



**SUBMISSION TO THE EXTERNAL INDEPENDENT REVIEW PANEL
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BACKGROUND

The UN has a policy of ‘zero tolerance for sexual exploitation and abuse’. The Secretary-General has an obligation to report progress toward full implementation of that policy to the General Assembly annually, and to document all incidents of sexual exploitation or abuse reported against military and civilian personnel involved in its UN peacekeeping operations.

Between 19 May and 24 June 2014, as the Central African Republic’s newly authorized UN peacekeeping mission, “MINUSCA”, was assuming authority, children staying in and around an internally displaced persons’ camp in the capital reported habitual, ongoing sexual abuse by soldiers from France, Chad, and Equatorial Guinea to staff from OHCHR/MINUSCA and UNICEF. It took those staff more than seven weeks to report up the chain of command, but by 16 July, detailed summaries of the children’s testimonies of abuse had been received by the interviewing staff members’ respective superiors in MINUSCA, in OHCHR and in UNICEF. The Office of the Secretary-General, the Deputy High Commissioner for Human Rights, the Executive Director of UNICEF, and the UN Office of Legal Affairs had all been made aware of the crimes by 8 August 2014.

It appears that with one exception, no effort was made by any senior UN official to inform other relevant government authorities or the public of the sexual abuse, even despite strong indications that it was widespread and continuing. The UN did not inform the governments of the Central African Republic, of Chad, or of Equatorial Guinea. No efforts were made by anyone in the UN system to alert the hundreds of thousands of civilians encamped in the area patrolled by un-apprehended, armed child sexual abusers. There is no indication that any of the senior UN officials who were fully apprised of the crimes, and of the UN’s involvement in investigating and documenting evidence, ever informed the Secretary-General or the Security Council.

The one exception was Mr. Anders Kompass, OHCHR: when he saw the reports of abuse—primarily by French soldiers—in mid-July 2014, some three months after MINUSCA, OHCHR and UNICEF staff were first asked to address the alleged crimes, he informed diplomatic officials from the government of France, which initiated a preliminary criminal investigation in CAR. Mr. Kompass then briefed his immediate supervisor, the Deputy High Commissioner for Human Rights, who in turn informed the Executive Office of the Secretary-General. The Office of Legal Affairs was apprised when French investigators attempting to identify the abusers asked—and were denied permission—to speak

directly with the OHCHR and UNICEF staff members who documented the children's reports of crimes. Shortly after the new High Commissioner for Human Rights assumed his role in September, he, too, was informed.

Mr. Kompass continued his regular duties as Director at OHCHR through 2014 and early 2015; at points during that period, he was asked to serve as Acting High Commissioner when both the High Commissioner and Deputy High Commissioner were temporarily absent from Geneva. On 12 March 2015, the High Commissioner asked him to resign for having failed to follow UN procedures when he transmitted the internal OHCHR report of child sexual abuse to French officials eight months earlier. Mr. Kompass refused to resign, and said that if forced, he would inform the media in his home country.

The High Commissioner, assisted by his Deputy, the Secretary-General's Chef de Cabinet, the USG of the Office of Internal Oversight Services, and the Director of the Ethics Office then decided, at a 19-20 March Senior Staff retreat in Turin, Italy, to initiate a formal investigation into the actions of Mr. Kompass. His alleged offense was the fact that when Mr. Kompass informed French officials of criminal allegations made against their soldiers, he failed to follow official UN procedures, and further breached protocol by transmitting the summary interviews to the French without first redacting the names of the child victims/witnesses, the boys' physical descriptions of the soldiers, and the names of the UN officials who collected the verbal evidence of crimes from the children.

On 10 April 2014, the USG of OIOS opened an investigation into Mr. Kompass. At that point, the cases of child sexual abuse were still only known within the UN and the French government. On 29 April, after receiving leaked UN documents from AIDS-Free World, The Guardian newspaper published the first account of the child sexual abuse scandal and the UN's inaction; the story was then picked up by media outlets worldwide.

