have to be meticulously corroborated.

VI. OIOS Proposal for the Way Forward

55. Despite the fact that there has been sustained investigative activity into a number of these allegations, many allegations remain untested and many avenues of inquiry are yet to be pursued.

A. Corroborated Allegations – Avenues of Inquiry

56. For those six allegations in which corroborative evidence has been obtained, the following base line inquiries remain outstanding.

a. Purchase of counterfeit gold and unlawful detention

57. A number of key and peripheral witnesses are yet to be located and interviewed. Preliminary interviews with Indian peacekeepers adversely named are required and documentation relating to the operations of the Indian contingent at Nyabiondo needs to be identified, collected and reviewed.

b. Sale of United Nations rations to members of FDLR

58. An assessment of ration consumption during the relevant period should be undertaken to determine unexplained excesses. Other individuals, including members of the FDLR also need to be located and interviewed to ascertain their involvement, if any, in the purchase of rations.

c. INDBATT purchased cannabis from FDLR

9. There is a requirement to interview the Indian officer adversely named in this allegation. A review of company disciplinary cases also needs to be conducted to establish whether there have been any other similar allegations handled by the contingent.

d. Failure to support the DDRRR process

10. In order to further this allegation, interviews must be conducted with DDRRR personnel. Defectors and those allegedly refused access to the program also need to be identified, located and interviewed. Investigators will also be required to establish the mandate and obligations of the contingent in dealing with potential defectors.

e. INDBATT and FDLR exchanged ammunition for ivory

11. The remaining FARDC and FDLR witnesses must be located and interviewed. Flight manifests and other relevant documentation must be obtained and reviewed in order to establish whether there are any irregularities that might reveal unusual use of helicopters consistent with the reported exchange.

f. INDBATT fraternization with armed members of FDLR

12. A number of FDLR witnesses are yet to be interviewed. Investigators also need to establish the mandate and obligations incumbent on the contingent with respect to the disarming of militia groups. A review of battalion documentation may also reveal whether there is any legitimate explanation for significant and sustained contact between peacekeepers and FDLR.

B. Other Allegations

13. A number of other significant allegations remain untested. OIOS considers that some of these allegations are so serious and the potential consequences of taking no action so grave, that they should not be left unexamined. The general nature of these allegations is well known in eastern-DRC and it seems inevitable that they will become the subject of scrutiny by the international media. Such exposure has the real potential to damage the reputation of the Indian military, MONUC and the United Nations.

14. Of particular concern are allegations that:

- Members of the Indian Battalion deployed to [REDACTED] provided confidential information to representatives of the FDLR on planned military operations by MONUC / FARDC;
- Weapons identical to those used by the Indian Battalion were observed in the possession of the FDLR;

- Convoys of vehicles belonging to General Laurent Nkunda frequent the Indian military camp at [REDACTED];
- Members of the Indian Battalion sold United Nations rations to General [REDACTED] and [REDACTED] of the FDLR;
- Members of the Indian Battalion deployed to [REDACTED] exchanged United Nations fuel and AK47's for money, gold and ivory;
- Members of the Indian Battalion provided food, ammunition and information to General Laurent Nkunda;
- Members of the Indian Battalion deployed to [REDACTED] traveled to [REDACTED] and exchanged weapons for unwrought gold;
- On 1 October 2007, members of the FARDC captured a pro-Nkunda element in possession of an Indian Battalion firearm;
- Members of the Indian Battalion were using Indian military aircraft to illegally export minerals from the DRC;
- MONUC provided military uniforms to General Laurent Nkunda which were then used to approach and attack FARDC; and
- Members of the Indian Battalion supplied weapons and ammunition to Nkunda elements.

VII. Recommendation

65. In order to further progress this matter, OIOS recommends that a briefing on the findings of the investigation to date be provided to officials designated by the Government of India.

66. OIOS remains available to provide support to the Indian investigation led by [REDACTED] and recommends that a meeting between major stakeholders take place to discuss the scope and purpose of any future investigative activity and, if appropriate, reach agreement on the modalities for the conduct of any joint investigation.

67. OIOS provides this overview report to the Department of Field Services for their information and consideration.

Annex 4: Standard Annex H to the Memorandum of Understanding signed with the Government of India by the United Nations

DFS/UNMIL/IND/O2

ANNEX H

WE ARE UNITED NATIONS PEACEKEEPING PERSONNEL

The United Nations Organization embodies the aspirations of all the people of the world for peace.

In this context the United Nations Charter requires that all personnel must maintain the highest standards of integrity and conduct.

We will comply with the Guidelines on International Humanitarian Law for Forces Undertaking United Nations Peacekeeping Operations and the applicable portions of the Universal Declaration of Human Rights as the fundamental basis of our standards.

We, as peacekeeping personnel, represent the United Nations and are present in the country to help it recover from the trauma of a conflict. As a result we must consciously be prepared to accept special constraints in our public and private lives in order to do the work and to pursue the ideals of the United Nations Organization.

We will be accorded certain privileges and immunities arranged through agreements negotiated between the United Nations and the host country solely for the purpose of discharging our peacekeeping duties. Expectations of the world community and the local population will be high and our actions, behavior and speech will be closely monitored.

We will always:

- Conduct ourselves in a professional and disciplined manner, at all times;
- Dedicate ourselves to achieving the goals of the United Nations;
- Understand the mandate and mission and comply with their provisions;
- Respect the environment of the host country;
- Respect local laws, customs and practices and be aware of and respect culture, religion, traditions and gender issues;
- Treat the inhabitants of the host country with respect, courtesy and consideration;
- Act with impartiality, integrity and tact;
- Support and aid the infirm, sick and weak;
- Obey our United Nations superiors/supervisors and respect the chain of command;

- Respect all other peacekeeping members of the mission regardless of status, rank, ethnic or national origin, race, gender, or creed;
- Support and encourage proper conduct among our fellow peacekeeping personnel;
- Report all acts involving sexual exploitation and abuse;
- Maintain proper dress and personal deportment at all times;
- Properly account for all money and property assigned to us as members of the mission; and
- Care for all United Nations equipment placed in our charge.

We will never:

- Bring discredit upon the United Nations, or our nations through improper personal conduct, failure to perform our duties or abuse of our positions as peacekeeping personnel;
- Take any action that might jeopardize the mission.
- Abuse alcohol, use or traffic in drugs;
- Make unauthorized communications to external agencies, including
- unauthorized press statements;
- Improperly disclose or use information gained through our employment;
- Use unnecessary violence or threaten anyone in custody;
- Commit any act that could result in physical, sexual or psychological harm or suffering to member of the local population, especially women and children;
- Commit any act involving sexual exploitation and abuse, sexual activity with children under 18, or exchange of money, employment, goods or services for sex;
- Become involved in sexual liaisons which could affect our impartiality, or the well-being of others;
- Be abusive or uncivil to any member of the public;
- Willfully damage or misuse any United Nations property or equipment;
- Use a vehicle improperly or without authorization;
- Collect unauthorized souvenirs;
- Participate in any illegal activities, corrupt or improper practices; or
- Attempt to use our positions for personal advantage, to make false claims or accept benefits to which we are not entitled;
- We realize that the consequences of failure to act within these guidelines may;
- Erode confidence and trust in the United Nations;
- Jeopardize the achievement of the mission;
- Jeopardize our status and security as peacekeeping personnel; and
- Result in administrative, disciplinary or criminal action.

Annex 5: Policy Guidelines for Considering Officers for various UN assignments, Ministry of Home Affairs, Government of India, 27 February 2013

F. NO. 21023/30/2012-PMA
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
 [Police-II Division]

North Block, New Delhi
 February 27th, 2013.

