

Testimony of Miranda Brown
“Do No Harm: Ending Sexual Abuse in United Nations Peacekeeping”
U.S. Senate Foreign Relations Committee
April 13, 2016

Good afternoon Chairman Corker, Ranking Member Cardin, and Members of the Committee. Thank you for inviting me to address you today. My name is Miranda Brown. I am a dual Australian and British national, and a former Australian Government official. I joined the Australian Department of Foreign Affairs and Trade (DFAT) in 2001 and occupied a number of positions in the Department before being appointed as the Deputy Permanent Representative at the Australian Mission to the United Nations in Geneva, in January 2008. I hold a PhD in Science and a Masters of International Law.

I must inform the Committee at the outset, that as a former Australian Government official, I am bound by certain confidentiality obligations towards the Australian Government. I have informed the Australian Foreign Minister about my presence at the hearing today.

I have consistently maintained close relations with the US Mission in Geneva, built on the foundations I formed during my time as the Deputy Permanent Representative of the Australian Mission to the UN. As you know, the US and Australian Governments enjoy the closest of relations.

I joined the UN’s Office of the High Commissioner for Human Rights (OHCHR), as the Chief of the East and Southern Africa (Africa I) section in December 2012, on leave of absence (Leave without Pay) from the Australian Government. I occupied this position until December 2014. The East and Southern Africa section covers several countries with peacekeeping operations including in Sudan (UNAMID), South Sudan (UNMISS) and Somalia (AMISOM). I undertook regular missions to the field, including to Somalia and South Sudan, at the height

of the crisis. I regularly acted as the Director (Chief) of the Africa Branch at OHCHR, which covers the entire continent. I have first-hand experience of monitoring and reporting human rights violations, including sexual abuse, in a peacekeeping environment.

My testimony will focus on:

- my experience working at OHCHR with sexual abuse in peacekeeping missions,
- the allegations of child sexual abuse in the Central African Republic and Anders Kompass' disclosure of same, and
- my experience as a UN whistleblower reporting abuse of authority by the UN leadership in response to the CAR allegations and my attempts to support UN staff who report the abuses.

From my experience in the field and as Chief of the Africa I section at OHCHR, I know that sexual abuse in peacekeeping missions (including UN, hybrid and other missions) is vastly under-reported, with bottlenecks for reporting at various stages, inside and outside the UN. There are multiple barriers to reporting sexual abuse. Victims fear discrimination, stigmatization and retaliation if they report abuses by peacekeepers or civilian and military police (recent figures show a significant number of civilians are involved in the abuses). Victims also fear losing benefits (such as security for their families or humanitarian assistance) either through retaliation or removal of peacekeeping troops and they know that there is a high likelihood they will not receive justice and the perpetrators will go unpunished. The cost benefits do not add up in favour of reporting. Many of the victims are minors, who are unaccompanied, separated or orphaned through the conflict. UN human rights officers located in the human rights components of peacekeeping missions are usually the first responders, and hence the internal "reporters" of the sexual abuse. They have their own fears, both about their physical safety as well as their own job security.

I would like to describe a typical situation in a UN peacekeeping mission. Most peacekeeping missions include a “human rights component” with a mandate to monitor and report on human rights violations in the country. The head of the human rights component, has a dual reporting responsibility, reporting to the head or deputy head of the peacekeeping mission, as well as to the High Commissioner for Human Rights.

The majority of the human rights officers working in missions are relatively junior (at the P3 level, out of seven professional and higher “non-political” grades). The human rights officers are often deployed to remote peacekeeping sub-offices or camps where there is little institutional support and the living conditions are extremely harsh. The camps often house significant numbers of internally displaced persons (IDPs) in overcrowded conditions. Security within and outside the camps is often maintained by the peacekeepers. In such cases, the human rights officers are therefore dependent on the peacekeepers for their physical protection. The security situation outside of the camps may be so dire that the human rights officers are either unable to leave the camps, or have to be accompanied by the peacekeepers, in order to interview victims of human rights violations. This creates an inherent conflict of interest for human rights officers in terms of reporting misconduct and human rights violations by the peacekeepers. In South Sudan, one junior human rights officer reported to me her experience of working in one of the remote camps which was frequently cut-off by the conflict. She spent significant periods as the only human rights officer in the remote camp. The camp was frequently cut-off from the UNMISS headquarters in Juba. This human rights officer described the terrible human rights violations inflicted on the civilian population, which included torture, mass killings, sexual and gender-based violence, forced marriage and abortion. She provided timely reports of these violations to her supervisors, who reported the figures to headquarters in Geneva and New York on a regular basis. When I visited her in the camp, she also told me about the abuses committed by peacekeepers. She said she had been too scared to report them. The victims were IDPs. She worried that the

alleged perpetrators might find out about her monitoring and reporting the allegations and she feared the victims might be subject to reprisal by the peacekeepers. She also feared for her own physical safety due to possible retaliation, directly or indirectly by the peacekeepers.

