



16 March 2018

Mr. Atul Khare  
Under-Secretary-General for Field Support  
United Nations  
New York, NY 10017

Dear Mr. Khare,

We have [exchanged several letters](#) with you about a troubling report from the UN mission in the Democratic Republic of the Congo (MONUSCO). An international staff member—a UN official—was accused of raping a female child multiple times.

On 13 March 2018 the Secretary-General released his [Special measures for protection from sexual exploitation and abuse](#) report, which, we note, [says](#) that the UN's internal investigation into the case is "pending" and the alleged perpetrator is "on leave without pay."

We have been focusing on this case for a simple reason. We believe that the UN Organization should have no role in receiving or investigating accusations of sexual abuse made against its own personnel. We advocate for the creation of a [Special Court Mechanism](#) in peacekeeping countries: an independent judicial body that would be empowered to assess, refer (where applicable), investigate, and prosecute UN personnel who are accused of committing sexual offenses.

Our correspondence with the UN over the MONUSCO child rape case has confirmed our absolute conviction that a Special Court Mechanism is necessary to ensure access to justice.

We sought specific clarification of the UN's process. You have provided a broad overview of internal rules and regulations and asserted that the Organization follows a "zero tolerance" policy.

It is clear that the UN handles allegations of "sexual exploitation and abuse" as simple disciplinary violations. Rape is far more than a disciplinary problem. It is a crime. Instead of being brought to criminal justice, a member of the UN's non-military personnel who is the alleged perpetrator of rape is subject to an internal investigation that is hidden from the public view.

In short, sexual crimes are committed with impunity by UN personnel.

According to the UN's account of the MONUSCO case, the Head of Mission determined that sufficient evidence existed to warrant an investigation of rape. Yet, although a serious crime was alleged, the matter was referred to the UN's Office of Internal Oversight Services (OIOS), which does not have the authority or authorization to conduct *criminal* investigations.

In your 28 November 2017 [letter](#) to us, you stated that "should a United Nations investigation find credible allegations of criminal conduct by a staff member," the UN policy is to "bring such allegations to the attention of the State of nationality of the staff member concerned." You continued: "In addition, the Organization's practice is to cooperate with other national authorities, such as the authorities of the State in which the alleged conduct took place."

Yet speaking at a [press conference](#) on 7 December, Jane Connors, the UN's Victims' Rights Advocate, said "an allegation" against "a person who's related to the UN and an international – there are disciplinary measures, and *only* disciplinary measures because it's not a judicial system."

Two senior UN officials. Two strikingly different statements. Is it any wonder that UN personnel accused of sexual abuse are rarely, if ever, subject to bona fide criminal investigations and accountability under the law? Is it any wonder that victims see little reason to report allegations?

In our 1 December [letter](#) to you, we narrowed our query to a series of 23 questions about the UN's general procedures for handling sexual abuse cases of a criminal nature.

You [responded](#) on 19 December, providing us with attachments and links to a number of resolutions and documents that occasionally touch on aspects of the UN's treatment of sexual abuse allegations but do not clarify how such critical matters are handled in the real world.

We sent a follow-up [letter](#) on 22 December. You responded within hours with a brief note that seemed to signal the end of the correspondence: "The Secretary-General has addressed these issues, through his reports to the General Assembly and through our responses to Code Blue and other civil society organizations."

With respect, we beg to differ.

We concede that as an employer the UN Organization has an interest and duty to manage its personnel. But the UN's administrative process is not parallel to a system of justice and should not take over and impede access to a court of law. The UN Organization is not neutral. In any sexual crime case, the entity that employs or contracts the alleged perpetrator is not a neutral party. Such an entity has its own interests and reputation to protect. When it takes any action in place of criminal justice authorities, it casts doubt on everything that follows, which could cause irreparable damage to the interests of both the accuser and the accused.

