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Office of the Special Coordinator on
Improving UN Response to Sexual
Exploitation and Abuse

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**RESPONSE TO QUESTIONS RELATING TO LEGAL FRAMEWORK
APPLICABLE TO PERSONNEL DEPLOYED BY NIGERIA TO UNITED NATIONS
MISSIONS**

1. You may please recall UN Secretariat letter DPKO/OMA/2016/0318 dated 20 April 2016 which provided details regarding the Legal Framework for Deployed Contingents Initiative and your email on 25 August 2016 with questions to assist in responding to the Note Verbale. Kindly find below response to the questions applicable to personnel deployed by Nigeria in UN Peacekeeping Missions:

a. **Specific Laws that Apply to Armed Forces Personnel
when Deployed as Part of UN Operations.**

(1) As a general rule but subject to the provision of the Status of Forces Agreement (SOFA) or the Status of Mission Agreement (SOMA), Nigeria troops deployed outside Nigeria for any reason (including UN Peace Support Operations (PSOs) are bound by Nigeria Law. Even when there is no specific SOFA/SOMA for the mission, the UN model SOFA will still apply to make the Nigerian Law the only law applicable to Nigerian troops on UN PSOs mission. Specifically, Article 47(b) of the UN model SOFA (1990) provides that military members of the military component of the UN peacekeeping operations shall be subject to the exclusive jurisdiction of their respective participating states in respect of any criminal offence which may be committed by them in the host country. This immunity from the jurisdiction of the laws of the host

country is however accompanied with the assurances from the Secretary General of the UN that the home country or troops contributing country guarantee to exercise jurisdiction with respect to crimes which may be alleged to have been committed by troops from that country participating in the mission. (See Article 48 UN Model SOFA). Such troops although immune for local jurisdiction are required to obey the laws of the host country and respect her customs and tradition.

(2) The cumulative impact of the above is that Nigeria troops on UN Peace missions are regulated exclusively by Nigerian law. This practice is usually expressed in the French Phrase 'loi du drapeau' meaning "law of the flag". In this vein, all Nigerian laws bind our troops abroad. The principal enactments in this regard are the Constitution of the Federal Republic of Nigeria 1999 (as amended), CAP C22 Laws of the Federation of Nigeria (LFN) CAP A20 2004. Additionally, Section 114 of Armed Forces Act (AFA) makes all other penal enactments in Nigeria applicable to military personnel. Also Section 56 and 57 of Armed Forces of Nigeria (AFN) criminalize disobedience to lawful orders. Through these provisions, disobedience of mission orders as well as the laws, customs and traditions of the host country reduced into orders, are punishable under Nigeria Law through the provisions of Sections 56 and 57 AFA.

(3) Furthermore, it suffices to add that by virtue of the provisions of Section 270 (2) of AFA, and by extension all other penal enactments vide Section 114 of AFA thereof, are applicable to all persons subject to Service law (in this case military personnel) in relation to units raised under the AFA whether within or outside Nigeria. Additionally, Section 169 (1) (a)(b) and (2) of AFA empower the Attorney General of the Federation (AGF) to waive the time limitation for institution of criminal proceedings against military personnel who commit civil offences outside Nigeria.

b. **Military Justice System.** The AFA and the Rule of Procedure applicable to the respective services, made provisions for a functional, robust and effective military justice system comprised of Summary Trials by Commanders and robust Court Martial Trials. Section 131 of AFA empowers Commanders listed therein or persons authorized on their behalf to convene Court Martials to try erring service personnel as occasion may demand.

c. **Sexual Abuse Related Offences.** The Armed forces Act provides for sexual offences. These are Section 77 – Rape and unlawful carnal knowledge, Section 78 – Defilement, and Section 80 – Sodomy. These offences cannot be fully said to be coterminous with the UN concept of Sexual Exploitation and Abuse (SEA) which could sometimes be consensual sex between 2 Adults. However, the definition of SEA is clearly reduced to orders which are applicable to Nigerian troops on UN missions. Breaches of such particular or standing orders are punishable under Section 56 and 57 of AFA.