Subject: POLICY GUIDELINES FOR CONSIDERING OFFICERS FOR VARIOUS UN ASSIGNMENTS

India has been participating in United Nations Peacekeeping missions since conception of the idea and since its first peacekeeping operations; Indian troops won the universal acclaim for their professional excellence. Since 1990's, the traditional peacekeeping by the UN has been transformed and expanded, both because of the changing nature of conflicts and calls for a more active and interventionist engagement by the UN Department of Peacekeeping Operations (DPKOs).

2. There are three types of UN assignments for which nominations are made by the Ministry of Home Affairs:-

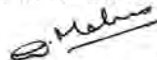
- I) Deployment of UN CIVPOL (Civilian Police) Officers.
- II) Deployment of Officers on Secondment with UN Missions.
- III) Deployment of FPU (Formed Police Units) from Central Armed Police Forces (CAPFs) with UN Missions.

3. **Deployment of UN CIVPOL (Civilian Police) Officers**

The deployment of UN CIVPOL officers is made after a test is conducted by the United Nations called UN SAAT. Passing of UN SAAT test is the minimum requirement for CIVPOL deployments with UN Mission(s), though passing of the UN SAAT is no guarantee of selection for deployment.

3.1 **The Selection Procedure and conditions of deployment**

- i) Based on the results of the UN SAAT, a panel of officers is prepared in order of merit. Validity of UN SAAT test is generally for a period of 18 months.
- ii) The names of UN SAAT cleared officers are forwarded to UN as per the merit list as and when the UN intimates the vacancies. However, UN does not consider the merit position of a candidate as the sole criteria for selection for deployment.
- iii) The general period of deployment of a UN CIVPOL officer in the mission is 12 months. In order to give exposure to maximum number of officers, generally, no extension beyond this period of 12 months is given. However, in exceptional cases, on the basis of recommendations of the



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United Nations Peacekeeping Operations, the cases for short term technical extension may be considered by MHA on the merit of the individual case.

- iv) On being selected, the officers are liable to accept the UN Mission assignments as offered by the UNDPKO. No individual request for deployment with any desired mission by an officer will be entertained.
- v) If any officer leaves the mission prematurely at his own or on any other personal reasons, he/she is liable to bear all the expenses, including travel cost from the mission field. To this extent, an undertaking is obtained from all the CIVPOL Officers prior to their departure, clearly stating that in the case of their pre-mature repatriation from the mission due to failure in the mission driving test or any other reasons, they will bear the repatriation expenses at their own.
- vi) The cases of such officers, who are selected for the deployment but are not relieved by the State Governments/Organizations due to operational exigencies, may be re-considered for further deployment depending upon the availability of officers in the UN SAAT list and other considerations.
- vii) The Officers, who were selected for deployment with UN mission(s) and did not accept the offer of appointment at their own due to their personal reasons, will not be eligible for further deployment.
- viii) The Officers, who qualified UN SAAT and could not be deployed during the validity of SAAT, are eligible to re-appear in the fresh UN SAAT.
- ix) An undertaking is obtained from all the officers prior to their UN CIVPOL deployment that, they will not overstay in Mission.
- x) Officers overstaying mission without specific approval of the competent authority will be dealt with strictly and the authorities/organizations concerned shall initiate disciplinary proceedings against such officers on receipt of instructions from MHA.
- xi) All officers on completion of their tour of duty will report to National UN CIVPOL Centre for de-briefing and getting relieving order after depositing the official passport.
- xii) State Governments/Organizations' should not allow any officer to re-join the duty at their Home State/ parent Department without the proper relieving orders and surrender certificate of the official passport issued by the National UN CIVPOL Centre, ITBP, Madangir, New Delhi.

3.2 Nodal agency for conducting UN SAAT test and completing deployment formalities.

- i) NATIONAL UN CIVPOL CENTRE, Madangir, New Delhi functioning under ITBP Battalion is the nodal agency for conducting UN SAAT test

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and completing the pre-departure formalities of officers selected for various UN CIVPOL deployments.

- ii) On arrival of Police Officers for deployment process, NATIONAL UN CIVPOL CENTRE will examine the documents viz. surrender certificate of personal passport, disciplinary /vigilance clearance, names in the identity card with selection order, Arms/ Ammunitions/ Validity of Driving Licence etc.
- iii) Police Officers reporting at NATIONAL UN CIVPOL CENTRE for pre-departure formalities shall not be sent on leave/ out station leave without the approval of MHA.
- iv) In order to ensure the smooth functioning of National UN CIVPOL Centre, BSF, ITBP, CISF and CRPF to provide one light vehicle for a period of 03 months on rotation basis.
- v) All the CAPFs shall provide necessary assistance to UN CIVPOL Centre during UN SAAT test on demand basis.

3.3 **Entitlement during deployment.**

The officers, on their deployment in the mission, will get subsistence allowance from UN while on such deployment. They will be entitled to draw their salary and other allowances from their parent organization/State concerned. They may also be allowed to retain Government accommodation, telephone etc. if any, during the tenure of such deployment for their families.

3.4 **Eligibility criterion**

- i) The Level of officers deputed — from Head Constables to SSP from all States, UTs, CAPFs and other organizations.
- ii) The candidate should be at least a Graduate.
- iii) Possesses a four wheeler valid driving license.
- iv) Must have completed 08 years of active police service/experience including training period as on date of calling nominations.
- v) Above 25 years of age as on date of calling nominations.
- vi) Must have good command over English Language (Spoken as well as Written).
- vii) IPS officer as per the batch prescribed in the vacancy circular (IPS officers should not be debarred from Central Deputation/ Foreign training).

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- viii) Nominated officers should be clear from Disciplinary/ Vigilance angle.
- ix) Necessary cadre clearance from the State Government/ CAPFs/any other lending organization concerned should be available.
- x) The officers, having previously done a UN Mission, must have completed a cooling off period of three years as on the date of issue of circular starting from the date of repatriation/ end of previous UN Mission.
- xi) Female police officers may be given preference.
- xii) Officers proceeding on retirement/ superannuation within a period of three years from the date of issue of the circular calling nominations may not be nominated.
- xiii) The officers whose names are received through proper channel will be further short listed depending upon the eligibility criteria so that a panel of officers proportionate to the number of anticipated vacancies is prepared. These short listed officers will then be called to undergo one week training in English, left hand driving and shooting skill and subsequently to appear before the UN Selection Assistance Team for the UN SAAT Test.
- xiv) The nominated candidate should bring UN P-11 personal history form, duly filled, and Bio data form in soft and hard copies as per the specimen circulated with the call letter for nominations.

3.5 **Instruction for filling-up of P-11 forms.**

In P-11 form, the scanned latest photograph of the applicant in Uniform should be pasted at the relevant places and signed. P-11 forms without photographs and signatures shall not be entertained. Candidates to ensure that, their name(s) mentioned in the P-11 form and bio-data are as per their school leaving certificates and as per the identity card issued by the department. Candidates must obtain a certificate from the department *"that the names and others particulars mentioned in the P-11 form are correct as per the record"* and the same should be attached with the P-11 form alongwith an attested photocopy of identity card issued by the department in the present rank.

4. **Deployment of Officers on Secondment with UN Mission.**

United Nations Peacekeeping Operations, New York through Permanent Mission India to United Nations circulates number of vacancies for the deployment of eligible and willing officers on secondment basis with various UN Missions and UN offices. The eligibility criterion and terms conditions in respect of each post are as prescribed by the UNDPKO.

