

# United Nations Nations Unies

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7 July 2017

Dear Ms. Donovan and Mr. Lewis,

This is in reference to your letter of 16 June 2017 referring to our meeting on 13 June 2017 during which you sought confirmation that functional immunity of United Nations personnel does not apply to crimes of sexual abuse, noting that misunderstandings concerning the scope of such immunity remain widespread. In your letter, you also seek clarification concerning any procedures to be followed by the national authorities with respect to the initiation of investigations or criminal proceedings related to acts of sexual abuse, in light of the functional immunity enjoyed by United Nations personnel. This letter does not address criminal acts of sexual exploitation or abuse by members of military contingents, who are subject to the exclusive criminal jurisdiction of their own troop contributing country.

As discussed during our meeting, and as made clear in my letter of 11 June 2015, in accordance with the 1946 Convention on the Privileges and Immunities of the United Nations (“the Convention”) and the Model status-of-forces agreement for peacekeeping operations (see UN document A/45/594), United Nations officials and experts on mission, with the exception of a limited number of high-ranking officials who enjoy diplomatic status, enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, so called functional immunity. It is axiomatic that criminal acts of sexual exploitation or abuse do not constitute official acts of a United Nations official or expert on mission. Accordingly, no functional immunity exists for such acts.

Allegations of criminal acts of sexual exploitation or abuse may, however, arise in the context of the performance of official functions, and the United Nations must, therefore, make an assessment of the circumstances surrounding the act and the immunity issue. I can assure you that my Office treats such matters with utmost urgency and acts swiftly to ensure that there are no legal obstacles by the United Nations to the proper investigation and prosecution of such cases. I note here that the Organization would treat requests for waivers of immunity for officials who enjoy diplomatic immunity in an equally urgent manner. In this regard, I wish to note that all my staff have been instructed to immediately bring to my personal attention any matter they are dealing with involving the question of immunity that relates to allegations of sexual exploitation or abuse. I can also assure you that my Office has adopted a proactive policy for requests for waivers of immunity in relation to allegations of criminal conduct by United Nations personnel, be it sexual exploitation or abuse or otherwise, in order to facilitate the proper administration of justice. In the

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same spirit, I have also requested all United Nations offices, programmes and funds to inform my Office at an early stage of potential cases of sexual exploitation or abuse to ensure that requests for judicial assistance and cooperation in national investigations from States concerning such allegations are prioritized and, where required, that the widest measure of cooperation possible is extended to such national investigations by the Organization.

I note that national authorities often initiate a criminal investigation into the allegations prior to informing the United Nations of the allegations.

The Secretary-General is committed to criminal accountability. It is indeed the Organization's established practice to refer credible allegations that United Nations officials or experts on mission may have committed a crime for investigation and prosecution by the appropriate national authorities, whether they be national authorities in the host State, or the State of nationality of the accused. Further, in accordance with the Convention, the Secretary-General has a duty to cooperate at all times with the authorities of Member States to facilitate the proper administration of justice. The duty to waive immunity, or to state in a formal manner that immunity does not apply, in response to allegations of criminal conduct is, as a matter of course, carried out expeditiously.

As discussed with you during the meeting, we very much welcome Aids Free World's focused attention to the issue of responding to sexual exploitation and abuse, and hope that you will maintain your commitment to strengthen mechanisms to ensure accountability in respect of cases of sexual exploitation and abuse.

Yours sincerely,



Miguel de Serpa Soares  
Under-Secretary-General for Legal Affairs  
and United Nations Legal Counsel