Dear Ms Deschamps


I am pleased to provide this submission to the External Independent Review Panel about terms of reference 2, 4, and 5. The Panel is to “review how the United Nations, including its separately administered funds and programmes and other subsidiary organs, responded to such Allegations and to make recommendations concerning how the United Nations should respond to allegations in the future that may raise similar issues, including allegations involving United Nations and related personnel, host State forces or non-State actors in the CAR”.

My submission is informed by the facts that in this context:

- The rights of children to safety, dignity, equality and bodily inviolability must be paramount;
- Children who are orphans, who are starving, who are homeless, who are young, and who are in war-torn nations, are extremely vulnerable, and therefore require extremely strong protection;
- There is now a sustained and unacceptable record of sexual abuse by UN peacekeepers and other foreign forces not under UN command in several nations (including CAR, Haiti, Congo, Liberia and South Sudan), and evidence to indicate these matters have not been appropriately dealt with, and nor have adequate prevention and response mechanisms been established;
- As shown by the CAR case, at the very least there appears to be a distorted sense of priorities at the institutional level, evidenced by a failure to take required action, and a preference for taking unwarranted action. This is shown by the CAR case, where: (1) there appears to have been a lack of sufficient and sufficiently prompt action to investigate the reports of sexual abuse by French soldiers once these reports were made to UN personnel (with this delay and inactivity prompting the forwarding of the information to the French government); (2) the UN not only suspended Anders Kompass for disclosing information about the case to the French government, but requested his resignation (see Laker J’s judgment, below, para [9]); (3) the United Nations Dispute Tribunal on 5 May 2015 ordered the lifting of Kompass’s suspension for disclosing to the French government the sexual abuse of children by 14 French soldiers (Judge Thomas Laker, UNDT/GVA/2015/126).
As evidenced by its various instruments including the Convention on the Rights of the Child, and the Secretary-General's statement on 16 January 2007 that “We must hold all UN employees to the highest standards of integrity and ethical behavior”, the UN has a clear and fundamental duty to take effective administrative actions to establish protocols and processes to (1) minimize the likelihood of sexual abuse through appropriate preventative, educational and regulatory measures; and (2) respond appropriately when sexual abuse occurs, by (a) providing all reasonable support to the victims, (b) protecting UN staff who bring these matters to light, and (c) taking action against alleged offenders while maintaining due process rights.

My overall submissions are:

1. **End to immunity.** There must be an end to immunity for UN personnel in the context of child sexual abuse, applying to both: (a) UN staff who commit child sexual abuse and their general immunity within and beyond the jurisdiction where the abuse occurs; and (b) troops provided by UN member states and their immunity from the jurisdiction of the country where the mission occurs. There is simply no ethical, moral, legal, theoretical or practical justification for providing legal immunity to any individual for the acts that constitute child sexual assault, and the existence of this immunity contributes to the continuance of these crimes. The immunity provided by the UN Charter art 105 only extends to acts “necessary for the independent exercise of their functions” and clearly has no application to the acts of criminal child sexual assault, which are specifically prohibited by Staff Rules ST/SGB/2014/1 Rule 1.2(e);

2. **Reform of policy and procedure about the reporting of child sexual abuse by all UN personnel.** There must be an immediate root and branch investigation and reform of policies and practices about the reporting of child sexual abuse by all UN personnel. It must be made a requirement for all UN staff to report known and suspected cases of child sexual abuse perpetrated by UN personnel and any personnel provided by UN member states not under UN command. This duty to protect the child must take priority over any other duty, such as a general duty of confidentiality. A duty to report child sexual abuse is consistent with the core values of UN staff which require the highest standards of efficiency, competence and integrity (see Staff Rules ST/SGB/2014/1) and the specific prohibition of child sexual assault (Staff Rules ST/SGB/2014/1 Rule 1.2(e)).

   The duty should be activated as soon as the staff member has knowledge or suspicion. The report should be made to an appropriate UN body with power to receive, investigate and act on reports, and this body should include individuals with expertise in child sexual abuse. Any such report should also be forwarded by the UN immediately to the government of the individuals who are alleged to have committed the sexual abuse. Those who make reports in good faith must be provided with immunity from all administrative and legal proceedings in relation to the report (these protections do not apply where the report is not made in good faith).

