



1 December 2017

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

Dear Mr. Khare,

We sincerely appreciate the fact that you responded to our open letter of 22 November to the Secretary-General. Yet, your response of 28 November left unanswered all of our questions about the steps the United Nations is taking in response to a recent report of alleged child rape by an international staff member.

We regard it as a matter of increasingly urgent concern that such questions be adequately addressed.

You wrote, “[w]ith a view to protecting the integrity of the ongoing investigation, as well as any potential criminal proceedings that may follow, [the UN is] not in a position to provide answers to the specific questions.”

Criminal and international human rights lawyers who regularly advise the Code Blue Campaign assure us that the UN could not possibly compromise the integrity of an investigation or prosecution simply by defining and clarifying its procedures.

However, to avoid an impasse and continue a constructive dialogue, we have reworded our questions to omit references to any specific cases. We now urgently request answers to the following generic questions. These inquiries are narrowly related to UN established procedures regarding UN civilian (that is, non-military, non-uniformed) international personnel (that is, UN staff/officials and experts on mission) working in countries hosting UN peacekeeping missions:

- 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?

- 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?
- 3) What procedure does the UN follow to determine whether sufficient evidence exists to warrant a criminal investigation?
- 4) Under what published, objective standard is that determination reached?
- 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?) If so:
 - a. Are adult and/or child alleged victims interviewed by UN personnel?
 - b. If so, which staff members/UN personnel are authorized to conduct those interviews?
 - c. Typically, how many UN interviews are 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?
 - e. Are the alleged victims' statements recorded? If so, are they recorded in writing, or by audio, or by video?
 - f. Are witnesses interviewed by UN personnel?
 - g. If so, which UN staff members/UN personnel are authorized to question witnesses or conduct witness interviews?
 - h. Are the witnesses' statements recorded?
 - i. Do UN staff members/UN personnel collect physical evidence in the course of 'investigating' allegations of sexual abuse?
 - j. If so, how, where, and by whom is that physical evidence collected?
 - k. How, where, and by whom is that evidence 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?
 - m. Is any other evidence sought, collected, or stored? If so, what evidence?
- 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 Investigative Services – which has no legal authority to conduct criminal investigations, so can only conduct *administrative* investigations?

- 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?
- 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?
- 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?
- 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?
- 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?
- 12) If UN personnel are detained during criminal investigations, where, by whom, and according to what conditions are they detained?
- 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?
- 14) Do Victims' Rights Advocates have contact with alleged victims, either 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?
- 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?

- 17) According to the UN, alleged victims have rights. Have those rights been codified? If so, where can we obtain a copy?
- 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?
- 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?
- 20) If so, at what point must each of those obligations be fulfilled?
- 21) Over what duration of time?
- 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?
- 23) If there is such an appeal procedure, how and when are alleged victims informed and availed of it?

Mr. Khare, the UN's prompt answers to these questions will help to define and clarify your established procedures, allowing organizations such as our own to monitor steps being taken by the United Nations to address alleged incidents of sexual abuse by UN non-military, international staff/officials, and experts on mission.

We look forward to continuing a constructive dialogue as we work to ensure that the United Nations can achieve its stated goals of prevention and accountability in cases of sexual exploitation and abuse.

Yours sincerely,



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Co-Director, AIDS-Free World



Stephen Lewis
Co-Director, AIDS-Free World

Cc: António Guterres, Secretary-General
Ms. Heidi Mendoza, Under-Secretary-General
Mr. Miguel de Serpa Soares, Under-Secretary-General
Ms. Jane Holl Lute, Under-Secretary-General