Once UN human rights officers' reports of sexual or other abuses by peacekeepers reach the Head of the Human Rights Division in the Mission, he or she should immediately report to the Mission leadership for it to inform the highest level of the troop contributing government involved - this with the aim to preserve the victims' safety, as well as the human rights officers', through the swift removal of alleged perpetrators from the site. Because the reporting by human rights officials to the Mission leadership has often led to friction, human rights staff may prefer to rely on the alternative reporting line to OHCHR headquarters to report the peacekeeper abuses to the relevant authorities. The Mission leadership has frequently ignored the human rights officers' reports of sexual abuses by peacekeepers for political reasons – following-up on the reports can upset the troop contributing governments and lead to the withdrawal of troops that are needed by the mission. Thus human rights officers have often appeared as trouble-makers to the Mission leadership.

The UN's Office of Internal Oversight Services (OIOS) expressed concern about the lack of assistance to victims of sexual abuse:

“Lastly, remedial assistance to victims is very weak. Very few victims have been assisted due to lack of dedicated funding and the slow enforcement process. Mapping of remedial assistance services has not been undertaken in all missions and informal immediate assistance has been required to partially bridge the gap.”¹

¹ Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations
<https://oios.un.org/page/download2/id/13>

The situation is further complicated by the different types of peacekeeping missions and reporting lines. For example in Somalia, the peacekeeping mission AMISOM is run by the African Union and in Darfur, Sudan the UNAMID mission is a hybrid UN and African Union mission.

Newly recruited human rights officers in peacekeeping missions receive basic training on monitoring and reporting human rights violations, conducted by OHCHR. The duration of the training courses vary, but are typically of five days' duration. The OHCHR guidelines² on monitoring and reporting, which are available on the OHCHR website, include general guidance on monitoring and reporting sexual abuse, but the guidance provided for reporting sexual abuse by peacekeepers or UN personnel is scant. The guidelines are frequently not implemented at the Mission level. The guidance on reporting child sexual abuse does not include mandatory reporting. Nor does it adequately address the issue of 'informed consent' when the victim is a child without parents or a guardian. The general training provided to human rights officers is focused primarily on monitoring and reporting for accountability purposes, and not on the UN's protection mandate and the need for intervention to stop ongoing abuses.

Additionally, most junior UN human rights officers hold temporary or "fixed-term" contracts of one or two years' duration. Their contracts can be non-renewed or they can be deployed to another duty station (location) with little notice. The temporary and insecure nature of their employment situation creates further conflicts of interests for UN human rights officers and other UN staff, when determining whether to report wrongdoing by UN peacekeepers or UN personnel. A UN human rights officer who suffers adverse employment consequences and loses his or her job after exposing sexual abuse or other wrongdoing, by peacekeepers or UN personnel, is unlikely to be compensated or reinstated for two reasons. Firstly, the tribunals that rule on such appeals have long been reluctant to intrude upon the UN Secretary General's prerogatives in contract

² <http://www.ohchr.org/EN/PublicationsResources/Pages/MethodologicalMaterials.aspx>

renewal. Secondly, the UN Tribunal statutes grant the Secretary General discretion on whether to reinstate the staff member or provide compensation even after the dispute tribunal has adjudicated the case and found the impugned adverse employment action irregular. In practice UN staff members are rarely reinstated and if not, only a small amount of compensation is paid.

Overall, my view is that there are significant structural barriers to reporting sexual abuse by peacekeepers and UN personnel. The current setup, which relies primarily on UN human rights officers assuming the role of reporters of these violations, is inadequate, poses risks to victims and staff and is inherently biased against reporting. Such barriers are exacerbated by the wholly inadequate UN internal justice system provision of protection to whistleblowers.

It is against this backdrop, that I would now like to describe to you the events that transpired after the disclosure by Mr. Anders Kompass (Director of the Field Operations and Technical Cooperation Division at OHCHR) to the French authorities, of the MINUSCA report *Sexual Abuse on Children by International Armed Forces* in the M'Poko IDP camp in Bangui, Central African Republic. MINUSCA is a multidimensional UN peacekeeping operation in the CAR, established by the UN Security Council on 10 April 2014.

I was the Acting Director of the Africa Branch at OHCHR in early August 2014 during the period shortly after the MINUSCA report came to OHCHR's attention in Geneva. Mr. Kompass was my direct supervisor at the time. Emails document my involvement and I was the key contact between OHCHR and MINUSCA during the period immediately following the disclosure. I supported Mr. Kompass' decision to disclose the allegations of child sexual abuse to the French authorities. The abuse documented in the MINUSCA report was horrific, ongoing and no attempt had been made to stop it. Young boys were allegedly being subjected to rape and other forms of sexual abuse by peacekeepers from France, Equatorial Guinea and Chad, in exchange for food. The abuse appears to have

continued until Mr. Kompass disclosed the MINUSCA report to the French authorities in July 2014. Mr. Kompass made his report discreetly yet openly, and the French Government expressed its thanks in writing through officially registered correspondence. French law enforcement received the disclosure immediately and a team of investigators was dispatched to Bangui.