   This kind of duty is consistent with mandatory reporting duties for child sexual abuse which exist in many countries including all 72 States, Territories and Provinces in the USA, Canada and Australia, and other nations, whether in child protection statutes, penal law, or social welfare legislation, including Sweden, France, Denmark, Norway, Israel and Brazil. A 2006 survey of 62 nations found 81.8% of developed nations, and 78.6% of developing nations had some form of mandatory reporting.  

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1 Secretary General Ban Ki-moon. (2007). Address to the Center for Strategic and International Studies in Washington, D.C.
3. Protection of personnel who disclose sexual abuse: reporters and whistleblowers. I appreciate that the Panel does not have the authority to inquire into the individual case of Anders Kompass, or of any other staff member who has been involved in the CAR case. However, on the available reported facts, it seems appropriate to regard this case as a paradigm example of inappropriate institutional practice. Under the UN Staff Rules ST/SGB/2014/1 Rule 1.2(e), UN staff members are directly “obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse”.

The actions of Mr Kompass can be interpreted as discharging this duty, and doing so in a situation where the initial actions in reporting the situation to UN institutional authorities were meeting institutional resistance or at least delay. Moreover, of necessity, the disclosure to French authorities required disclosure of the children’s identities to protect the children who had been abused and enable investigations to be conducted. This is standard practice in all legal and policy regimes of reporting of child sexual abuse as an essential component in enabling protection of the abused children. Instead of acting promptly on the initial reports, the institution seems to have prioritized disciplinary proceedings against the individual who demonstrated integrity, principle and courage. Informed by this experience, there is a need for formalized protections to be established for those who report child sexual abuse in good faith, whether to the UN authorities, to government authorities in the relevant nation state, or both.

4. Reform of general policy on prevention of child sexual abuse by UN personnel. There appears a need for reform of general policy and process to prevent child sexual abuse by UN personnel. The Special Measures for protection from sexual exploitation and sexual abuse - Report of the Secretary-General published on 13 February 2015 (A/69/779) is a welcome development, but its recommendations do not on their face appear to be sufficiently strong or comprehensive. Reform needs to be systematic, and evidence-based.

There is ample academic literature indicating the necessary components for prevention of and responses to child sexual abuse in institutional contexts.\(^4\) A proper response can occur practicably and economically. For example, Wurtele’s CSA Prevention Evaluation Tool for Organizations: Child Protection Policy & Procedures sets out a matrix of seven key prevention dimensions, with subcomponents for each:

- The organisational policy (14 subcomponents)
- Standard 1: Safe screening and hiring practices (18 subcomponents)
- Standard 2: Code of Conduct (21 subcomponents)
- Standard 3: Implementation and monitoring (10 subcomponents)
- Standard 4: Ensuring Safe Environments (10 subcomponents)
- Standard 5: Reporting and responding to concerns, disclosures and allegations (21 subcomponents)
- Standard 6: Training and education (including sexual boundary education) (14 subcomponents)

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In conclusion, all institutional protocols, procedures and reform measures in this context must prioritize the right of the child to be free from sexual abuse, and where sexual abuse occurs, to intervene at the earliest possible opportunity to interrupt the abuse. Those who report sexual abuse in good faith must be protected. These measures must seek to protect and promote the rights of children who are inherently vulnerable, and in this context are profoundly so. As a guardian of children’s rights, and a promulgator of the Convention on the Rights of the Child, the UN must act as an exemplar in how it deals with child sexual abuse to preserve its credibility and legitimacy.

In Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 SCR 76, Deschamps J delivered a compelling dissenting judgment which found the Criminal Code s 43, in permitting corporal punishment, unreasonably breached the right of the child to equality and equal protection under the Canadian Charter of Rights and Freedoms s 15. In situations where the UN is involved in peacekeeping missions, children who have already experienced extreme suffering should also possess the right to protection, supported by all practicable measures taken to prevent and respond effectively to sexual abuse by its staff and associated personnel.

Yours sincerely

[Signature]

Professor Ben Mathews
Faculty of Law, Senior Research Fellow
Director, Children’s Health Program, Australian Centre for Health Law Research
Professorial Fellow, Australian Royal Commission into Institutional Responses to Child Sexual Abuse
Queensland University of Technology, GPO Box 2434, Brisbane 4001
61 7 3138 2983 - b.mathews@qut.edu.au