



Mogadishu, 19 October, 2014
AMISOM/HOM/14/343.14

Mr. Daniel Bekele
Africa Director
Human Rights Watch (HRW)
New York, USA.

Dear Sir,

The African Union – AU Mission in Somalia (AMISOM) would like to refer to the Human Rights Watch (HRW) Report titled “The Power These Men Have Over Us – Sexual Exploitation and Abuse (SEA) by AU Forces in Somalia”, released on 8 September 2014 and HRW’s recent communication to the AU on the same, dated 23 September 2014.

AMISOM welcomes the ongoing engagement of HRW on this issue as it is at the very essence of the deployment of the Mission. Indeed, the mandate and tasks assigned to AMISOM by the AU Peace and Security Council (PSC), as well as the United Nations (UN) Security Council, are premised on promoting human rights and protecting ordinary Somalis, including women and children.

Accordingly, AMISOM reiterates its deep concern about the allegations of SEA leveled against its uniformed personnel by HRW. The AU does not condone, and indeed has maintained a zero-tolerance stance against, any form of SEA in all its Peace Support Operations (PSOs). The AU is committed to doing all it can to ensure justice and provide assistance to the alleged victims in the event that the allegations are founded.

Following the initial AU reaction, as articulated in the Commission’s communiqué of 8 September 2014, AMISOM has now had a chance to review the report in detail and would like to provide the following additional elements. AMISOM would like to add that this response does not delve into the specific allegations made against its personnel, as the AU is actively taking steps to investigate these cases. Instead, this response focuses on the overall report, methodology and the recommendations made in the same. The response takes into account the clarifications provided by HRW in its letter mentioned above. Once the AU has completed its investigation, it will engage with HRW and the public at large on the specific allegations made in the report.

Accordingly, this response begins with an update on the actions taken with respect to the investigations proposed by the AU as this is a priority for the AU. It then proceeds to provide and contextualize the impact of the report on AU operations in Somalia and add to the information already provided on mechanisms in place to address SEA. The response then focuses to elaborate on some of the concerns expressed in its Press Release on 8 September, particularly with regard to the methodology, imbalance, misrepresentation and inaccuracies and subsequently focuses on the recommendations made by HRW and the actions foreseen with respect to the same. It concludes with specific recommendations to HRW.



Investigations and Assessment of SEA in AMISOM

Following communication by HRW of its allegations of SEA in May 2014, the AU Commission immediately initiated a process of mobilizing the requisite expertise from AU Member States and other independent African institutions, in order to constitute an Investigation Team that will look in-depth into those allegations. Furthermore, the Commission determined that it was also necessary to conduct an assessment on the prevalence, nature, extent and patterns of SEA, if at all, as the HRW did not ascertain this aspect (See para. 2, page 2 of the HRW report), so as to inform its response for current and future PSOs.

In constituting the Investigation and Assessment Teams, the Commission has been motivated by the need for these Teams to conduct their assignments in an impartial, professional, victim-friendly, effective and efficient manner. The Teams are expected to undertake a comprehensive investigation and assessment so as to not only adduce evidence that can be used to prosecute potential perpetrators, but also to provide a comprehensive evidence-based understanding of the situation, circumstances, and extent to which SEA occurs, if indeed it occurs in AMISOM. This process is due to commence in October 2014.

AMISOM notes the position of HRW with respect to sharing information on victims and witnesses. While appreciating the need to maintain confidentiality in the interests of victims and witnesses who may fear reprisals for reporting SEA, especially in a country where security and justice institutions remain particularly fragile, AMISOM is however of the strong view that organizations such as HRW that are in possession of evidence of wrongdoing by its uniformed personnel should cooperate and share with it information which does not jeopardize the safety of alleged victims in duly constituted investigation processes.

For instance, there is no reason why HRW should not share other collaborative evidence such as specific information on the locations where the alleged SEA took place; dates and names of the alleged perpetrators and collaborators and information of victims and witnesses who did not request for confidentiality. A blanket decision that no information will be shared without even a suggestion that HRW may further engage with some of the individuals who provided it with evidence, with a view to encouraging them to cooperate with AU investigators, is counter-productive and not helpful. While understandably victims of SEA are reluctant to channel their grievances to the organization which employs their alleged abusers, if the ultimate objective of HRW is to assist AMISOM to prevent the recurrence of similar incidents in the future and bring justice to the victims, HRW has a duty and responsibility to provide AMISOM with evidence and proof in its possession. This concern was brought to the attention of HRW vide letter AMISOM/HOM/14/325.14, dated 3 June 2014. So far, HRW has remained unyielding in its position. Sharing the information requested would greatly help in expediting the AU's investigations, easing the interviewing process and, ultimately, ending impunity for SEA and facilitating assistance to victims.