Moreover, the UN is unlike any other employer in the world. It alone enjoys the privileges and immunities that are so necessary to multilateralism. To a certain extent, the UN's immunity permits the Organization to skirt checks and balances and stifle freedom of information. We assert that UN immunity is being abused, and the privacy needed for an effective world body of 193 Member States has been extended far beyond its purpose.

Having thoroughly examined the resolutions and documents you sent to us, our concerns about the UN Organization's approach have not been allayed; they have been heightened. In the public interest, we are reproducing each of the 23 questions included in our 1 December letter. We have gone through the UN materials and provided good-faith answers to each of the 23. The questions and answers are below.

*1. In peacekeeping "host countries," local populations and organizations are instructed to report or refer allegations of sexual abuse made against UN personnel directly to the UN Organization. "Fact-finding" is then conducted by UN personnel. If the UN determines that non-military UN personnel may have committed crimes in the host country, the host country has primary jurisdiction and authority to investigate and prosecute. What is the UN's established procedure and timeline for handing over "credible" criminal complaints, when made against UN international civilian personnel, to the host country with primary jurisdiction?*

The UN does not have an established system-wide procedure and timeline for handing over to the host country with primary jurisdiction "credible" criminal complaints made against UN international civilian personnel.

*2. In the scenarios above, does the UN follow one procedure if the allegations involve international UN civilian personnel, and another procedure if the allegations involve national UN civilian staff? If there are two different procedures or practices for referring credible cases to the host country with primary jurisdiction, in what ways do the procedures or practices differ, and why do they differ?*

The UN has two different procedures for referring international and national civilian staff to criminal authorities, but the UN has failed to explain how or why the procedures differ.

*3. What procedure does the UN follow to determine whether sufficient evidence exists to warrant a criminal investigation?*

The UN does not have an established, consistent, system-wide procedure for determining whether sufficient evidence exists to warrant a criminal investigation against a UN staff member.

*4. Under what published, objective standard is that determination reached?*

The UN has not provided a published, objective standard outlining or defining how it reaches that determination.

*5. In the course of making the determination that sufficient evidence exists to warrant a criminal investigation, is evidence collected by UN staff/officials (who, as employees or consultants working for the same UN Organization are, by definition, co-workers and colleagues of the accused?)*

In the course of making a determination that sufficient evidence exists to warrant a criminal investigation, UN staff and officials do collect evidence.

*If so:*

*a. Are adult and/or child alleged victims interviewed by UN personnel?*

Adult and/or child victims are interviewed by UN personnel.

*b. If so, which staff members/UN personnel are authorized to conduct those interviews?*

The UN does not specify who is and who is not able to conduct those interviews.

*c. Typically, how many UN interviews are conducted with an alleged victim?*

The UN does not have a policy on how many interviews are typically conducted with an alleged victim.

*d. Is there a maximum allowable number of times that a single alleged victim can be questioned or interviewed by UN personnel?*

There is no established limitation on the number of interviews that may be conducted with a single victim.

*e. Are the alleged victims' statements recorded? If so, are they recorded in writing, or by audio, or by video?*

There is no system-wide policy on the manner in which victims' statements are recorded.

*f. Are witnesses interviewed by UN personnel?*

The UN does interview witnesses.

*g. If so, which UN staff members/UN personnel are authorized to question witnesses or conduct witness interviews?*

The UN does not have a system-wide policy on who is authorized to question witnesses or conduct witness interviews.

*h. Are the witnesses' statements recorded?*

The UN does not have a system-wide policy on recording witness statements.

*i. Do UN staff members/UN personnel collect physical evidence in the course of 'investigating' allegations of sexual abuse?*

UN staff members/personnel do collect evidence in the course of 'investigating' sexual abuse.

*j. If so, how, where, and by whom is that physical evidence collected?*

The UN does not have a system-wide policy on how, where, and by whom physical evidence is collected.

*k. How, where, and by whom is that evidence stored?*

The UN does not have a system-wide policy on how, where, and by whom physical evidence is stored.