4.1 The selection process for considering the names of officers for Deployment on secondment with UN Missions being followed at MHA is as under:-

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- (a) All the vacancies so received are circulated amongst all the CAPFs, CPOs and other organizations as well as all State Governments and UT Administrations through Registered Speed Post, Email and also posted on the MHA website. For speedy circulation, all the vacancy positions are also sent through e-mail to the Authorities concerned, including Directors General of Police of State Governments and UT Administrations.
- (b) The level of secondment vacancies being circulated by UNDPKO shall have the eligibility as under :-
 - (i) D-1 & D-2 IGP/ADG or equivalent.
 - (ii) P-5 DIG/IG.
 - (iii) P-4 SP /DIG
 - (iv) P-3 Dy SP/SP
 - (v) P-2 Inspector/Dy.SP
- (c) The eligible officers may apply for the level equivalent to their ranks or *one level below*.
- (d) All the circulated vacancies are time bound and the nominations of eligible and willing officers are to be submitted to MHA by the given date itself.
- (e) The nominations received after due date will not be considered.
- (f) In case of CAPFs officers, only the nominations forwarded by Director Generals of the force concerned shall be considered.
- (g) In case of State Governments and UT Administrations' Police Officers, including IPS officers, only the nominations received through the State Governments and UT Administrations authority concerned will be accepted and considered. The nominations received directly from the Director General of Police or copy endorsed to this Ministry will be treated as applied directly and will not be considered.
- (h) In the case of State/ UT Cadre IPS Officers on central deputation, the nominations of eligible/ willing officers be forwarded to this Ministry by the Head of the department/Directors General of CAPFs concerned.
- (i) The nominations in respect of State Cadre Officers who are on central deputation and on the verge of their repatriation to parent cadre after completion of central deputation tenure should not be considered/ forwarded to this Ministry.
- (j) In the cases of IPS officers, their nominations are forwarded but their final deployment shall be subject to disciplinary/ vigilance clearance to be received from the Police Division (IPS-II) of MHA.
- (k) The nominations of AGMUT cadre officers posted in GNCT of Delhi/ UTs forwarded by the Commissioner of Police, Delhi Police will be considered

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subject to the disciplinary/ vigilance clearance from the UT Division, MHA and cadre clearance from the Joint Secretary (UT), MHA.

- (l) On receipt of nominations, the same is put-up for obtaining approval of SS(IS)/Home Secretary for nominating suitable officers as per the eligibility criterion of UNDPKO. In case, where there are large numbers of applications/ posts are to be considered, a meeting under the Chairmanship of SS (IS) may be called. The names are selected based, interalia, on the following criterion:
 - a. For every vacancy, normally a maximum of three names are forwarded to UN
 - b. The name of any officer is forwarded for a maximum of two secondment positions in a calendar year
 - c. The education criterion laid by UN, the requirements of previous UN experience required, if any as well as cooling off requirements and language requirements for the post are the main criterion followed for nomination
 - d. Instructions issued by the DoP&T from time to time are kept in view.
- (m) The officers, who after nomination do not go for the deployment without any reasonable justification, will be debarred for 03 years for applying for UN deployment.
- (n) On nomination by MHA, the Officials shall ensure the following :-
 - i) Fill-up the Personal History Profile (P-11) properly. Some vacancy positions are circulated with P-11 especially endorsed by UNDPKO for that position. In such, cases, the endorsed P-11 form should only be used.
 - ii) Signatures of the candidate have to be endorsed on the P-11 form both in hard as well as soft copies.
 - iii) Photographs have to be affixed on the P-11 form both in hard as well as soft copies.
 - iv) Employment and Academic Certificate, in which vacancy announcement number is to be mentioned, should be attached wherever required.
 - v) P-11 (CV) and bio-data in respect of nominated officers should be sent through soft & hard copy on e-mail address at uspma@nic.in and sopma@nic.in.

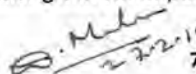
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- vi) Officers are required to follow utmost precautions and care while filling their P-11 (CV) as this can become a cause for rejection of their nominations even after recommendation of their names by MHA.

5. **Deployment of FPU (Formed Police Units) from CAPFs with UN Missions.**

The deployment of FPU is made after a test is conducted by the United Nations called UN SPAT. Passing of UN SPAT test is the minimum requirement for any FPU deployment with UN Mission, though passing of the UN SPAT is no guarantee for selection for such deployment. For drawing the list of officers to undergo SPAT, the following procedure is followed:

- a) It is the responsibility of CAPFs concerned to carry out the selection process and prepare a main panel of equal numbers of troops to be deployed with UN Mission and a reserve panel of not less than 25 personnel for being presented before the SPAT Assessment team. The reserve list should contain the composition of all ranks.
- b) FPU personnel in the main panel, including reserves, should be presented before UN SPAT assessment.
- c) While preparing the panel, CAPFs should include the reserve panellists of the previous year, who had cleared SPAT but could not be deployed, in case such personnel are still willing for deployment in FPUs.
- d) Following categories of personnel should not be included in the panel:-
 - i) Low Medical Category;
 - ii) Officers/personnel required undergoing mandatory promotion/professional courses for their eventual promotion to higher ranks;
 - iii) Officers/ men whose integrity is doubtful;
 - iv) Officers/ men against whom disciplinary /vigilance case is pending/ contemplated.
- e) The selection process for rotation of contingents should be carried out at least 02 months in advance to ensure timely UN SPAT assessment by UN Experts for timely rotation.
- f) Immediately after UN SPAT assessment, the list of detailed and reserve personnel should be provided to MHA for obtaining political clearance from MEA and for obtaining the approval of the competent authority for rotation.
- g) In the case, where the advance party is required to be sent, the same should be intimated to MHA well in advance alongwith list of personnel for

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obtaining necessary approvals from UNDPKO for the movement of advance party in commercial flight.

- h) Once the rotation process has been started, the concerned CAPFs will detail a focal point (A Gazetted Officer) and he will be responsible for:-
- a. Coordinating the visit of UN SPAT for the SPAT assessment of respective contingent,
 - b. Liaise with UNDPKO office in Delhi, Airport authorities to get exception of Passengers Service Fee (PSF) and Airport Development Fee (ADF) during their rotation.
 - c. Liaise with MEA for speedy political clearance and preparation of Passports and completing visa formalities including flight landing clearance etc,
 - d. Name of focal point alongwith his official telephone number, mobile number and e-mail id may be intimated to MHA for further submission to UNDPKO.

6. **Power to relax.**

Any relaxation or deviation from above guidelines may be granted by the competent authority on case to case basis and on merit.


 27.2.13
(Dinesh Mahur)
 Director (Pers.)
 Telefax: 2309 2933

1. The Directors General,
BSF/CRPF/CISF/ITBP/NSG/SSB/Assam Rifles/RPF/NDRF
2. The Director General,
NCB/BPR&D/NCRB/NIA
3. The Director,
IB/CBI/NPA
4. The Chief Secretary & Directors General of Police,
All State Governments/UT Administrations
5. The Joint Secretary (UT)/Joint Secretary(Police-I), MHA.
6. NIC for uploading on the MHA website.

Annex 6: Nomination Procedures for Positions in the UN DPKO and DFS Requiring Official Secondment From National Governments of Member States of the United Nations Organization

F/No.21023/30/2012-PMA
Government of India
Ministry of Home Affairs
(Police Division-II)
PMA Cell

Dated, the 13th June 2013

To.

1. The Directors General,
BSF/CRPF/CISF/ITBP/NSG/SSB/Assam Rifles/RPF/NDRF
2. The Director General, NCB/BPR&D/NCRB/NIA
3. The Director, I B/CBI/NPA
4. The Chief Secretary & Directors General of Police,
5. All State Governments/UT Administrations.
6. DsGP of all State and UT Administration

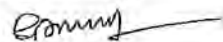
Subject:- **Nomination Procedures for Positions in the UN DPKO and DFS Requiring Official Secondment From National Governments of Member States of the United Nations Organization**

Sir,

I am directed to refer to the subject and forward a copy of PMI to UN E/Fax No. 57 dated 06th June 2013 regarding guidelines issued by UNDPKO. These guidelines may be followed while forwarding nominations of officers to serve with the UN.