In view of HRW expressed commitment to constructive dialogue and in the interests of ensuring justice for the alleged victims, AMISOM would like, once again, to urge HRW to reconsider its position and discharge its responsibility in this regard. Whatever information HRW provides will be treated with utmost confidentiality and discretion.

Context and Impact of HRW Report on AMISOM's Operations

As also noted in the HRW report, since Somalia's descent into armed conflict after the collapse of the Said Barre regime in 1991, there have been a number of failed interventions to restore peace and the rule of law. Until the deployment of AMISOM in 2007, there seemed to be no prospect of hope for Somalia. However, since the deployment of AMISOM, all of the major towns and cities in

south central Somalia have been recovered from the terrorist group Al-Shabaab, making it possible to deliver the much-needed humanitarian assistance to the affected populations.

These achievements have been due largely to the sacrifice, discipline, courage and determination of the AMISOM uniformed personnel in support of the Somali Government and people. HRW is aware that the peace being enjoyed in many towns and cities across Somalia has, in large measure, been paid for with the blood of thousands of young African soldiers from Somalia and the troop and police contributing AU Member States.

As the African Governments and their peoples act in solidarity and are determined to bring about lasting peace on the continent, AMISOM considers the generalization contained in the HRW report as being unfair. The title of the report, which seems to characterize AMISOM uniformed personnel as rapists and human rights abusers, is an unacceptable misrepresentation of the Mission. It will no doubt undermine efforts to win the trust and respect of the Somali population.

Existing Mechanisms to Address SEA

HRW is aware that the AU has in place mechanisms to ensure that AMISOM's uniformed personnel conduct themselves in ways and manners consistent with the obligations of the AU and their countries of origin, as included in the relevant provisions of the Memoranda of Understanding (MoU) between the AU and the troop and police contributing countries. The AU's approach is holistic: it includes preventive, mitigating and punitive measures. In AU's initial response to the allegations, these measures were described in detail. However, it is worth stressing that the AU's preventive measures are robust and have been commended by various partners in a number of reports. For instance, the Independent Expert on the situation of human rights in Somalia has noted that "*Regular training of AMISOM forces on humanitarian and human rights laws had yielded positive results, including in regard to the prevention of conflict-related sexual violence*"¹. Mitigating measures are also in place and are consistent with best practices of similar organizations like the UN. The punitive/intervention measures are in place.

In particular, although AMISOM conducts various outreach events and sensitization in Somalia on reporting SEA against its personnel, it is now clear that existing mechanisms in this regard can be strengthened. Consequently, AMISOM is in the process of establishing a confidential reporting Helpline that members of the Somali public can use to report any allegation of SEA in a free, safe and confidential manner. AMISOM, with appropriate expert support, will train Somali nationals who will respond to these calls, offer basic counselling and arrange for them to be provided with other support, as may be needed.

Further, in keeping with the AU's continuing efforts on SEA and to further strengthen responses to SEA, as well as enhance AMISOM's leadership's and other relevant personnel's capacity, commitment and accountability on SEA, the AU has just concluded a Leadership Capacity Building and Strategy Formulation Workshop on SEA for AMISOM at the Pan-African Parliament (PAP) in South Africa. At the end of the Workshop, AMISOM Leadership expressed its commitment to take necessary steps, including the adoption of the one year plan on SEA, the proposal to include a specific Annex to the Memorandum of Understanding (MoU) with Troop Contributing Countries and Police Contributing (T/PCCs) on SEA and the improvement of welfare and recreation of all AMISOM personnel as part of measures to address SEA.

¹ See, A/ HRC/21/61, 13 August 2012, paragraph. 20.

Major concerns with the HRW report

i. Research Methodology

As noted in its Press Release of 8 September 2014, the AU disagrees with the conclusions of HRW based on a sample of 24 allegations in a force of 22,000 personnel. Given that the research was conducted in Mogadishu alone, then the sample is that of 24 soldiers against roughly 6,200 soldiers deployed in the Mogadishu area. To draw conclusions on the basis of a sample of less than 0.5 percent may not be empirically sound or reflect best practice. This scenario is made even worse by the fact that this is used to characterize a force of more than 22,000 uniformed personnel.

