

AIDS-Free World
Code Blue Campaign

Submission to the UK House of Commons Select Committee on
International Development's
Inquiry on sexual exploitation and abuse in the aid sector

**A proposal for independent accountability for
sexual exploitation and abuse committed by
United Nations personnel**

EXECUTIVE SUMMARY

- AIDS-Free World applauds the Committee's examination of the broad issue of sexual exploitation and abuse across the aid sector. In this submission, we draw the Committee's attention to the specific problems posed by cases where the perpetrators are UN personnel, in peacekeeping and beyond.
- The UN has been regularly revealed to have mishandled cases of sexual exploitation and abuse perpetrated by its personnel but continues to operate without sufficient oversight. In the specific instance of peacekeeping, the UN also operates in a vacuum of state authority with no clear jurisdiction willing and able to prosecute sexual crimes.
- While humanitarian and development organizations face severe problems in accountability and safeguarding, it is essential to make a clear distinction between these organizations and the UN, which is the world's largest and most influential multilateral body, given its mandates by the Member States of the UN, and thus must be under serious, special scrutiny.
- UN immunity has posed significant and unique problems for reaching just and proper outcomes in cases of sexual exploitation and abuse committed by UN personnel. The issue of immunity applies only to the UN, not other organizations in the aid and humanitarian sectors, demanding the collective intervention of Member States.
- Further, UN peacekeeping is unique, and operates in a vacuum of state oversight and legal accountability, in a context where governments are restricted in their capacity to act on UN sexual exploitation and abuse.
- The UN has a strong conflict of interest and cannot fairly self-police and self-report. Cases are mishandled, investigations are perfunctory, and many allegations are kept hidden or dismissed out of hand.
- AIDS-Free World's Code Blue Campaign proposes that Member States establish, on an emergency basis, a **Temporary Independent Oversight Panel** to closely monitor and evaluate, in real time, the UN's response to individual allegations of sexualized offences, and make expert recommendations on UN policies and procedures. A Temporary Independent Oversight Panel is the most effective way to ensure complete transparency across the UN system.
- The UN decides how to dispose of cases of sexual exploitation and abuse. More than half of all reported allegations involve perpetrators—the UN's civilian personnel—who are subject almost exclusively to UN internal inquiry and discipline meted out by their colleagues, and no external legal sanctions. The UN continues to treat "sexual exploitation and abuse" as disciplinary violations, failing to resolve the problem that serious criminal and civil harms go unaddressed.
- We have proposed the establishment of a **Special Court Mechanism** for peacekeeping missions. It would be a lean international body that would be able to receive complaints, refer when necessary, and investigate, try, and judge criminal cases with the full weight of criminal law.
- These are concrete, workable solutions which differ from the UN's proposals and reform efforts because they acknowledge the roots of the problem of impunity, and the UN's conflict of interest. They put independent oversight, lawful investigation and true criminal accountability at the forefront to punish and deter sexual offenses.
- The UN has largely been allowed to self-police given the reluctance of Member States to demand external oversight. The UK and other Member States now have an unparalleled opportunity to begin to dismantle impunity for sexual exploitation and abuse, and to restore trust in the world's most critical international institution by opening the UN to the external, unbiased scrutiny of experts.

ABOUT CODE BLUE

Co-Directors Paula Donovan and Stephen Lewis formed the international advocacy organization AIDS-Free World to highlight the underlying inequalities, prejudice, bigotry, ineptitude and indifference that have allowed HIV to become a global plague. Focusing on high-level advocacy, strategic communications and creative legal approaches, AIDS-Free World works to tackle not only the underlying social causes, but also the misguided institutional responses that enabled a global pandemic. In 2015, AIDS-Free World launched the Code Blue Campaign, which seeks to end impunity for sexual abuse by UN personnel. This includes removing barriers to justice for victims and establishing a fair and transparent system of justice where victims' needs are incorporated and respected.

Using our deep knowledge of and access to the UN system, we are working to tackle the problem at its roots, by exposing the gaps in how allegations of sexual assault are handled and proposing solutions to address the problem. We are shining a light on the deeply entrenched attitudes, beliefs, policies and practices that make up a culture of impunity for sexualized offences. In consultation with international legal and sexual violence experts and victims' rights groups, we are proposing a series of concrete solutions. We work in consultation with those directly affected by the activities of UN peacekeeping missions and have designed activities to bring the voices and firsthand expertise of victims and members of affected communities into decision-making processes.