Encl :- As above

Yours faithfully,



(G C Yadav)

Under Secretary to the Government of India

☎ : 011 23093443

E Mail ID : uspma@nic.in

Copy to

SO (IT), MHA - For uploading the enclosed information on MHA Website.



Permanent Mission of India to the United Nations
235 East 43rd St. New York, NY 10017

Fax: 00-1-212-490-9656

E-mail: ind_general@indiaun.net

Tel: 00-1-212-490-9660

tiwari.un.ny@gmail.com

E/Fax: 57

06 June 2013

To: Col PP Singh
Dir. SD-3 AHQs
Email : dirsd3un-mod@nic.in

From: Colonel Manoj Tiwari
Military Adviser

Shri GC Yadav,
US (PMA), MHA

Repeat: 1. JS (G/Air), MoD
2. US (UNP), MEA

Priority: Most Immediate

Internal Distribution: PR, DPR & C (D)

No. of Pages: 1 + 2

Dy. No. 27-9-2013-PMA
Dated: 7.6.2013

Subject: Nomination Procedures for Positions in the UN DPKO and DFS Requiring Official Secondment From National Governments of Member States of the United Nations Organisation

1. Guidelines issued by the UNDPKO for procedures to be followed for submission of the nomination of candidates to posts requiring secondment from active Military and Police service, which are open for recruitment within the DPKO and DFS, are attached herewith for information and necessary action please.

2. To avoid any delay in consideration of applications, the UNDPKO's guidelines may please be strictly adhered while submitting nomination please.

Best regards,

sh. V. S. S.
7/6/13

Colonel Manoj Tiwari
Military Adviser

**NOMINATION PROCEDURES FOR POSITIONS IN
THE DEPARTMENT OF PEACEKEEPING OPERATIONS
AND THE DEPARTMENT OF FIELD SUPPORT
REQUIRING OFFICIAL SECONDMENT FROM NATIONAL GOVERNMENTS OF
MEMBER STATES OF THE UNITED NATIONS ORGANIZATION**

Outlined below are the procedures to be followed by Permanent Missions for the nomination of candidates to posts requiring secondment from active Military and Police service, which are open for recruitment within the Department of Peacekeeping Operations (DPKO) and the Department of Field Support (DFS). In the interest of promoting an orderly process and to avoid delay in the consideration of applications, Permanent Missions are respectfully requested to adhere closely to these procedures.

1. The above-mentioned posts are reserved only for candidates nominated by Member States through their Permanent Mission to the United Nations; candidates applying independently will not be accepted. It is requested that applications be submitted as soon as possible. No applications will be accepted after the deadline specified on each job opening.
2. Applications for candidates must be presented in one single submission via a Note Verbale from the Permanent Mission. Each submission must contain a duly completed excel sheet form "Nomination of Candidates for posts in DPKO and DFS requiring secondment of Military and Police Officers in active service", listing the names of the nominated candidates for each job opening. In addition, for each nominated candidate, the following will be required to be included in the submission:
 - a) *United Nations Personal History Profile (PHP) Form (P.11) and, if applicable, Employment record (Supplementary Sheet)*, duly completed and signed by the nominated candidate.
 - b) *Military/Police Academic and Employment Certification* issued by the relevant military/police authority and containing details on the candidate's military/police academic degree/courses and employment record. This is a revision of the *Attachment to Personal History Profile (PHP) Form (P.11) for Military and Police Personnel applying for Secondment Positions with the Department of Peacekeeping Operations and the Department of Field Support*.
 - c) *Employment Record-Supplementary Sheet* to be used for additional employment information.
3. In the event a Permanent Mission wishes to recommend a candidate for several posts, a separate PHP Form (P.11), Academic and Employment Certification and Employment Record-Supplementary Sheet must be submitted for each post.

28 March 2013

4. Permanent Mission may choose to submit their nominations in one of the following way:
 - a. hand-delivered to Ms. Giorgia Dario-Paolucci, DPKO/DFS Executive Office (EO), DC-I, Room 1064.
 - b. emailed to dpko-dfs-secondmentrecruitment@un.org Please note that electronic submissions must follow the correct procedure as per attached instructions. Incomplete submissions will not be accepted.
5. Upon receipt of the:
 - a. hand-delivered submission, the designated official for the military/policy campaign, will confirm receipt of the submission and the attachments by signing-off on the duly completed excel sheet form "Candidates for posts in the Department of Peacekeeping Operations and the Department of Field Support requiring secondment from Military and Police Officers in active service".
 - b. emailed submission, the designated official for the military/policy campaign, will confirm receipt of the submission and the attachments by signing-off on the duly completed excel sheet form "Candidates for posts in the Department of Peacekeeping Operations and the Department of Field Support requiring secondment from Military and Police Officers in active service" and return it via email.
6. Applications submitted using fax, mail or any other formats will not be accepted.
7. Communications regarding this exercise will be through Permanent Missions only. The DPKO/DFS EO will not entertain personal queries from individual applicants.

Annex 7: Standards for Verification of Character and Antecedents for Recruits of the Army, Policy Compendium of Recruitment of Junior Commissioner Officer and other Ranks. (Available at: http://odisha.edespatch.com/PDF_DEST/L00261/2012/6/25403_1.pdf)

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SPEED POST

Telephone : 0671 – 2305280

Army Recruiting Office
Cuttack (Odisha) – 753 001

D/337/Veri/RC&CC/ 87

12, May 2012

Smt Roopa Mishra, IAS
Collector and District Magistrate
Khurda (Odisha)

By - 564/Poll
16/5/12

VERIFICATION OF POTENTIAL ENROLLEE FOR INDIAN ARMY

Sir,

1. Refer Part VIII, Section II of Policy Compendium for Recruitment of Junior Commissioned Officer and Other Ranks-2009 issued by Additional Director General of Recruiting Adjutant General's Branch Integrated Headquarters of Ministry of Defence (Army). Relevant Extract of Policy Compendium for Recruitment of Junior Commissioned Officer and other Ranks 2009 is attached at Appendix 'A'.

2. Indian Army being one of the largest Armies of the world has to ensure that the intake in its folds is of desirable persons only. It is very important to guard against the infiltration and retention of undesirable and antisocial elements, criminals and enemy agents as they can cause irreparable damage to the Organization and the system before being detected. Hence, all possible steps shall be taken during Verification of Potential Enrollee for Indian Army to keep undesirable & antisocial elements and enemy agents out. As a part of Pre- Enrolment Verification 30 (Thirty) Nativity/ Residential Certificates are being forwarded to various District Administrative Authorities of Khurda for verification with specific reference to validation of Office Seal, and Signatures of concerned Tehsildar. Authenticity of "Permanent Residential Status" of candidate in addition to conduct of comprehensive investigation by concerned civil authorities primarily to ensure the following :-

- (a) Guard against infiltration & retention of following persons:-
 - (i) Members associated with any body/party declared unlawful.
 - (ii) Persons wanted by the police and who get enrolled for political motives to spread anti-govt propaganda and dissatisfaction.
 - (iii) Persons engaging in activities prejudicial to interest of the Nation/State or promote on grounds of religion, race, language, caste

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or community, feelings of enmity or hatred between different sections of people.

(iv) Deserters from the Armed Forces, Police and Para Military Forces.

(v) 'Bad Characters' registered with police authorities and economic offenders.

(vi) Members involved in subversive activities including member of any Organization, which aims to change society by violent means.