Also, the AU would have benefited more from a clearer and more concise description of the evidence. It is unclear if the allegations were committed by a handful of soldiers or several different soldiers. In page 3, paragraph 3 of the report, HRW states that *"most of the women interviewed for the report were sexually exploited by a single soldier over a period of weeks and even months, although some had sex with several soldiers, notably at the Burundian contingent's base."* This appears to suggest that one AMISOM soldier was responsible for having sexual relationship with various Somali women over a sustained period of time. More scrupulous and detailed description of the information, especially pertaining to the perpetrators, would have been most helpful to the AU, especially as it moves forward with its investigations.

ii. Incomplete and one-sided investigations

In the report, HRW claims to have interviewed several alleged victims of SEA but excluded AMISOM personnel accused of those acts. The report states, in the penultimate paragraph of page 9, that: *"HRW did not request to visit military bases on which these abuses took place, because of concerns regarding confidentiality and the risk of reprisals against survivors or witnesses following such a visit."* Yet, in HRW's Mission Statement, HRW asserts that it is *"... committed to maintaining high standards of accuracy and fairness, including by seeking out multiple perspectives to develop an in-depth, analytic understanding of events."*

The report is therefore based on victim/witness accounts solely. No alleged perpetrators or collaborative information is presented. Yet, it is a basic tenet in research to endeavor to reflect and tell the whole story from at least the two opposing perspectives: in this instance both the victims and alleged perpetrators. Consequently, the evidence that HRW is relying on to draw its conclusions is one-sided and incomplete. Besides this, no collaborative evidence is presented. Understandably, collaborative evidence is difficult to obtain, especially as SEA typically occurs without witnesses. However, the report makes allegations of victims and witness suffering from sexually transmitted diseases and even being treated but presents no further particulars in this regard. This would have been helpful information as the AU proceeds to investigate the alleged cases by HRW.

Further, HRW admits, in paragraph 2 of page 2 of its report, that it was constrained in carrying out exhaustive research into the allegations. The report states that, *'given the particularly complex and sensitive nature of this research topic, security concerns as well as the profound reluctance of survivors and witnesses to speak about their experience, Human Rights Watch did not assess the scale or prevalence of the abuse'*. Despite this admission, HRW proceeds to make portray and characterize SEA as it did.

The conclusions therefore are based on an in-exhaustive and incomplete research and from one perspective: the victim's perspective. This perspective has not been subject to scrutiny or

verification expected of such research, especially information from “the other side,” let alone from other multiple sources. On this basis alone, the conclusions are questionable.

iii. Factual inaccuracies and/or misrepresentations of some claims

- a) Immunity of AMISOM personnel: In the report, HRW states that all AMISOM members of staff, including locally-recruited Somalis, are immune from criminal prosecution for acts done in their official capacity and, as such, perpetrators of SEA are immune from prosecution. Also, in its letter, HRW requests for clarity and suggests that the question of immunity is blurred. To be clear, paragraph 55 of the Status of Mission Agreement (SOMA) confers immunity only on civil allegations against AMISOM staff members, including Somali staff of AMISOM. For criminal allegations, both AMISOM international and local civilian staff may be locally prosecuted in Somalia for crimes committed in that country. Consequently, no immunity exists for SEA.
- b) Report on the alleged 'gang rape' of 2013: In the report itself and in letter to the AU, HRW implies that AMISOM swept the same under the carpet. This is not an accurate portrayal of the manner this case was handled. Firstly, when the news of the allegation broke out, AMISOM Force Headquarters set up a Board of Inquiry (BoI) to investigate it. However, all efforts to interview the alleged victim of the incident did not succeed, as the NGO which was apparently sheltering the victim refused to disclose her location to AMISOM and would not allow her to present evidence before the BoI. Since she was the witness-in-chief, the BoI could not make any progress without hearing her side of the story. Secondly, whilst AMISOM's BoI was still engaged in the matter, the Federal Government of Somalia (FGS) decided to take over the investigation. It therefore was not in the victim's best interest or efficient to proceed with the BoI. The FGS has since concluded the investigation, but has yet to release the outcome of the same.
- c) Location of HQ: In the report, HRW notes that Sector 1 of the Mission was moved to the Mogadishu Stadium. This is factually incorrect. Sector 1 has not moved to the Stadium. It is still at the Base Camp which is located in Halane.
- d) Location of the Marine Shops: HRW states that "Marine Market Area", where the shops are located, is outside the base camp. Specifically, HRW states that: *"One of the busiest areas is the Marine Market area at the northern side of the airport runway, which is controlled and regulated by AMISOM, and previously primarily by the UPDF, but outside the AMISOM base camp and accessed through a separate gate, Marine gate"*. In reality, the Marine Market Area is inside the base camp and not outside as mentioned in the report.