Our approach is rooted in a feminist perspective, a steadfast belief in multilateralism, and a commitment to ensuring that the UN Organization created by Member States to carry out their collective will fulfills that mandate according to the UN's founding principles.

The Code Blue Campaign urges the United Kingdom to play a leading role in a global effort to introduce the neutral, independent monitoring and oversight necessary to assess and evaluate current practices; to overhaul and replace the systems that have failed victims of UN sexual exploitation and abuse; to guarantee the legal accountability required of true and impartial justice; and to restore faith in the United Nations.

A PROPOSAL FOR INDEPENDENT ACCOUNTABILITY FOR SEXUAL EXPLOITATION AND ABUSE COMMITTED BY UNITED NATIONS PERSONNEL

A. Mishandled by design: the unique position of the United Nations and the need to instill independent accountability mechanisms

What makes the UN unique

1. Sexual offenses committed by United Nations personnel became widely known in the 1990s. Years later, in the early 2000s, mounting media attention and international pressure pushed the UN to designate these offenses as “sexual exploitation and abuse”, and to formally denounce these acts by prohibiting them in a code of conduct. Other non-governmental organizations have taken similar actions, enacting prohibitions in their internal codes, and, like the UN, establishing offices to receive and investigate complaints. Yet the UN differs fundamentally from other organizations: it is a multilateral international body, and it is imbued with great power and privileges. Most important is UN immunity from legal process.
2. This immunity from legal process is accorded to the UN system and its personnel by Member States and derives from international treaty law. The UN itself has absolute immunity, which protects the work of the organization and ensures that the UN cannot be sued and that even a court of law cannot force the UN to turn over any of its work products or documents. The civilian personnel who carry out the UN’s work also have immunity, to protect their work from interference or retaliation from a hostile government. For UN personnel, how far immunity extends depends on their category of personnel and the nature of the actions or words that constitute the alleged offense. The highest-ranking UN officials have immunity akin to diplomatic immunity, but the vast majority of personnel have only functional immunity—which means they are only immune from any legal process for words and actions performed as part of their official duties.
3. Military personnel deployed to work with UN peacekeeping missions do not have immunity from legal process; instead, by prior agreement, military personnel remain under the “exclusive jurisdiction” of their country of nationality—that is, a country which sends troops to the UN retains the right and duty to investigate and prosecute its own personnel.
4. While military members of peacekeeping missions must be tried by their home countries, civilian UN personnel (in peacekeeping and other UN entities) are not under any such provision. The courts of the country where offenses occur retain jurisdiction to prosecute those civilians. However, the question of immunity arises. Most UN personnel have only functional immunity. Crimes, including those sexual offenses that constitute crimes, are never official acts of UN personnel, and so no functional immunity exists for sexual crimes. Yet, the UN still asserts the right to determine, on a case-by-case basis, whether the alleged offense involves criminal behavior, and thus, whether immunity exists for that behavior. To make that case-by-case determination, the UN may need to review available information to identify which UN-affiliated personnel may have been involved in the allegation, whether that allegation was criminal, and thus, whether immunity applies in that circumstance. In the cases where immunity does apply (for example, if the sexual offense is committed by a high-ranking UN official), the UN must make the determination about whether that immunity should be waived, in keeping with the UN Secretary-General’s duty and obligation to waive immunity when it would impede the course of justice.¹

¹ For a more detailed explanation of immunities, see “Primer: Privileges and Immunities of the United Nations”, <http://www.codebluecampaign.com/primer-privileges-and-immunities-of-the-united-nations/>

5. These narrow responsibilities are derived directly from the UN's immunity provisions. Once the UN determines whether immunity applies—and, if it does, whether to waive it—the UN should immediately refer the case to the appropriate authorities. However, in practice, a complex regime has evolved across the UN system, giving the UN organization excessive control beyond merely establishing whether and to what government's authorities individual cases should be referred for criminal investigation and legal process. Often the organization acts in ways that forestall or impede the involvement of any state authority, or it withholds information from relevant states. As noted above, because the UN has absolute immunity, there can be no external appeal of any of the UN's decisions; the UN cannot be forced to reveal its internal documentation, and the UN operates outside the boundaries of the law.