(vii) Candidates inducted by Intelligence Agencies with fake documents.

(viii) Any other type of antisocial and undesirable element.

(b) Requisite framework for investigation as part of Pre-Enrolment Verification must be followed by the concerned investigation agency to authenticate details provided by the candidates about their home, education, schools attended, family members & their profession, previous Government service details of Sarpanchs & Nambardars and details of witness who have signed on Character/ Pre-Verification Certificate. Detailed enquiry shall be carried out to confirm whether the candidate has given correct information about his Antecedents.

(c) Scrutiny of all documents submitted by the candidate for issue of "Nativity/ Permanent Residential Certificate" with specific emphasis for authentication and validation of these documents shall be carried out. If there is an iota of doubt about bonafide of a candidate or of impersonation, requisite assistance of Intelligence/ Vigilance/ Police shall be sought for.

(d) In addition, concerned civil administrative authorities shall incorporate additional measures for proper verification of character and antecedents of Recruits of the Army to avoid entry of illegal migrants and guard against infiltration of undesirable & antisocial elements, criminals and enemy agents.

(e) Though verification reports are confidential, however, there have been instance in recent past, whereby a candidate was found to be in possession of copy of verification reports and incidentally his Permanent Residential Certificate was also suspected to be fake. It is therefore, reiterated, that necessary instructions shall be suitably enforced at all levels to ensure confidentiality of such reports.

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Secretary Employment
Govt of Orissa
Bhubaneswar

Director Employment Mission
Employment Directorate
Kharavel Nagar
Bhubaneswar (Odisha)

Revenue Divisional Commissioner (CD)
Cuttack (Odisha)

For information and issue suitable
instructions to concerned authorities

Tehsildar Bolgarh
Distt Khurdha (Odisha)

- For information & necessary action with
specific reference to Verification Reports of
Pre-Enrolment of Potential Enrollees for
Indian Army as per details given at
Annexure -I of Appendix 'B'

Tehsildar Tangi
Distt Khurdha (Odisha)

- For information & necessary action with
specific reference to Verification Reports of
Pre-Enrolment of Potential Enrollees for
Indian Army as per details given at
Annexure -II of Appendix 'B'

Tehsildar Chilka
Distt Khurdha (Odisha)

- For information & necessary action with
specific reference to Verification Reports of
Pre-Enrolment of Potential Enrollees for
Indian Army as per details given at
Annexure -III of Appendix 'B'

Tehsildar Khurda
Distt Khurdha (Odisha)

- For information & necessary action with
specific reference to Verification Reports of
Pre-Enrolment of Potential Enrollees for
Indian Army as per details given at
Annexure -IV of Appendix 'B'

Tehsildar Begunia
Distt Khurdha (Odisha)

- For information & necessary action with
specific reference to Verification Reports of
Pre-Enrolment of Potential Enrollees for
Indian Army as per details given at
Annexure -V of Appendix 'B'

Tehsildar Bhubaneswar
Distt Khurdha (Odisha)

- For information & necessary action with
specific reference to Verification Reports of
Pre-Enrolment of Potential Enrollees for
Indian Army as per details given at
Annexure -VI of Appendix 'B'

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Tehsildar Jatni
Distt Khurdha (Odisha)

- For information & necessary action with specific reference to Verification Reports of Pre-Enrolment of Potential Enrollees for Indian Army as per details given at Annexure -VII of Appendix 'B"

Tehsildar Banpur
Distt Khurdha (Odisha)

- For information & necessary action with specific reference to Verification Reports of Pre-Enrolment of Potential Enrollees for Indian Army as per details given at Annexure -VIII of Appendix 'B"

Tehsildar Balipatna
Distt Khurdha (Odisha)

- For information & necessary action with specific reference to Verification Reports of Pre-Enrolment of Potential Enrollees for Indian Army as per details given at Annexure -IX of Appendix 'B"

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Appendix 'A'

(Ref Para 1 of ARO Cuttack letter
No D/337/87 dt 12 May 2012)

**PART –VIII ; SECTION II: VERIFICATION OF CHARACTER
AND ANTECEDENTS OF RECRUITS OF THE ARMY'**

(Relevant Extract of Policy Compendium for Recruitment
of Junior Commissioned Officer and other Ranks 2009)

22. The aim of this SOP is to lay down the action to be taken to verify the character and antecedents of the new entrants and guard against the infiltration and retention of undesirables in the Army.

Undesirable Persons

23. The following Persons must not be allowed to infiltrate into the Army :-

- (a) Members associated with any body/party declared unlawful.
- (b) Persons wanted by the police and who get enrolled for political motives to spread anti-govt propaganda and dissatisfaction.
- (c) Persons engaging in activities prejudicial to interest of the Nation/State or promote on grounds of religion, race, language, caste or community, feelings of enmity or hatred between different sections of people.
- (d) Deserters from the Armed Forces, Police and Para Military Forces.
- (e) 'Bad Characters' registered with police authorities and economic offenders.
- (f) Members involved in subversive activities including member of any Organization, which aims to change society by violent means.
- (g) Candidates inducted by Intelligence Agencies with fake documents.

Types of Character Verification

24. There are two types of character and antecedents verification as under:-

- (a) Pre- Enrolment Verification.
- (b) Post- Enrolment Verification.

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Appendix 'B'(Ref Para 2 of ARO Cuttack letter
No D/328/87 dt 12-May2012)**SUMMARY OF PRE ENROLMENT VERIFICATION REQUIREMENTS
POTENTIAL ENROLEE OF INDIAN ARMY**

S No	Tehsil	No of Candidate
1	Bolgarh	04
2	Tangi	05
3	Chilika	05
4	Khurda	07
5	Begunia	05
6	Bhubaneswar	01
7	Jatni	01
8.	Banpur	01
9.	Balipatna	01
Total		30

IMPORTANT DATES

1. Date of Despatch of Requisition for Pre- Enrolment Verification to Concerned Tehsildar Offices on 12 May 2012.
2. Last Date of Receipt of Pre-Enrolment Verification Report at ARO Cuttack on 31 May 2012.
3. Pre- Despatch Validation of Potential Enrollees for Indian Army at Army Recruitment Office Cuttack by 04 Jun 2012 to 10 Jun 2012.
4. Despatch of Candidates to Army Training Centres after final despatch drill from 15 Jun 2012 to 25 Jun 2012

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Annex 8: Judgement of the Armed Forces Tribunal in the case of
Col Harvinder Singh Kohli Vs Union of India and others

**IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

TA/254/09
IN W.P.C. No. 7827/2009

**COLONEL HARVINDER SINGH KOHLI
R/O. D-501 LAGOON APARTMENTS
AMBIENCE ISLAND
GURGAON-122 022.**

THROUGH : MS. REKHA PALLI, ADVOCATE
MS. POONAM SINGH, ADVOCATE
...PETITIONER

VERSUS

- 1. THE UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF DEFENCE
SOUTH BLOCK
NEW DELHI-110 011.**
- 2. THE CHIEF OF ARMY STAFF
SOUTH BLOCK
NEW DELHI-110 011.**
- 3. THE GENERAL OFFICER COMMANDING-IN-CHIEF
EASTERN COMMAND
FORT
KOLKATTA-21**
- 4. THE GENERAL OFFICER COMMANDING
3 CORPS
C/O. 99 APO**
- 5. MAJOR GENERAL RAVINDERS SINGH (RETD.)
EX GENERAL OFFICER COMMANDING
57 MOUNTAIN DIVISION
(SERVICE THROUGH AG'S BRANCH,**

**MP DIRECTORATE, ARMY HQ, SENA BHAWAN
NEW DELHI)**

- 6. BRIGADIER S.S.RAO
EX COMMANDER, 73 MOUNTAIN BRIGADE
DY GOC 36 INFANTRY DIVISION
C/O. 56 APO**

**THROUGH : SH. ANKUR CHHIBER, ADVOCATE
LT COL NAVEEN SHARMA**

...RESPONDENTS

CORAM :

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER**

**J U D G M E N T
DATE : 11.01.2010**

1. Challenge in this appeal is to the finding and order of the Court Martial dated 06.08.2004 whereby the petitioner was dismissed from service in gross violation of Army Rule 52 and 54 and also the subsequent orders dated 18.03.2008 and 20.02.2009 passed by Union of India on the post confirmation petition and also the order dated 20.02.2009 of Union of India declining to interfere with the sentence awarded to the petitioner.