*l. What specific measures, if any, are taken by the UN personnel/UN staff who collect and store physical and testimonial evidence to (a) establish the chain of custody, and (b) protect against tampering with or degradation of evidence?*

The UN does not have a system-wide policy on specific measures to (a) establish the chain of custody and (b) protect against tampering with or degradation of evidence.

*m. Is any other evidence sought, collected, or stored? If so, what evidence?*

The UN does not have a system-wide policy on how other evidence is sought, collected, or stored.

*6. Upon determining that sufficient evidence exists to warrant a criminal investigation, why, in some cases, does the Organization first refer those matters to the UN Office of Internal Oversight Services— which has no legal authority to conduct criminal investigations, so can only conduct administrative investigations?*

The UN has not provided an explanation for why it refers some cases to the Office of Internal Oversight Services.

*7. It is standard practice or law in most jurisdictions to give criminal investigations precedence over civil suits and administrative investigations in order to avoid contaminating evidence, delaying justice, incentivizing victims or witnesses, or otherwise compromising the integrity or the success of any criminal proceedings. What is the UN's position on that practice?*

The UN has not explained why it does not follow the standard practice or law in most jurisdictions, which gives criminal investigations precedence over civil suits and administrative investigations.

*8. With the rare exceptions that apply only to senior UN officials who hold diplomatic status, immunity does not apply when UN personnel are 'credibly' accused of sexual crimes. The sovereign states in which the alleged crimes occur have primary jurisdiction over the investigations and prosecutions of those crimes, as noted in question #1. Once the UN has determined that an allegation of sexual abuse warrants criminal investigation, within how many hours or days does the UN refer such cases to the host country? Is there a maximum allowable number of hours or days?*

The UN does not have a system-wide policy on how many hours or days may elapse before referring UN personnel who are 'credibly' accused of sexual crimes to the host country.

*9. If there are ever delays of hours or days between the UN's determination that sufficient evidence exists to warrant a criminal investigation of a particular allegation and the UN's referral of that allegation to the host country with primary jurisdiction, what are the possible reasons for those delays?*

The UN has no explanation for why there may be delays of days, weeks, or even years between the determination that sufficient evidence exists to warrant a criminal investigation and the referral of that allegation to the host country with primary jurisdiction.

*10. Where criminal investigations were warranted in peacekeeping countries, there have been many instances when the UN did not refer those allegations to the host countries with primary jurisdiction but instead dealt with the cases internally, treating them as administrative-only matters. What justified the UN's decisions not to refer such cases for criminal investigation and possible prosecution in host countries with primary jurisdiction?*

The UN often does not refer 'credible' sex crime allegations made against international civilian personnel to the peacekeeping host countries with primary jurisdiction, but it has no official or legal justification for not doing so.

*11. When UN international civilian personnel are under investigation, are they detained in the host country with primary jurisdiction until the criminal investigations are completed?*

In cases where UN international civilian personnel are accused of committing sexual abuse in a particular country, the UN has no established, system-wide procedures for detaining the accused while investigations are ongoing.

*12. If UN personnel are detained during criminal investigations, where, by whom, and according to what conditions are they detained?*

There are no uniform, system-wide UN procedures governing where, by whom, and under what conditions accused UN international civilian personnel should be detained while investigations are ongoing.

*13. Immediately following its receipt of any [report] allegation of sexual abuse by its international personnel, what steps does the UN take, if any, to ensure that the person or persons allegedly responsible do not flee?*

There are no uniform, system-wide UN procedures to ensure that UN international civilian personnel accused of sexual crimes cannot flee the countries where the alleged crimes occurred while an investigation is pending or ongoing.

*14. Do Victims' Rights Advocates have contact with alleged victims, either before or during criminal or administrative investigations?*

When individuals accuse UN military or non-military, national or international personnel of sexual exploitation or abuse, the UN Organization places no limits on contact between those alleged victims and colleagues of the accused who hold the designation "Victims' Rights Advocates," whether before or during criminal or administrative investigations.