These factual inaccuracies, while seemingly insignificant, could be symptomatic of a larger problem in HRW's research methodology, allegations and findings. However, the AU will not dwell on it for now until it has had a chance to conduct thorough investigations into the matter.

iv. Cooperation with AU/AMISOM

The AU and its various PSOs policy is to cooperate with human rights organizations such as HRW. The AU therefore expects a commensurate level of objectivity, completeness and professionalism from these organizations, including HRW. Indeed, AMISOM cooperated fully with HRW, responded comprehensively to its initial request for information, and senior officers of the AU also met with HRW officials prior to the release of the report. All these, including the AU's explicit communications on a number of occasions expressing its commitment to engage with, collaborate and even work in partnership with HRW, were largely disregarded.

Considering that both of our institutions are working towards the same good cause in Somalia, and in particular stemming any form of SEA and indeed any form of human rights abuses, it is surprising that HRW adopted such an approach. A more collaborative approach would have led to a mutually constructive and desirable outcome in our common goal of increasing accountability and ending impunity on SEA.

Actions on Recommendations Contained in the Report and in the Letter to the AUC dated 23 September 2014

As reiterated during numerous engagements with HRW, the AU has a zero-tolerance policy on SEA, and the AU is mindful that its policies need to be strengthened. It is in this spirit that the AU would like to recap that it welcomes the insights and views of HRW on aspects that the Mission could focus on to strengthen its overall response to SEA. A number of the recommendations made were already in the process of being implemented, including investigating the allegations, SEA training, pre-deployment training and engaging with TCCs/PCCs to ensure accountability and reporting on disciplinary matters. Nevertheless, as noted earlier, the AU is undertaking an assessment on SEA so as to inform its policies and actions. The recommendations made by HRW will be considered alongside the finding and recommendations of the assessment.

In the meantime, a most useful recommendation that the AU is already considering is the one that relates to the suggestion that the Mission will benefit from having military courts by TCCs/PCCs in the Mission area. This is particularly useful from the point of view of facilitating access to justice to alleged victims who reside in Somalia. The AU is presently consulting with the TCCs to consider how this proposal can be implemented. As noted in the HRW report, one of the TCCs has also in the past deployed military courts inside Somalia to adjudicate on allegations of misdeeds. The AU is studying the *Modus Operandi* of this procedure, with a view to ascertaining its efficacy.

Additionally, the AU is consulting with the TCCs/PCCs, in order to obtain necessary information of all actions taken by the TCCs/PCCs in cases of misconduct. Once the necessary feedback is received, it is the AU's intention to share the same with HRW.

Observations and Recommendations to HRW

Given the leading role of HRW in promoting human rights, the AU is disappointed by the approach and final report on a matter of such importance and gravity. All actions are consistent with prioritizing media attention, rather than addressing SEA: specifically, the disproportionately small number of cases used to paint a picture of systemic widespread SEA by AMISOM personnel; the timing of the report; the approach taken of ignoring the AU's requests for cooperation and requests for information prior to the press conference as documented in the AU's letter and emails inviting HRW to a workshop on SEA; the title and portrayal of the AU on the cover page and the failure to interview the alleged perpetrators.

Equally disturbing is that the report conveys a misunderstanding of the context of PSOs and the implication that this could have on the efforts underway to liberate Somalia, an accomplishment that has remained elusive until recently, with the deployment of an African-led PSO. Unintentionally, the report has given additional ammunition to all those trying to obstruct the path towards peace and greater security in Somalia. It has also complicated AU's efforts to win the support of the local population in the fight against the Al-Qaeda-linked terrorist group Al-Shabaab.

Given all of the above, the AU is calling on HRW to undertake a more scrupulous research and investigations and collect information from a larger sample, interview alleged perpetrators and engaged effectively with the AU on the actions it is taking to address SEA. In this regard, the AU would also urge HRW to engage more professional, seasoned researchers who understand peace support

contexts to ensure comprehensive capturing of facts, more effective constructive engagement with the AU and AMISOM, and more accurate and balanced reporting on what is a complex and sensitive subject matter.

Finally, the AU would like to reiterate, the AU's unflinching commitment to ensuring a rights-based approach to the protection of civilians especially the rights of vulnerable women and children in Somalia. In this regard, the AU will continue to engage with key organizations such as HRW and to take the necessary steps to prevent SEA, guarantee justice to victims of human rights abuses, including SEA and guard against impunity of perpetrators.

Yours Sincerely,



Ambassador Maman S. Sidikou
Special Representative of the Chairperson of the Commission (SRCC) for Somalia
and Head of AMISOM.