6. In peacekeeping, this problem is even more profound. The UN plays a large role in receiving and vetting allegations through its own fact-finding before referring them to Member States for investigation and, if warranted, for prosecution. This raises another important distinction: the gap in accountability that arises from the particular nature of peacekeeping agreements with the countries "hosting" the UN. Although the host country retains jurisdiction over offenses committed on its territory, in the particular case of peacekeeping, the UN has refused to allow its personnel to be tried in the courts or investigated by the police of states such as South Sudan, Central African Republic, and Haiti. Without the involvement of courts, crimes are downgraded to workplace misconduct. Peacekeeping is therefore unique, in that this vacuum of authority arises not only from the immunity regime that Member States have put in place, but also from current practice within the organization.

7. As a result, when sexual exploitation and abuse involves crimes or civil harms, it remains unclear how—as well as where and when—victims of UN peacekeeping personnel can access justice under the law. The UN organization is able to interfere, vet, and block cases from reaching any country's authorities.

Self-policing with conflicts of interest

8. UN processes in place today to address sexual exploitation and abuse thus have grown into a complex web of opaque, bureaucratic internal procedures and ad hoc processes, operating outside the law and without any oversight. They suffer from unresolvable conflicts of interest; are characterized by perfunctory tick-the-box actions; and cause serious damage to victims, to the justice and due process, and to the reputation of the UN organization and the Member States.

9. The reason for all these negative outcomes is simple: the UN is not a neutral party. In any case involving one of its own personnel, the UN organization has its own interests to protect, such as mitigating reputational damage, assessing whether the case will have an impact on the organization's programming or funding, and retaining and supporting employees who are key players in diplomatic or management strategies. These interests, among others, form the basis of a deep, intractable conflict of interest. In any other context, this conflict is plain. It is why the use of employer investigations and disciplinary processes is normally a supplement to criminal or civil justice, and employers are bound to respect the law and to defer to law enforcement and neutral court officials. Employers are ideally not the first and should never be the only point of contact for victims of crimes. In those cases where employers are involved, they do not have the right to delay legal procedures while they determine whether a claim is criminal in nature; employer-driven investigations and administrative processes are never acceptable substitutes for law enforcement and courts. Immunity makes the UN unique among "employers"

in that all of its personnel—over 90,000 worldwide—are subject first to UN internal processes, such as fact-finding by their colleagues to answer questions about whether and to what extent immunity might apply. The UN organization is intimately involved in all cases from the early stages, because they take complaints and make preliminary fact-finding inquiries, touching evidence and potentially influencing victims and witnesses.

10. Only later, if at all, the UN organization may decide to refer cases to independent, legally-based justice systems—but it may still refuse to cooperate and disclose information. History demonstrates that there is a serious problem caused by the filtering out of cases before they ever reach justice. We provide evidence of this in our testimonials below.

Shoddy UN “investigations” create barriers to justice

11. In 2017, a confidential source provided AIDS-Free World’s Code Blue Campaign with internal case files that revealed the UN’s egregious mishandling of sexual exploitation and abuse complaints against its own peacekeeping personnel.² As noted above, in response to any accusation, even against military personnel who remain under the jurisdiction of their own countries, the UN intervenes not only to assess simply whether it is possible, in practical terms, that a crime may have been committed and by whom it may have been committed, but overreaches to conduct preliminary “fact-finding” designed to assess the credibility of the case.

12. The materials leaked to us included 14 such fact-finding inquiries into complaints lodged against military peacekeepers serving in the UN mission in the Central African Republic (MINUSCA).

13. The case files gave us a glimpse into the details of how the UN treats complaints, unfiltered and unedited. These 14 examples demonstrated the need for independent oversight to prevent the following harms observed when the UN usurps the roles of bona fide authorities:

- **An overwhelming bias against victims.** In eight of 14 cases, the alleged victims were not even interviewed by fact-finders. In two cases, the alleged victims were interviewed in hostile settings surrounded by large groups of men, many in uniform.
- **Haphazard, ad hoc, and prejudicial investigative procedures.** Potential corroborating witnesses were not sought out for interviews. The testimony of local authorities with no connection to the alleged incidents was given investigatory credence. In two instances, at least a month passed before fact-finders arrived on the scene to determine whether a crime may have been committed.
- **Scant understanding of crimes of sexual violence.** In one case, a peacekeeper accused of sexually assaulting women was described as merely having committed “sexual harassment”. Fact-finders expressed skepticism about claims made against peacekeepers that came from religiously observant units.