2. It is contended by the petitioner that from the date of his entry in the Artillery Regiment he worked with all sincerity and

dedication in field areas and at high altitude. ACR's dossier also reflects his outstanding performance. The petitioner assumed command of 175 Field Regiment on 01.04.2000 and was also empanelled for promotion to the rank of Colonel by a duly constituted Selection Board and was promoted to the rank of Colonel on 01.09.2000. The petitioner remained in command of the said unit. In December 2003, he commanded successfully and apprehended number of Militants in North East. Brig. S.S.Rao (Respondent no.6) then Commander of 73 Mountain Brigade started pressuring petitioner to report kills by showing encounter so as to boost the image of the Brigade Commander and also to bring laurels to the Unit. The petitioner refused to succumb to such pressure and expressed his inability to kill innocent people. The respondent no.6 continued to mount pressure on the petitioner. On 17.08.2003 his Unit received a message that Respondent no.6 would visit the Unit in the afternoon the same day. He visited the unit the very same day at 12:30 hrs. and was received by Major J.S.Babbar, Captain Amitabh Kumar and Lt Sharma. The Unit again informed the respondent no.6 on his arrival that they had five militants in their custody. Respondent no.6 then directed to show them as "kills" to which the petitioner did not agree as the order itself was illegal. Respondent no.6 thereafter advised him to send a party which should fire in the air near Village Bara Nagadung so as to give impression to the villagers that an encounter with militants was

in progress and subsequently these five militants who were in custody could be deemed to have been killed in their encounter and report sent accordingly. Respondent no.6 also advised that after managing such killing the bodies should be shown to have been left behind mentioning because it was raining in the night and the terrain was bad but the recovered arms had been brought back. On the following day, a search party be sent which should report on return that the bodies were found missing. The petitioner and his other colleagues had to carry out the orders of respondent no.6 and for that he had been dragged to face GCM proceedings. There was no ill design motive on the part of the petitioner to have made false report about their killing except that he ensured the compliance of the directions of his superiors. The complicity of the respondent no.5 and 6 is well proved from the materials on record including from the taped version but while awarding punishment to them they were dealt differently and lenient punishment was awarded to them. He also made representation to the Chief of Army Staff who also recommended for lenient punishment keeping in view the orders passed against other officers who were associated in the said crime but the Union of India discriminated in the matter of petitioner and gave him severe punishment by way of dismissal from service.

3. It is further alleged that on the anonymous complaint about fake encounter on the night intervening 17th and 18th of August, 2003 the petitioner was made scapegoat whereas the entire scheme was hatched by respondent no.6. Further the compliance of statutory Rule 57 (a) and 63 was not ensured resultantly in the entire trial being vitiated.

4. This petition was resisted by the respondents contending that the petitioner along with Maj J.S.Babbar were tried by a GCM. Five charges were levied against the petitioner for having committed civil offence i.e. criminal conspiracy whereby false reporting of an encounter for the purposes of bringing laurels to his Unit and also made a false statement about that killing which could make out case u/s.57(a) R/w. Section 34 IPC. He also sent false report to senior officers knowing about the killing which was prejudicial to the good order and military discipline. He pleaded guilty against all the five charges made against him. His statutory petition u/s.164(2) of the Army Act was also rejected by UOI. Apart from it for setting up false case in obedience of alleged orders given by Respondent no.6 he planned fake encounter and forwarded citations including photographs etc. There is ample evidence on record to substantiate the charges levied against the petitioner coupled

with his plea of guilt. Further it is also contended that for such fraud played by the petitioner he deserves severe punishment.

5. To answer rival contentions of the parties it shall be useful to extract all the five charges which were made against the petitioner. They are as under:

First Charge
Army Act Section 69
Read with IPC Sec
120 B
(Against both accused)

COMMITTING A CIVIL OFFENCE,
THAT IS TO SAY, CRIMINAL
CONSPIRACY, CONTRARY TO
SECTION 120 B OF THE INDIAN
PENAL CODE

in that they together,

at field, on or about 17 August 2003, while performing duties of Commanding Officer and Battery Commander of 175 Field Regiment respectively, agreed to cause to be done an illegal act to wit, using evidence known to be false, whereby a plan was made to fabricate an encounter with militants of ASSAM COMMANDO GROUP on night 17/18 August 2003, and the said act was done in pursuance of the agreement.

Second Charge
Army Act Section 57(a)
Read with IPC Sec 34
(against both accused)

IN A REPORT MADE BY THEM
KNOWINGLY MAKING A
FALSE STATEMENT

in that they together,

at field, on 18 August 2003, while in the capacity as aforesaid in the first charge in a special situation report made by them and forwarded to HQ 73 Mountain Brigade furnished details about an encounter of 175 Field Regiment personnel with the elements of

ASSAM C OMMANDO GROUP
on night 17/18 August 2003, well
knowing that no such encounter
had in actual fact taken place.

Third Charge
Army Act Section 57(a)
(Against accused no.1
only)

IN A DOCUMENT SIGNED BY
HIM KNOWINGLY MAKING A
FALSE STATEMENT

in that he,

at field, on 12 September 2003,
while in the capacity as aforesaid
in the first charge, in a citation
dated 12 September 2003, made in
respect of Accused no.2, stated as
follows:

“Displayed exceptional gallantry,
command ability and leadership in
the face of hostile fire and the
column eventually succeeded in
killing five ASSAM COMMANDO
GROUP terrorists and recovering
one 9 mm Browning pistol, two
double barrel breech loading rifles,
four single barrel breech loading
rifles, 250 grams of Gun powder,
lead pellets and incriminating
documents.”

Well knowing the said statement to
be false.

Fourth Charge
Army Act Section 57
(a) (Against accused
no.1 only)

IN A DOCUMENT SIGNED BY
HIM KNOWINGLY MAKING A
FALSE STATEMENT

in that he,

at field, on 12 September 2003,
while in the capacity as afore
stated in the first charge in a
citation dated 12 September 2003,
made in respect of JC-264960K
Naib Subedar (TA) Jaswant Singh
of 175 Field Regiment, stated as
follows:

“Displayed gallantry and

leadership of an exceptional order in the face of hostile fire. Used his ingenuity and self initiative with utter disregard to personal safety to come in close proximity to two militants who were holed up in dead ground and were firing indiscriminately and shot down both of them. In the process, he got bullet shots on his bullet proof jacket.”

Well knowing the said statement to be false.

SIXTH CHARGE
Army Act Section 63
(Against Accused no.1)

AN ACT PREJUDICIAL TO
GOOD ORDER AND MILITARY
DISCIPLINE

in that he,

at field, between 15 November and 15 December 2003, while in the capacity as afore stated in the first charge improperly advised following person of 175 Field Regiment to make false statements about killing of five militants and recovery of arms and ammunition on night 17/18 August 2003, before a Court of Inquiry, converted vide Headquarters 57 Mountain Division convening order no.57380/175 Fd Regt/A dt 11 November 2003.

