

A Proposal for Change

We have a plan for real change.

The United Nations' sexual exploitation and abuse scandal has persisted for far too long. For decades, stomach-churning reports have appeared at regular intervals in the media. Most have focused on UN peacekeeping personnel accused of shocking acts committed against some of the most vulnerable people in the world. Members of the public, many of whom share AIDS-Free World's deep belief in the United Nations, feel a combination of revulsion and betrayal to hear that the sacred principles of peace and security for all that lie at the core of the UN mandate have been violated. They wonder, legitimately, why the remedial efforts the UN Organization announced the last time, and the time before that, have had little to no effect.

The UN's crisis is not concentrated exclusively in peacekeeping; neither is AIDS-Free World's **Code Blue Campaign**. But through careful study and consultation, we have identified a problem that is unique to countries with UN peacekeeping missions. It boils down to this: the Troop and Police Contributing Countries (TCCs and PCCs) contracted by the United Nations to supply military and uniformed personnel stipulate that they themselves must maintain discipline – and therefore jurisdiction -- over their own. If a “blue helmet” or “blue beret” is accused of breaking the rules or the law while working as a peacekeeper, the TCC/PCC has the right and the obligation to investigate, discipline, and, if necessary, prosecute.

A Lack of Criminal Accountability

The big obstacles to justice arise in relation to the rest of a peacekeeping mission's personnel—the civilians (non-military, non-uniformed) who work for the UN organization. If they're accused of breaking their employer's rules, the UN, of course, has the right to take appropriate administrative measures, including fact-finding, internal investigations, and discipline ranging from written sanctions to demotions or dismissal. But if UN personnel break the law, then government authorities must take over; the UN has no legal authority to address criminal matters. Its role is purely to assess whether the alleged offense is a crime, and whether, on the face of things, it's logistically possible that the accused UN personnel member could have committed it. If the answer to those two basic questions is “yes,” then UN immunity doesn't apply, and police investigators and prosecutors are free to do their jobs. As is the case when anyone else is accused of a crime in a foreign country, the government of that country has primary jurisdiction – that is, the right and obligation to investigate and, if necessary, prosecute and punish the foreigner according to their laws.

This is where the UN organization's top officials have created an impasse, and a glaring double standard. Behind closed doors, they have decided that the governments of certain peacekeeping countries are incapable of carrying out criminal investigations or trials that meet acceptable standards. And so, when a member of the UN's non-military, non-uniformed personnel is accused of a criminal sexual offense in a peacekeeping country, those top officials circumvent the local government. They shield the accused predator from law enforcement, cutting off any route to real criminal justice. Instead, they subject him only to the internal administrative steps befitting much lesser, non-criminal offenses. Thus, UN peacekeeping's uniformed personnel operating under the jurisdiction of their Troop or Police Contributing Countries may face prison back in their own

countries if accused of sexual assault or rape, while UN civilian personnel accused of exactly the same crimes face only the possibility of losing their jobs.

A Glaring and Unjust Double Standard

This double standard is grossly unjust in a number of ways. Not least, it sends the false message to UN personnel, and to the populations they're mandated to serve and protect, that civilian UN personnel are above the law. Allowing even one sex offender to escape criminal justice violates the rights of victims and erodes the public's trust in peacekeeping and in the UN.

But, the UN organization protests, it would violate the rights of the *accused* to subject them to dysfunctional, inept police investigations and court proceedings. Most peacekeeping countries, they say, are in no position to mete out justice.

An Insurmountable Conflict of Interest

In cases such as these – as in all cases of sexual exploitation, abuse, or harassment reported to and handled internally by the UN organization – another fundamental problem prevents any kind of impartial, unbiased justice: a multilayered conflict of interest.

Whenever its personnel are accused of sex offenses, the UN is immediately faced with conflicting interests. The UN organization has a duty toward its personnel who stand accused: innocent until proven guilty. The UN organization has a duty toward the persons who report sexual offenses: some are also UN personnel who deserve the support and protection of their employer; others are so-called “beneficiaries” living in the countries where UN personnel are posted to assist with development, humanitarian assistance, and protection during conflict. Right there, the conflict of interest is insurmountable: the UN organization cannot defend the best interests of both the accused and the accusers. It is not and cannot act as a neutral party.

And the bureaucracy (referred to as “the Organization”), including all its personnel, have an overriding obligation to act at all times in the best interests of “the United Nations,” the collective body of 193 governments who comprise its Member States. The bureaucracy's conflict of interest: the bureaucracy has three competing interests to serve: the best interests of the accused it employs, the best interests of the accuser, and the best interests of the world body.

Our Proposal

So: Are the rights of women and children in peacekeeping countries somehow less important than those of UN personnel? To avoid any chance of substandard treatment at the hands of local police and courts, should UN civilian personnel accused of sexual crimes while in UN peacekeeping countries get a free pass? The answer to both questions, of course, is NO.