Although no media outlet had reported the case before 29 April 2015, the Under-Secretary-General of OIOS later cited media attention as one reason for her decision 19 days before that date, on 10 April, to circumvent normal OIOS procedures and personally initiate an investigation into Mr. Kompass. The other reason the USG of OIOS gave was this issue's exceptional 'political sensitivity'. By all accounts and implications, however, simultaneously, she and other senior staff appear to have determined that the issue was not sufficiently important to warrant the attention of the Secretary-General, the Deputy Secretary-General, the USG for Peacekeeping Operations, or the Security Council, all of whom played essential roles in the re-authorization of MINUSCA in April 2015, and the approval of a special continuing role with the UN in CAR for French troops.

QUESTIONS ARISING

The incidents in CAR revealed deep and underlying problems about the UN's overall handling of sexual exploitation and abuse in peacekeeping operations. The actions and inactions of UN officials up to the highest levels, the missing policies, the abuse of authority, and the questionable legal bases for UN procedures, raise grave questions that need to be answered. Among these:

1. Obligations to notify and inform: When apprised of the sexual abuse of civilians, what are the UN's obligations to inform the governments whose civilians were victimized, the governments with jurisdiction over the alleged perpetrators, and the Security Council? Where are those obligations codified? Are they carried out in all peacekeeping arenas, in a timely manner, in all cases? Was the UN system's failure in the CAR case to inform the governments of the Central African Republic, France, Chad, and Equatorial Guinea indicative of standard operating procedure, or was it an aberration? Are UN officials currently aware of other sexual abuse cases that they are reporting neither to appropriate authorities, nor to the Security Council?

2. Political sensitivity: Are all allegations of sexual abuse committed by one Member State's soldiers against another country's civilian population considered exceptionally "politically sensitive"? What distinguished the CAR case? At what point is the SG informed of issues deemed to be so politically sensitive that they can only be addressed by the most senior UN officials, and normal procedures must be bypassed? What are the standard operating procedures? Are they clear and predictable enough to be understood and followed by all staff?

3. Effectiveness of missions by senior diplomats and officials: Since the allegations were first reported to the UN, high-level visits to CAR have included:

- Independent Expert on Human Rights in CAR (April 2014, February & June 2015)
- USG for Peacekeeping Operations (April & September 2014, April 2015)
- UN Women Executive Director & AU Special Envoy on Women, Peace & Security (May 2014)
- UN Deputy Emergency Relief Coordinator; Special Rapporteur on the Human Rights of IDPs; & EU/ECHO Director of Operations (February 2015)
- Security Council mission, co-led by France & Angola (March 2015)

It appears that UN staff did not brief any of these decision-makers about the unresolved, and likely ongoing, violations of children. What policies and procedures are currently in place, or must be enacted, to ensure that officials taking part in Security Council and other high-level missions are briefed with the full, accurate, and timely information they require to assess situations on the ground? In countries with active peacekeeping missions, are senior UN staff under any obligation to apprise Security Council delegations about everything of relevance, including politically sensitive information, so that the delegation can report back to fellow Council members and make fully informed decisions regarding the re-authorization of troops and additional resources required?

4. Commission versus omission: Dozens of mid-level and top UN officials knew about the CAR abuses for many months before the story broke in the media, and appear to have taken no action at all. Yet, OIOS has initiated just one administrative investigation, into Anders Kompass. Is it usual for the UN system to punish acts of commission, but ignore acts of omission? If concerned UN staff expect inaction or retaliation, or both, if they report sexual abuses through their chains of command, does the UN's leadership bear responsibility for creating a culture in which many staff feel that leaking internal, politically sensitive information and documents is the only way safe and effective way to expose and prevent sexual exploitation and abuse?