- (a) JC-264960K Nb/Sub (TA)
Jaswant Singh
- (b) 14370396F Hav (GD) Jarman Singh
- (c) 15135496A L/Nk (DMT) Harjit Singh
- (d) 14374350W Hav (GD) Gita Singh
- (e) 14398781F Hav (TA) Karnail Singh
- (f) 14354149K Hav (Opr) Manjit Singh
- (g) 15140118L Gnr (DMT)
Gurmail Singh

- (h) 15137666X L/Nk (GD)
Gurminder Singh**
- (i) 13492512Y Hav (Opr) Jaspal
Singh**
- (j) 1442655H L/Nk (Opr) Sarabjit
Singh**
- (k) 15149740A Gnr (GD) Jasveer
Singh**

6. The petitioner admitted his guilt before the GCM and the certificate as required under Army Rule 115 (2) was also given by the GCM mentioning that all the charges were read and explained to the petitioner who pleaded guilty. Caution was also given to him that such plea of guilt would be read against him. This was the position of the five charges read and explained to the petitioner. On 04.08.2004 in the GCM the accused again pleaded guilty, but the GCM anyhow observed that it appears that on account of tremendous and environmental/organisational pressures the petitioner is accepting his guilt and so the GCM construed such plea of guilt to be not bonafide and treated his statement to be “Not Guilty”. The petitioner appears to have understood the benevolent approach of the GCM but he insisted upon recording his ‘plea of guilt’ and asserted that it should all be read in that manner and those statement of his should not be taken to negate his plea of guilt. Such note of his ‘plea of guilt’ was taken by the GCM. The petitioner also owned his responsibility for such design. All these factors were taken into consideration by the GCM and his plea of guilt was recorded. On the

basis of such plea of guilt the petitioner was convicted for all the five charges and was punished by way of dismissal from service.

7. The first and the foremost point agitated from the side of the petitioner is that the petitioner being Commanding Officer of the Artillery Unit declined to carry out the order of the respondent no.6 for killing of the five militants who were caught by his Unit but on his directions he had no option except to prepare the case of killing and he had to manufacture the evidence. Such obeying of the Command was undoubtedly his fault but his culpability was not more than the Senior Officer whose fault was viewed with leniency while awarding punishment to them. It was obvious from the charges and for which there was admission from the side of the petitioner that would undoubtedly be admissible in evidence. Such plea of guilt was deliberate and voluntarily. At the second occasion when the GCM intended to convert his statement construing it to be 'not guilty' instead of guilty, he insisted for mentioning his specific plea of guilt in the matter. Under Army Rule 115(2), there is a statutory provision which lays down the precautionary rules so as to ensure voluntariness and the accused being placed free from threat and influence of the superior. The accused through out pleaded guilty and even the GCM had also taken all precautions while explaining

him and the certification u/s.115(2) was also given by them. Such plea of guilt is admissible in evidence. It is a relevant fact that a judgment of conviction can be based on such admission, where it is found to be truthful, deliberate and voluntarily.

8. The declaration of the Commanding Officer of the Unit is generally taken as the gospel truth unless the correctness of such declaration is disputed or challenged with cogent proof showing facts to the contrary. Here in this case there is ample evidence of making false declaration. Even the petitioner nowhere desired that he managed false papers so as to show the killing of militants in an encounter and thereafter sent report to citation so that all concerned including Unit get commendations. Such act on the part of the petitioner was inconsistent with the interest of military service and not befitting the status, position and dignity of the Commanding Officer. Whether he ensured false encounter on the instructions of senior officers, would be immaterial. It was observed by the Apex Court in the case of *Union of India and Others Vs. Harjeet Singh Sandhu (2001) 5 SCC 593*, in the background of Rule 14 of the Army Rules, it was held that any wrongful act or any act of diligency which may or may not involve moral turpitude would be 'misconduct' under the Rule 14. Identical view was expressed by

Supreme Court in the case of *Baldev Singh Gandhi Vs. State of Punjab and Others (2002) 3 SCC 667*, that the expression 'misconduct' means unlawful behaviour, misfeasance, wrongful conduct, misdemeanour etc. The petitioner in the capacity of Commanding Officer, did not maintain absolute integrity, devotion to duty and did an act complained of bears forbidden quality or character.

9. The petitioner was commanding the Unit and it was expected on his part to have maintained high discipline and moral integrity. Morale and discipline are the very soul of an Army Officer and no other consideration, howsoever important, can out-weigh the need to strengthen the morale of the Armed Forces and to maintain discipline amongst them. He being the Commanding Officer was accountable for his acts or omissions and not to have been swayed by the wrongful command of his seniors. He cannot take the plea that he was faithfully discharging the orders of his superiors. The Doctrine of "full faith and credit" applies to the act done and performed. His duty is to faithfully discharge his duties to elongate the public purpose and to be in accordance with the procedure prescribed. It is undisputed as from the charter of duties, the responsibilities of the Commanding Officer that he is required to act in accordance with the rules. Commanding Officer is the

ultimately responsible and accountable for the action done and decision taken by him. He was also under obligation not to succumb to the illegal command of senior to prepare forged papers showing killing of five militants.

10. It is next contended that the petitioner had no ill design to prepare the forged papers so as to bring name and fame to his Unit or to superior officers. It was pursuant to the directions of his seniors he had to submit the papers showing encounter. The GCM and the Chief of Army Staff had taken strict view of the offence where fraud is proved against the petitioner but only because it is found to have been committed on account of the directions of the superior officers, the same may not lead to the conclusion that the petitioner was not involved in this conspiracy. The forged papers were prepared under his supervision and he would be liable for the acts of criminal misconduct.

11. There is ample evidence to fasten the culpability of the petitioner and charges have also been established. He has also admitted his guilt. It is at this juncture the conduct in the matter of preparing false report and stage managing the supposed killing of five militants on the

part of the petitioner without demur, which in turn make the principle of estoppels by conduct applicable in his case. The Supreme Court in *Tata Iron and Steel Co. Ltd. Vs. Union of India and others* (2001 (2) SCC 41) dealt with the issue of estoppel by conduct rather exhaustively vide paragraphs 20 and 21 stated the law pertaining thereto as below :

Estoppel by conduct in modern times stands elucidated with the decisions of the English Courts in Pickard v. Sears (1837: 6Ad. & El. 469) and its gradual elaboration until placement of its true principles by the Privy Council in the case of Sarat Chunder Dey v. Gopal Chunder Laha (1898 L.R. 19 I.A.203) whereas earlier Lord Esher in the case of Seton, Laing Co. v. Lafone (1887: 19, Q.B.D.68) evolved three basic elements of the doctrine of Estoppel to wit:

Firstly, where a man makes a fraudulent misrepresentation and another man acts upon it to its true detriment: Secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: And thirdly there may be circumstances under which, where a mis-representation is made without fraud and without negligence, there may be an Estoppel.

Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which

cannot properly be characterised as misrepresentation. In this context, reference may be made to the decisions of the High Court of Australia in the case of Craine v. Colonial Mutual Fire Insurance Co. Ltd. (1920: 28 C.L.R. 305). Dixon, J. in his judgment in Grundt v. The Great Boulder Pty. Gold Mines Ltd. (1938: 59 C.L.R. 641) stated that:

“In measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. It is only when the representor wishes to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the representee would be in if the representor were allowed to disavow the truth of the representation.”
(In this context see Spencer Bower and Turner: Estoppel by Representation 3rd Ed.). Lord Denning also in the case of Central Newbury Car Auctions Ltd. v. Unity Finance Ltd. (1956 (3) All ER 905) appears to have subscribed to the view of Lord Dixon, J. pertaining to the test of detriment to the effect as to whether it appears unjust or unequitable that the representor should now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the

representation, in short, the party asserting the Estoppel must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs, the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment.(vide Grundts: High Court of Australia (supra)).