14. In addition to these procedural harms, the leaked files exposed another grave problem: lack of transparency in recording and reporting allegations. On September 14, the UN’s spokesperson noted, “Every single credible allegation that is reported to us is made public on our website.”³ However, in reference to our publication of the leaked files noted above, the UN

² <http://www.codebluecampaign.com/press-releases/2017/9/13>

³ <https://www.un.org/press/en/2017/db170914.doc.htm>

later admitted that the UN knew about 13 of the 14 cases we published, yet failed to publicly disclose 8 of these cases. Six cases were kept off-record, even internally.⁴

The UN employs ad hoc processes with no pathway to criminal justice

15. In all years since the UN has made data available, civilian personnel of the UN have committed more sexual exploitation and abuse per capita, as we noted in our 2015 submission to the House of Lords Select Committee on Sexual Violence in Conflict.⁵ It is only due to our sustained lobbying that the UN has acknowledged that civilians represent a high proportion of perpetrators. Over 60% of allegations reported to the UN in 2017 were against civilians. The UN continues to avoid grappling with the reality that when civilians commit sexual offenses, more often than not, the cases are not referred on to a country that has jurisdiction to investigate and prosecute them. This means that most often, even violent criminals are punished with nothing more than workplace sanctions.

16. The Code Blue Campaign contacted the UN in November 2017 about an international civilian staff member in the UN's peacekeeping mission in the Democratic Republic of the Congo (MONUSCO) who had been accused of committing multiple rapes against a female child.

17. We submitted 23 questions regarding the process followed in this case, including asking when, if, and how it would be referred for criminal accountability. We asked whether there were policies to limit delays and to prevent contamination of testimony and evidence, and whether the UN had a duty to inform victims of the difference between UN investigators and actual law enforcement authorities. It is long- and well-established that in cases of sexual violence, more than in any other violent crimes, the early and thorough investigation of law enforcement officers is crucial to securing convictions and protecting victims from traumatization and retaliation. Material evidence must be collected urgently and carefully preserved in order not to prejudice the possibility of prosecution. That is why we were highly concerned about processes followed.

18. We received a letter from the UN in response to our questions that reiterated principles but did not contain answers to the inquiries we made. Further attempts to secure information were briskly rebuffed; the matter was closed to further discussion.⁶

19. Shortly after, by the UN's own count, the Secretary-General reported that there were 11 civilians in peacekeeping missions and 75 civilians in other UN system entities accused of sexual exploitation and abuse in 2017. Only 6 of those cases are "pending" referral to the appropriate authorities, including the DRC case we inquired about above.⁷ In no case is a referral reported as complete. There is no information on action taken in any of the cases.

⁴ <https://www.un.org/press/en/2017/db170918.doc.htm>

⁵ <https://www.parliament.uk/documents/lords-committees/sexual-violence-in-conflict/SVC-committee-evidence.pdf>, p. 35

⁶ <http://www.codebluecampaign.com/press-releases/2018/1/17>

⁷ https://www.un.org/preventing-sexual-exploitation-and-abuse/sites/www.un.org.preventing-sexual-exploitation-and-abuse/files/2018_sg_report_on_special_measures-data_annexes-final.pdf (See section C.1 and C.4)

A culture of impunity, discrimination against women, retaliation and cover-ups

20. As Justice Marie Deschamps noted in her review of the UN's egregious handling of the peacekeeper sexual abuse scandal in the Central African Republic, the UN has a recognized culture of impunity for sexual exploitation and abuse.⁸ Yet impunity for sexual offences doesn't exist in a vacuum. This poisonous culture runs deeper—discriminatory attitudes towards and practices in relation to women and “boys’ club” patriarchal structures run rampant through the UN system. An organization's culture affects not just the response to reported sexual offences, but determines the behavior of personnel on a day-to-day basis. It profoundly affects victims', witnesses' and bystanders' decisions about whether to report incidents when they do occur. These oppressive structures have done great damage to the reputation of the organization, and we have shone a light on the many examples of retaliation and cover-up that exist throughout the system. Most recently, we highlighted multiple, deeply disturbing accusations of serial predation by the Deputy Executive Director and grossly unjust related actions of the Executive Director of UNAIDS, to use just one example.⁹ The responses of Member States have so far focused on everything but overhauling the systems of redress, mirroring decades of previous ineffective responses. This appears to betray an ongoing willingness by Member States, where issues of violence and discrimination against women are concerned, to abdicate their responsibilities and their control to the very organization they should be governing and monitoring.