b. **Are Military Personnel Always on Duty when Deployed?** Military personnel are always on duty when deployed on UN PSO mission.

e. **Powers of Commanding Officer.** A Commanding Officer can promulgate rules and policy on non-fraternization, confinement to Camp by the power conferred on him in Section 56 and Section 57 of the AFA to make lawful orders to ensure the effectiveness, efficiency and discipline in the Unit. Disobedience to such lawful command is punishable by these provisions of the AFA, Cap A20, LFN, 2004.

f. **Implementation of UN Rules on Prohibition of Sexual Exploitation and Abuse when Deployed in UN Operations.** UN rules on the prohibition of SEA are implemented in the following ways:

- (1) Sensitization and education during pre-deployment and in-mission training highlighting the SEA concept and the likely reparations of breach. Accordingly, aide-memoirs, flyers, handbooks and booklets on SEA are also provided for troops.

(2) The definition of SEA is elevated to standings orders and given to troops in documented forms.

(3) On induction into the mission, troops are monitored to prevent any breach on SEA.

(4) When a breach occurs, disciplinary action which may include unfavourable reports, repatriation from the mission and/or trial and punishment are carried out.

g. **Disciplinary Powers of Commander.** A Commanding Officer (CO) has disciplinary powers under Section 115 (for officers) and Section 116 (enlisted men) of the AFA. The punishments he can award after a summary trial subject to the rank of the accused are admonition, reprimand, severe reprimand, imprisonment with Hard Labour (IHL), reduction in rank and dismissal amongst others. He also has power of referral of case to higher commander (like the Sector Commander in a UN mission) when he is of the opinion that he does not have adequate powers to punish the offender effectively. He could also refer cases for trial by court martial.

h. **Authority to Investigate Allegations.** The Military Police have the authority to investigate allegations of SEA in the field. In addition, Section 123 of the AFA empowers and mandates a CO to investigate any allegation of the commission of any offence before proceeding with it. The CO may do that by ordering Military Police investigation or he may choose to exercise his power to personally investigate pursuant to Rules 7(1)(a) and 8 of the Rules of Procedure (Army) 1972 and their equivalent provisions in the adjectival laws of the Nigerian Navy and Nigerian Air Force respectively.

i. **Deployment of National Investigation Officers.** Each unit on PSO normally has a Military Police detachment in support. They are responsible for investigating all allegations of any crimes including SEA. When the need arises, NIOs could be appointed to investigate allegations of SEA.

j. **Referral of Investigations from NIOs.** Investigation reports are normally referred to the Commanding Officer, as well as the relevant Departments of the Services Headquarters for further action.

k. **Authority to Proffer Charges.** The Military Police could bring charges of SEA only after investigation indicts such a military personnel. The Command could appoint a prosecutor to prosecute such a case. If a Nigerian troop is indicted at the completion of a thorough investigation, the Military Police will submit its report which may recommend charges. The investigation report shall then be reviewed by the Directorate Legal Services of the respective Service and if upheld, the CO thereafter signs the charges Sheet against the alleged offender. The CO must sign the charge personally and he cannot delegate it by virtue of Paragraph 43 Chapter II of the Manual of Military Law. This provision was given judicial pronouncement in the case of CPL OSAFELE FRIDAY V NIGERIAN ARMY (2016) LPELR-41604 (CA) PAGE 12-20 PARAGRAPH E – B where the court held that signing of a charge is a jurisdiction matter and if signed on behalf of the CO, the whole trial is a nullity. This presupposes that while the Military Police may recommend charges and undertake prosecution in court, the power to bring charges lies with the CO.

2. A copy of the AFA which guide behaviour and actions of Armed Forces of Nigeria personnel was earlier made available to the Office of the Special Coordinator.

3. Please accept the assurances of my highest consideration.



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