*15. If it is the case that Victims' Rights Advocates interact with alleged victims, what steps have been taken to ensure that these interactions do not prejudice any potential or ongoing criminal investigation and/or prosecution or any administrative investigation?*

No formal, published, system-wide regulations or precautions have been issued to ensure that interactions between alleged victims and UN Victims' Rights Advocates will not prejudice potential or ongoing criminal or administrative investigations of other UN personnel accused of sexual exploitation or abuse.

*16. Given that other UN personnel may have contact with alleged victims and/or witnesses before or during investigations, what steps have been taken to ensure that these interactions do not prejudice any criminal investigation and/or prosecution?*

No formal, published, system-wide regulations or precautions have been issued to ensure that interactions between alleged victims and any UN personnel will not prejudice potential or ongoing criminal or administrative investigations of other UN personnel accused of sexual exploitation or abuse.

*17. According to the UN, alleged victims have rights. Have those rights been codified? If so, where can we obtain a copy?*

Although UN officials regularly refer to the rights of victims and alleged victims who accuse UN military and non-military personnel of sexual exploitation and abuse, those rights have never been codified or written down.

*18. How and by whom are alleged victims informed of their rights and of any specific assistance and/or services they are entitled to receive, either directly from the UN or through local entities supported financially by the UN to make those provisions?*

In the absence of any official, codified catalogue of the rights of alleged victims of UN sexual exploitation or abuse, and of the specific assistance and/or services they are entitled to receive, UN personnel make ad hoc decisions about whether and which rights apply, and to what types and levels of assistance or services, if any, individual victims are entitled.

*19. Does the UN believe that the Organization is obligated to provide, or to ensure the provision of, specific services and assistance to alleged victims of sexual abuse by UN personnel?*

Although UN officials regularly refer to the Organization's "victim-centered approach" toward those who accuse UN personnel of sexual exploitation or abuse, there is no uniform, system-wide policy or official declaration of the Organization's specific obligations toward alleged victims. A/RES/62/214, a resolution on assistance to victims, outlines a vague and voluntary strategy, not a binding obligation.

*20. If so, at what point must each of those obligations be fulfilled?*

In the absence of a policy setting out the Organization's specific obligations toward all alleged victims of sexual exploitation and abuse, alleged and legally established victims can have no expectations that assistance or services will be afforded to them at all, or by a certain point, or that any assistance or

services will be provided without discrimination.

*21. Over what duration of time?*

The UN Organization has neither declared its obligations toward victims, nor established the minimum or maximum duration of any assistance or services rendered in individual cases at the discretion of individual UN personnel.

*22. If an alleged victim, or that person's legal guardian where he or she is a minor, believes that some or all rights and entitlements due to alleged victims of sexual abuse by UN personnel are not being provided by the UN, to whom can the alleged victim or guardian appeal?*

Because the UN has never codified the rights of alleged victims or the entitlements due to them, accusers who believe that the UN has deprived them of their rights as victims have no recourse to complain or appeal.

*23. If there is such an appeal procedure, how and when are alleged victims informed and availed of it?*

No established appeal process exists through which accusers can demand the "victims' rights" to which the UN regularly refers.

Mr. Khare: We are back at the beginning. The UN has failed to defend its ad hoc and opaque procedures. Victims—including, but far from limited to, the girl in the Democratic Republic of the Congo—are left to wonder if the UN is serious about putting criminals behind bars and upholding victims' rights.

We have stopped wondering.

The UN needs to recuse itself from any involvement in criminal investigations and allow for an independent, impartial judicial mechanism that would be responsible for receiving all complaints against UN peacekeeping personnel.

Secretary-General António Guterres admitted in a recent [press conference](#) that he was troubled by the UN's response to the sexual abuse crisis. "The problem is not yet solved," he said during a press conference. "There's a long way to go."