21. The reforms the UN organization is putting forward as “solutions” to its own ongoing sexual abuse crisis fail to address these entrenched, systemic biases and cultures. In part, that is because the same people who have perpetuated the culture of impunity are the ones tasked with fixing the harms it causes. Making reporting easier will not help the woman who knows that the decision-maker ultimately responsible for deciding her case is a manager who abuses his or her own authority and has a track record of ignoring facts and siding with the accused. To truly change this culture, it must be better understood and addressed by those ultimately responsible for the health of the UN Organization - the Member States responsible for governing it. Only by closely observing, in real time, the response to each reported offence will Member States have sufficient information about and understanding of this entrenched oppression to overhaul these inequitable structures.

New approaches must ensure complete independence and transparency

22. An open Ministerial letter to the Secretary-General of the UN, spearheaded by the UK's Department for International Development, noted that “As funders of the UN, we have a responsibility to our citizens, and to those we are providing assistance. As a minimum, we need to be able to provide them with ...assurances: that all UN entities provide ... an organisational culture across the UN system that prioritises safeguarding, so that it is safe for those affected to come forward, and to report incidents; [t]hat all UN entities have published and transparent systems in place for reporting and investigating allegations, and communication of the conclusions of these; [t]hat all constituent parts of the UN (entities) work collaboratively and collectively to step up efforts to tackle sexual exploitation and abuse.”¹⁰

⁸ <http://www.un.org/News/dh/infocus/cenaficrepub/Independent-Review-Report.pdf>

⁹ <http://www.codebluecampaign.com/unaid>

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/692935/Joint-donor-letter-UNSG.pdf

23. We welcome the fact that the UK has called for action but are compelled to note that each time new allegations of sexual exploitation and abuse committed by UN personnel rise to the spotlight, the UN has dutifully responded by reproducing the same cycle of inaction: measures are proposed, promises are made, minor modifications are undertaken. Those modifications are not system-wide changes. They have not made a dent in the UN's sexual exploitation and abuse crisis, because they do not acknowledge and do nothing to address the UN's conflict of interest. They simply seek to improve UN processes in place, while protecting the UN's ability to maintain complete control over these cases.

24. The examples given above reaffirm our absolute conviction that with immediate effect, there must be oversight by Member States of these complex and unregulated processes to ensure that all victims are heard and treated fairly, and that justice ensues. Relying on self-reporting by the UN officials who were involved in particular cases, on information gathered secondhand by commissions and review panels who conduct their interviews post-facto, and on assurances of corrective action from within the organizations, is a well-worn process that has failed in every case to change the system or affect reform. In order to evaluate firsthand, and to assess processes as they unfold, Member States must insist on real-time oversight and full access to information by a panel of external experts appointed by and reporting directly to them. We are aware of no other proposal that will enable Member States to carry out their duty to understand, evaluate, analyze, and correct systems now in place that are failing to protect or bring justice to victims of sexual offenses by UN personnel.

25. In the longer term, there must be a recognition of the unique position of UN peacekeeping and the gaps created by the organization in countries reeling from conflict and temporarily dependent upon the assistance of other sovereign states to ensure the protection of their civilians. We propose that Member States establish an independent, external Special Court Mechanism to guarantee access to justice where governments' systems and infrastructures are incapacitated. The Special Court Mechanism would be empowered by Member States to receive complaints of sexual exploitation and abuse and to quickly conduct criminal investigations and prosecutions in cases involving UN civilian personnel or to refer the claims to the appropriate authority in cases involving military personnel, following up each case with those Troop-Contributing-Countries and reporting on actions taken.