Phipson on Evidence (Fourteenth Edn.) has the following to state as regards estoppels by conduct.

“Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like; and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed. [Lyon v. Reed (1844) 13 M & W. 285, 309] The doctrine has, however, in modern times, been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows: Where one by his words or conduct willfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter his own

previous position, the former is concluded from averring against the latter a different state of things as existing at the same time. [Pickard v. Sears (1837) 6 A.& E. 469,474] And whatever a mans real intention may be, he is deemed to act willfully if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it. (Freeman v. Cooke: 1848 (2) Exch.654, 663).

Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled. {Mercantile Bank v. Central Bank (1938 AC 287, 304 and National Westminster Bank v. Barclays Bank International (1975 Q.B. 654] This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently. [Moorgate Mercantile Co. Ltd. v. Twitchings (1977) AC 890 (H.L.)] The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped as against the other from asserting differently at another time. [Square v. Square (1935) P.120]

12. The Learned Counsel for the petitioner submitted that as the other officer including senior officer were dealt with leniently while awarding sentence/punishment to them and so he should be kept at par with those superior officer in the award of punishment, more so in the circumstances that he obeyed their command. It is also said that Chief of Army Staff also recommended for lenient punishment in his matter. In our view seeing the conduct of the petitioner in making false declaration, citation and papers and also succumbing to the pressure of the seniors for carrying out wrongful orders cannot be viewed with leniency. It is not possible to exceed his prayer even on equitable grounds. In this regard it shall be useful to quote the principle of equality as enshrined in the case of *Prem Chand Somchand Shah Vs. Union of India, (1991) 2 SCC pg.48*. It is as under :

As regards the right of equality guaranteed under Act 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed amongst discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges and liabilities imposed conversed, discriminatory may result if persons dissimilarly situate and treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that

event it is necessary that the different treatment should be founded on an intelligible differtia which distinguishes persons or things that are grouped together from things left out of the group and that differential must have a rational relation to the object sought to be achieved by the statute in question.

13. The petitioner, in order to successfully invoke the right guaranteed under Act 14 of the constitution will have to establish that he and his other officers whether senior or junior are similarly situated. The petitioner being Commanding Officer had more responsibilities. He cannot equate his position with that of other officers. Again when lenient view was taken in the matter of other officers and in what enveloped circumstances that punishment was awarded but it shall not be of the point to mention that 'equality' it is trite, cannot be claimed in illegality. (*See Panche De vs State of Rajasthan (2009) 2 SCC pg.589*).

14. Lastly it is submitted by the Learned Counsel for the petitioner that the petitioner owned his responsibility for the entire mishap and innocently pleaded guilty though he was under pressure for forging the documents. Once the superior officers have been exonerated and the junior officer was not dismissed from service, his case shall also be considered sympathetically. Penalty from dismissal from service was

imposed by the authorities concerned on the recommendation of the GCM and no interference is warranted unless the punishment is shockingly disproportionate. The petitioner has also failed to show mitigating circumstances in his favour. The punishment awarded by the authorities cannot be characterised as disproportionate and shocking. In passing, reference may also be made that undue sympathy to impose inadequate sentence would do more harm to the military discipline and justice system and that was also taken into consideration by the authorities while rejecting the representation of the petitioner. Moreover the petitioner being the Commanding Officer he was required to be more honest towards his duties and the personnel attached with him. He cannot claim parity with his senior or the subordinate for the said offence in which they are said to be involved. They were not on equal pedestal and so he cannot be treated at par with them in the award of sentence.

15. We do not find any justified ground to interfere in the impugned order. **Petition dismissed.**

S.S.DHILLON
(Member)

S.S.KULSHRESHTA
(Member)

**PRONOUNCED IN THE OPEN COURT
TODAY ON DATE 11.01.2010**

Annex 9: RTI appeal before the First Appellate Authority of the Indian Army with respect to disclosure of Col report into sexual exploitation by the 6th Sikh Regiment in the DRC

Tele : ASCON : 35641

Provost Marshal's Office
Adjutant General's Branch
Integrated HQs of MoD(Army)
DHQ PO New Delhi-110011

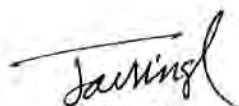
B/87008/AG/PM/RTI-2356

01 Apr 2013

✓
Shri Suhas Chakma
C-3/441-C, Janakpuri,
New Delhi-110058

APPEAL UNDER RIGHT TO INFORMATION ACT 2005 SHRI SUHAS CHAKMA

1. Please refer your appeal dated 28 Feb 13, received by this office on 04 Mar 2013.
2. Order of the Appellate Authority dated 01 Apr 2013 on the Appeal under Section 19 (1) of the Right to Information Act 2005 is fwd herewith for your information.
3. In view of the above your appeal is hereby disposed off.


(JS Suhag)
Col
Addl Offr
for Appellate Authority

Enclosure : As above

Copy to :-

DDG RTI (RTI Cell)

A copy of orders of the Appellate Authority dated 01 Apr 2013 is fwd herewith for information and necessary action please.

**ORDER OF THE APPELLATE AUTHORITY ON THE APPEAL BY
SHRI SUHAS CHAKMA UNDER SECTION 19 (1) OF THE
RIGHT TO INFORMATION ACT, 2005**

1. WHEREAS, Shri Suhas Chakma vide application dated 27 Dec 12, had sought following information under Right to Information Act 2005 : -

(a) Copy of the report of Court of Inquiry (Col) conducted by the Indian Army into the sexual misconduct allegations leveled against Indian troops while deployed in a UN peace-keeping mission in the Democratic Republic of Congo in 2007-2008.

2. AND WHEREAS, DDG RTI, the CPIO at Integrated Headquarters of MoD(Army), vide their letter No A/810027/RTI/11750 dated 17 Jan 13 had declined to provision the information.

3. AND WHEREAS, aggrieved by the response of the PIO at Integrated Headquarters of MoD (Army), Shri Suhas Chakma preferred an appeal dated 28 Feb 13, under the provisions of section 19 (1) of the said Act, stating that he was not satisfied with the information provided as requested vide his application dated 27 Dec 12.

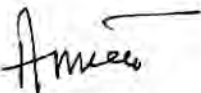
4. AND NOW THEREFORE, after having perused all the records and after hearing views of the nodal officers, I find that requested information has been denied by the CPIO under the provisions of section 8 (1) (h) of the RTI Act 2005. Investigation on the subject incident is still not completed and disclosure of information at this stage is likely to impede the process of investigation. I, therefore, find that denial of requested information by the CPIO under the provision of Sec 8 (1) (h) of the RTI Act is well justified and I uphold the decision Communicated to the appellant by the CPIO vide their letter No A/810027/RTI/11750 dt 17 Jan 13.

5. The appeal is therefore accordingly disposed off.

Signed at New Delhi on this

first

day of Apr 2013.


(Anil Mehta)
Major General
Appellate Authority

Asian Centre for Human Rights is dedicated to promotion and protection of human rights and fundamental freedoms in the Asian region by:

- providing accurate and timely information and complaints to the National Human Rights Institutions, the United Nations bodies and mechanisms as appropriate;
- conducting investigation, research, campaigning and lobbying on country situations or individual cases;
- increasing the capacity of human rights defenders and civil society groups through relevant trainings on the use of national and international human rights procedures;
- providing input into international standard setting processes on human rights;
- providing legal, political and practical advice according to the needs of human rights defenders and civil society groups; and
- by securing the economic, social and cultural rights through rights-based approaches to development.



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