*"The problem is not yet solved."*

You are familiar with the solution we advocate in peacekeeping countries. Our proposed [Special Court Mechanism](#) has been debated by leading international legal experts and discussed with Member State representatives. It would be an independent, neutral, and external entity that operates entirely out of the purview of the UN Organization.

The Special Court Mechanism would have an established procedure and timeline for handing over credible criminal allegations made against military peacekeepers to the "sending state" of the accused peacekeeper. In the case of international staff members who have been accused, the Special Court Mechanism would handle all phases of the judicial process, concluding, if necessary, with a trial

conducted under international standards of justice and a criminal sentence imposed upon the finding of a guilty verdict.

**An independent Special Court Mechanism would** have legal authority and jurisdiction to open criminal investigations, using clear, consistent, and published procedure.

**An independent Special Court Mechanism would** operate with criminal justice authority, offering fair, impartial justice for both victims and perpetrators.

**An independent Special Court Mechanism would** follow the same procedures for different categories of personnel at the initial stages when complaints are being reported, recorded, and evaluated, ensuring that all persons are treated equally before the law.

**An independent Special Court Mechanism would** collect properly preserved, untainted evidence, with a clear chain of custody, and conduct competent victim and witness interviews, following uniform standards that are focused on maximizing that testimony for admissibility in court.

**An independent Special Court Mechanism would**—as an integrated mechanism with criminal justice authority derived from Member States—eliminate delays in referrals to competent authorities. It would conduct criminal investigations in a timely manner to ensure that evidence doesn't grow cold and witnesses' memories don't grow dim.

**An independent Special Court Mechanism would** have a clear legal basis to refer matters for subsequent administrative investigations, giving precedence to criminal investigations so as not to obstruct, delay, or taint such cases.

**An independent Special Court Mechanism would** develop and enforce due-process-oriented detention policies when UN personnel are under investigation, ensuring that alleged perpetrators cannot easily flee the area, engage in inappropriate contact with witnesses or victims, and/or commit additional crimes.

**An independent Special Court Mechanism would** follow established ethical guidelines for any “victims’ rights advocates” who interact with victims, assuring the advocates’ complete independence from the accused or his employers and guaranteeing the advocates’ dedication to the victims’ best interests and confidentiality.

**An independent Special Court Mechanism would** codify the rights that are due to victims. Those rights would be derived from fundamental principles of law—and the laws of sovereign Member States.

Mr. Khare: We are not playing a game of gotcha in an attempt to embarrass the UN. We are not participating in an academic exercise.

The Secretary-General has made it clear that he regards sexual exploitation and abuse as a problem that is not confined to peacekeeping. We agree. The recent revelations about senior UN officials who have been accused of sexual assault and harassment prove that the UN's problem is broad and deep. The Special Court Mechanism would begin by protecting the most vulnerable populations in the world, those who

depend on the UN for essential protection and support in the midst of war and crisis. But we believe that the Mechanism can be expanded to protect *all* of those who are victims of UN predators.

The United Nations is engaged in vital work throughout the world. The fragile peace and security of our planet requires that UN personnel operate at full capacity. UN officials should not be devoting precious work hours to coping with flaws within the UN's internal organization. They should not be composing talking points and plotting public relations strategy to address the latest scandal.

According to the words of the founding charter, the UN is pledged to "establish conditions under which justice ... can be maintained." When it comes to a sexual abuse crisis that has plagued the world body for more than two decades, the UN has failed to live up to this promise.

The words are the Secretary-General's: "*The problem is not yet solved.*"

It is time for the UN to step aside and allow a new strategy to be pursued. The victims of UN predators—including the child victim in the Democratic Republic of the Congo—deserve nothing less.

Sincerely,



Paula Donovan  
Co-Director, AIDS-Free World



Stephen Lewis  
Co-Director, AIDS-Free World