26. Every recent proposal brought forward by the UN Secretary-General keeps power concentrated in the opaque UN system. Of late, the UN has stated that cases involving its civilian personnel, including those posted in peacekeeping countries, are referred for investigation and prosecution to the accused's state of nationality. This assertion omits the pre-requisite steps: first, it must be established that states of nationality can and will exercise extraterritorial jurisdiction—that they are legally capable and willing to try their own nationals when those individuals are alleged to have committed sexual offenses while employed as international personnel by the UN organization and working in countries other than their own. No international agreement as yet exists that would give the UN authority to remove jurisdiction from the state in which the alleged crime was committed and to insist on prosecution by the country of nationality. For many countries, the obligation to investigate claims made against their nationals while working abroad presents overwhelming practical problems including cost, language barriers, timing, and information gaps—not to mention that conducting trials in distant countries makes justice all but invisible to the victims, witnesses, and affected communities. Even if Member States were willing and able to exercise extraterritorial jurisdiction, it would change nothing in the status quo. Barriers to justice and the conflict of interest would remain firmly in place, as the UN would continue to play the role of receiving, vetting, and deciding whether or not to refer cases to Member States.

27. We urge the Committee to recognize that the UN's processes are simply the wrong tools to break the cycle of abuse and impunity. They cannot be modified or fixed; they must be assessed—urgently and in real time—overhauled, and completely replaced. The changes and assurances the UK is rightly seeking cannot be made without removing the UN organization, with its insurmountable conflict of interest, from any new mechanisms or initiatives.

B. The Solutions: Criminal accountability and independent oversight

Emergency measure: a Temporary Independent Oversight Panel¹¹

28. With more accusations expected as victims from within the UN come forward, bolstered by the #MeToo movement, UN Member States must move quickly with credible and creative interim measures. Allegations continue to be submitted to entities whose personnel are directly involved in the abuse, investigations continue to take place behind closed doors, and judgements continue to be rendered by senior management—even in those cases where senior managers and the accused are one and the same. In order to convey to UN entities that Member States are intent on addressing what is a system-wide crisis; in order to work toward a unified, system-wide solution that will encourage all complainants to feel that it is now safer and more worthwhile to report abuse; and in order to restore the public's trust and confidence in the world body, the UK and other Member States should, without delay, create a Temporary Independent Oversight Panel.

29. This emergency measure would be authorized, established, funded, and governed by Member States, while being independent of all other UN organizations. The Panel would be composed of experts in the fields of law, criminal investigations, workplace investigations, law enforcement, and sexual violence, including experts put forward by governments with regional representation in mind, and would be administered by and report directly to UN Member States.

30. This solution is practical and simple to put into immediate effect. It is a practical reality that UN entities currently handle sexual exploitation and abuse as they would if they were entirely autonomous and unrelated to one another, rather than part of one cohesive UN. For that reason, a thorough evaluation of each individual entity's processes and procedures with an eye to integrating, harmonizing, and instituting system-wide reforms, would prove unwieldy and inordinately time-consuming. A Temporary Independent Oversight Panel would allow each entity to continue to receive complaints, conduct investigations, and reach final conclusions through their usual procedures. However, UN entities would be instructed to alert the Oversight Panel immediately upon receipt of a complaint; from that point forward, the Oversight Panel would monitor every action, allowing its experts to follow every step in the process as it is considered and taken. The Oversight Panel would shadow and monitor the actions of the UN entities in real time, as those entities follow their current, established rules, regulations and procedures to respond to and adjudicate complaints. Evaluating those current UN policies and practices would happen in the moment, rather than in retrospect after another public exposé reveals another system failure. When necessary, such as in instances when the experts determine that the UN's procedures are placing a victim in danger, the Panel would be authorized by the Member States to intervene and instruct the UN entity to cease and correct its course of action.

¹¹ For more information, see: <http://www.codebluecampaign.com/press-releases/2018/2/23-1>

31. Commencing immediately, and conducting its real-time oversight and evaluation during a pre-established period ideally no longer than six to nine months in duration, the Oversight Panel would submit an interim and a final report to Member States. Its reports would focus exclusively on a review of UN entities' established policies and practices. It would present experts' analyses about whether those current policies and practices are meeting the UN's stated objectives, and, critically, whether they are adequate to ensure proper complaint receipt, investigation, discipline, prosecution, and punishment, according to international best practice. The Panel would submit a comprehensive independent evaluation to Member States with recommendations, highlighting the areas in need of reform or replacement.

32. This solution is unique and timely. It gives the UK and other Member States a way to obtain accurate, detailed information that is lacking from the discussions around reforms of UN organizational processes that remain opaque and mysterious, while providing a vitally needed and thus far missing accountability measure: independent oversight.