5. Zero tolerance versus failure to stop current and prevent future abuse: Given its stated policy of ‘zero tolerance’, which creates an imperative to stop perpetrators and end sexual abuse as soon as it is reported, and given the UN’s ethical and legal mandates and responsibilities to take immediate action to prevent further abuses of persons known by the UN to be at real and heightened risk of sexual abuse, what guidelines and protocols define the UN’s specific obligations to protect civilians from sexual abuse known by or reported directly to the UN? Does any official document delineate the UN’s responsibilities, creating a lesser obligation to protect children and adults at imminent risk of reported, ongoing sexual abuse if that abuse is not committed by UN peacekeepers?

6. UN and UNICEF obligations with regard to children: Sexual abuse is a separate and egregious offense when committed against children, since minors by definition lack the legal right to consent to sexual acts; they lack the maturity to provide testimony without the consent and protection of a guardian; and they do not possess the legal agency to decide whether their own abuse will be reported in full or acted upon by law enforcement or the judiciary. Does the UN have a system-wide protocol for eliciting testimony from child victims? Are UN staff who learn of or who suspect child sexual abuse subject to the legal, mandated disclosure regulations that should apply to any adult temporarily entrusted with the care of a child, and to the associated legal penalties for failure to report immediately? Is the UN under separate obligations to protect children who report to the UN that they are at ongoing or imminent risk of sexual abuse? What are the specific, higher obligations of UNICEF, given its special mandate under the Convention on the Rights of the Child? Were all of the above obligations met in CAR? Given the urgent imperative to apprehend alleged child sexual abusers, what is UN policy regarding the transmission of all testimony and evidence, including names of victims, witnesses, and perpetrators, to the appropriate authorities with jurisdiction over the investigation and prosecution of crimes? On what legal basis did the Office of Legal Affairs prevent OHCHR and UNICEF staff in possession of such evidence from cooperating directly and fully with France’s investigation into its soldiers’ crimes?

7. Consistent standards of conduct and disciplinary measures: The Secretary-General’s 2013 Human Rights Up Front initiative “encourages staff to take a principled stance and to act with moral courage to prevent serious and large-scale human rights violations, and pledges Headquarters support for those who do so.” Many senior OHCHR staff believe that Mr. Kompass acted within the bounds and expectations of an OHCHR official when he apprised his French government counterparts of human rights violations that they alone had the authority to prosecute. Does the investigation of Mr. Kompass indicate that all staff who exhibit the individual ‘courage’ promoted by Rights Up Front, and all those who function in line with long-accepted practices of OHCHR officials, will now be subjected to OIOS investigations and disciplinary actions?

8. Immunity and legal authorities’ access to staff and information: Given that the UN claims that immunity does not apply in instances of sexual exploitation and abuse, on what authority were UN staff prevented by the Office of Legal Affairs from being interviewed in person by French investigators looking into the allegations in CAR? To what extent did UN immunity block or hinder the transmission of important information on CAR? And more generally, when UN civilian staff are the alleged perpetrators, the UN conducts its own extensive (and often lengthy) investigations to determine “credibility” before referring the allegations to Member States. If immunity is not

applicable, then on what legal basis is the UN authorized to intervene and delay normal legal processes? What are the rights of Member States to be informed of allegations and receive access to evidence and information collected by the UN?

9. Broader implications for peacekeeping: Sexual exploitation and abuse of civilian populations by peacekeepers—whether international forces or UN peacekeepers—should be viewed as a significant threat to peace and security. When a host community comes to view peacekeepers as threats to their safety, it undermines the mission itself.

By their inaction, the UN helped to foster further mistrust in an already-hostile environment, placing those peacekeepers being sent to CAR under MINUSCA's banner at grave personal risk. When allegations of sexual exploitation and abuse surface in a peacekeeping mission, does the UN have an obligation to notify other Troop Contributing Countries, so that they can adequately inform their troops of the potential hostility they might face from the civilian population?

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