We have a proposal that will make justice equally available to all, and will guarantee the competent and humane handling of all UN personnel accused of criminal sexual offenses.

We believe that the necessary solution is an independent, impartial Special Court Mechanism. The idea has received an enthusiastic hearing from ambassadors and government officials, legal experts, academics, international jurists, and experts on sexual violence and criminal accountability.

The United Nations Organization should be relieved of a duty that belongs in other hands.

This solution would end the Organization's conflict of interest. Victims of sexual exploitation and abuse committed by UN peacekeeping personnel would no longer have to file complaints *with other personnel from the same Organization* and hope for justice.

Instead, all victims would report sexual offenses to the Special Court Mechanism's intake offices near peacekeeping bases and outposts, where they would be provided with the independent, impartial response that is their due.

If allegations were lodged against non-military UN staff and experts on mission, the Special Court Mechanism would investigate and prosecute the alleged perpetrators. Although the "host state" of a peacekeeping mission has jurisdiction over such crimes, the UN Organization has long insisted that cases against the personnel it deploys cannot be fairly investigated or tried in a country riddled by conflict, where police and court systems are already in crisis. The mechanism would relieve the host state's judicial system of the burden of handling such matters. (And if the non-military accused's country of origin had laws allowing it to investigate and prosecute crimes committed by its nationals in the peacekeeping country, it could formally ask permission to do so.)

For allegations against military personnel, the mechanism would receive complaints and handle the job of referring the cases to the soldiers' troop-contributing countries, which would be responsible for investigation and prosecution. If a troop-contributing country chose not to, the mechanism would step in and do the job.

The Special Court Mechanism would have a lean staff 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 done. A roster of pre-qualified international judges 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.

It is a bold and ambitious plan. But a Special Court Mechanism is what an otherwise intractable problem demands. It would meet the needs of peacekeeping countries under siege and help to ensure impartial justice for victims, affected communities, and the accused.

We have identified several foundational elements that could aid Member States as they begin the process of creating a strong Special Court Mechanism.

A Victims' Bill of Rights is needed to provide the framework to uphold a transformed system of justice. It would spell out exactly what victims are entitled to receive, such as information, interpretation services, assurances of privacy, protection, and restitution.

The voices of victims and communities must be heard. Civilians whose lives are directly affected by the UN's presence in peacekeeping countries have insights unlike anyone else's. We have explored avenues for them to describe their firsthand experiences and convey their honest, unmediated opinions.

First, the Code Blue Campaign is arranging for affected community members, even in the most remote areas, to answer a series of open-ended questions anonymously, using a smartphone self-interviewing technique we developed and call CAVIA. Second, we are convening public "hearings" in countries with both active and completed peacekeeping missions. The forum will allow victims who want to come

forward to give testimony and express their views, and for the first time, allow local responders to offer their informed critiques before a panel of expert witnesses.

Those insights and observations would be relayed to the UN's Member States, filling in the critical dimension that decision-makers have been missing.

Just how pervasive is the culture of impunity? The best source of that information can be found *within the UN Organization*. An anonymous staff survey, conducted by an independent third party to guarantee confidentiality, would provide an unvarnished assessment of the true breadth of the problem, and to the real barriers to reporting and addressing sexual abuse in the UN system.

Any healthy justice system needs checks and balances to keep it responsive and transparent. The Special Court Mechanism would enlist the regular involvement of local and international civil society experts on sexual violence, gender, and culture.

Would-be perpetrators who find their way into UN jobs or military peacekeeping contingents need to know exactly what will befall them if they commit crimes of this nature. With the wisdom of hindsight, we can see the strengths and weaknesses of the 2003 Secretary-General's Bulletin that conveyed UN system-wide "zero tolerance" for sexual exploitation and abuse. The UN must now clarify that the immunity provided to UN personnel by the *1946 Convention on the Privileges and Immunities* does not cover sexual crimes. Communicating that fact widely will go a long way toward breaking the myth that UN personnel are above the law and toward ending the culture of impunity.

The United Nations, its invaluable peacekeeping operations, and civilians in crisis around the world all need and deserve a root-and-branch overhaul of the response to sexual exploitation and abuse. Past efforts have all served only to modify a system that is fundamentally flawed. The UN's Member States can release their Organization from criminal-justice functions that it is neither designed nor authorized to carry out. It can end the untenable conflict of interest, and fill a yawning gap in accountability. It can wipe out the necessity for damage-control exercises that are sapping time and resources. Once liberated by the creation of a Special Court Mechanism, the UN Organization can concentrate fully on its essential mandates of peace, security, and humanitarian assistance.

It is time for the United Nations to consider a truly game-changing solution. Member States are unanimous: The stakes could not be higher. The UN needs a solution that is fast, efficient, and fair. The UN needs a solution that will actually work. There is a path forward. The Code Blue Campaign is eager to help.