Criminal accountability: A Special Court Mechanism¹²

33. Victims of sexual exploitation and abuse committed by UN civilian peacekeeping personnel face an additional, insurmountable barrier: they are asked to submit complaints against UN personnel *to other personnel from the same Organization, in the same location*. Those UN personnel who are posted in the victims' countries are mandated to protect them; those personnel are also colleagues of the accused, and rely for their income and security on fellow UN personnel. It is unconscionable to pretend that a victim has the choice and ability to understand, navigate and overcome a complex web of international agreements, UN immunity, and the vacuum of state authority in order to seek justice. This is particularly misleading and unfair when the truth is that justice is unattainable: the system is not designed toward that end.

34. That is why we propose that a group of Member States take the lead in establishing a Special Court Mechanism, an independent legal body that would erase the organization's conflict of interest, and would be both able and willing to handle all aspects of intake, reporting, investigation, and prosecution of offences with the neutrality, expertise, and legal authority those processes demand. Based on criminal definitions and due process procedures established by statute, the Special Court Mechanism would be authorized to try sexual offences as ordinary crimes committed by and against individuals, without the size or complexities of international criminal tribunals and without the frustrating lack of clarity and capacity encountered when engaging far-flung, disparate national jurisdictions. The Mechanism would ensure one standard of justice for all those accused—regardless of country of origin.

35. When allegations are lodged against non-military (civilian) UN personnel, the Special Court Mechanism would receive complaints; conduct the rapid, initial fact-finding required; quickly assess and resolve all questions related to UN immunity; conduct legally authorized criminal investigations complete with the full powers of law enforcement; collect and preserve evidence according to standards that will render it admissible at trial; and if warranted, prosecute the alleged perpetrators. For allegations against military personnel, the mechanism would receive complaints, conduct the rapid, initial fact-finding, and handle the job of referring the cases to the soldiers' troop-contributing countries which would remain responsible for investigation and prosecution. If a troop-contributing country was unwilling or chose not to carry out those functions, the mechanism would step in and take over.

¹² For more information, see: <http://www.codebluecampaign.com/solutions/>

36. The Special Court Mechanism would have a lean staff selected, approved by, and reporting to Member States. Its investigators, lawyers, and support personnel would have the legal authority to conduct bona fide criminal investigations. The court itself would be nimble, activated when needed and on location, enabling victims and perpetrators alike to take part in fair trials and see that justice is being carried out. A roster of diverse international judges pre-qualified by Member States would preside over the proceedings and hand down sentences. The Special Court Mechanism would maintain a registry; keep full, accurate crime statistics; doggedly follow up and report on the progress of each case; and ensure that victims are kept informed.

37. The proposal has received an enthusiastic hearing from ambassadors and government officials, legal experts, academics, international jurists, and experts on sexual violence and criminal accountability.

CONCLUSION

38. While Member States patiently wait, yet again, for the current round of UN “reforms” to take hold, valuable resources are being squandered, and the UN’s credibility continues to suffer. Among the UN’s personnel, the unresolved crisis and disheartening recycling of standard responses is taking a heavy toll on morale, talent retention, and the UN’s ability to carry out its mandates. It goes without saying that the goal of achieving gender parity will remain elusive as long as an internal culture of impunity that overwhelmingly affects women is allowed to persist.

39. We implore the UK to focus on demanding an overhaul of the UN system, and to lead an urgent effort to replace the status quo with impartial, neutral mechanisms. The starting point that holds real promise of ending sexual exploitation and abuse within the UN organization is the establishment by Member States of a small, expert, focused team, unconnected to the organization: a Temporary Independent Oversight Panel. Ending a culture of impunity will begin when Member States exercise their governance role by removing from the UN organization its ability to self-police, self-judge, and self-report, all behind closed doors. A Temporary Independent Oversight Panel will put Member States firmly in control of the information needed to assess, evaluate, and correct systems do not fulfill the world body’s responsibility for protecting vulnerable persons. In those cases where there is currently no avenue to criminal responsibility—cases of sexual exploitation and abuse committed by civilian UN peacekeeping personnel—we ask that the UK take a leading role to establish a viable, neutral, and just jurisdiction through a Special Court Mechanism to investigate and prosecute these cases.

40. No one Member State can or should shoulder alone the burden of ensuring that victims and perpetrators have access to fair and just process and protection before the law. But the United Kingdom is uniquely placed and uniquely suited to leading the way out of what, by all measures, has evolved from a long-neglected crisis to a pressing emergency.