Nine months later, I learned that [the new High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein had ordered that Mr. Kompass be suspended and the UN leadership had decided to place Mr. Kompass under investigation by OIOS, for his disclosure of the MINUSCA report to the French authorities. Mr. Kompass was escorted out of his office on 17 April 2015.

I was appalled by what appeared to be the deliberate targeting of a UN staff member, who had taken immediate action to stop child sexual abuse by peacekeepers, and was simply doing his job. Mr. Kompass was my supervisor and I had supported his decision to disclose the MINSUCA report to the French government, on the basis that the abuse was ongoing and the UN leadership in Bangui had not taken any steps to stop it over a period of many months, or if they had, these steps had been ineffective. I decided to blow the whistle to the US Government about my concerns of the apparent abuse of authority by the UN leadership in respect of the treatment of Mr. Kompass. On 22 April 2015, I wrote to US officials at the US Permanent Mission to the United Nations in Geneva, outlining my concerns and providing relevant documents, including the MINUSCA report. I marked these documents as "strictly confidential".

In the absence of appropriate guidelines for situations of ongoing child sexual abuse, Mr. Kompass, whose terms of reference allow him reasonable flexibility in acting to address immediate abuses, followed the best practice established in many UN member states, including Australia, Canada, the US, most European Union member states, Brazil and South Africa, which have implemented specific mandatory disclosure and reporting requirements for child abuse. In these

countries, there is a legal obligation placed on certain citizens, usually professionals working with children, or on issues relating to children, civil servants and other categories to report without delay child abuse, including child sexual abuse, to the authorities or law enforcement agencies. In some countries, these laws extend to all citizens and are not limited to professionals working with children or civil servants. The disclosure must include the full name of the child suspected of being abused, or at risk of abuse, and as much information as possible about the child and suspected abusers. In some countries, the professional may report the suspected abuse to the hierarchy in his or her institution, but in others there is a requirement for the professional to report directly to the relevant authorities (usually law enforcement agencies), thereby bypassing the hierarchy. This is to avoid a situation where the professional is placed under pressure by his or her hierarchy not to disclose the information or to redact it. The US is a world leader on mandatory reporting of child sexual abuse, with laws enacted in all states.

Furthermore, although the OHCHR guidelines do not adequately cover child abuse, the UN overall has a clear position on reporting child abuse, as outlined in the guidance and model legislation issued by the UN Office of Drugs and Crime (UNODC), in conjunction with UNICEF, as well as the World Health Organization (WHO) reporting requirements. The UN's own guidance establishes the duty to report child abuse and spells out that this duty overrides any obligations to keep reports confidential.

In early May 2015, the UN Dispute Tribunal ruled that his suspension was unlawful and Mr Kompass was reinstated in his position as Director of the Field Operations and Technical Cooperation Division. However, Mr. Kompass remained under investigation by OIOS.

A US-based non-governmental organization (AIDS-Free World), obtained documents showing the improper collusion among UN oversight offices and top

UN officials, and in response to public protest about child sexual abuse in the CAR and the treatment of Mr. Kompass, at the end of June 2015, the Secretary General was obliged to establish an external independent panel to review the situation³.

In the fall of 2015, the panel began to inquire about the legality, rationale and best practice guidelines for reporting child abuse. Australian Professor Ben Matthews, a world expert on mandatory reporting, provided a submission to the External CAR Panel (see Attachment A).

The External CAR Panel returned its report in December 2015 (see Attachment B). The panel found gross institutional failure and abuse of authority in relation to the reporting of sexual abuse of children and to the investigation of Kompass (who was exonerated). Still, the internal misconduct investigation of Mr. Kompass - by the same OIOS office whose chief had been found guilty by the CAR Panel of abusing her authority in investigating Mr. Kompass - continued.

Between October 2015 and January 2016, I wrote a series of letters and emails to the UN Secretary General and other senior UN officials calling for the UN leadership to desist from investigating Mr Kompass (see letters at Attachment C). Mr. Kompass remained under investigation until 8 January 2016, the date on which Mr. Kompass was concluded with his exoneration.

The Kompass case highlights one of the key problems with the UN's narrow definition of a UN whistleblower, which only covers staff who report misconduct by other staff members. The UN leadership has made a great issue of the fact that Mr. Kompass reported misconduct by national troops, not UN peacekeepers. He is therefore not protected by the UN anti-retaliation policy (SGB/2005/21)⁴.

³ Formally the "Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic"

⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/651/55/PDF/N0565155.pdf?OpenElement>

The UN leadership, through the UN Spokesperson says the fact that OIOS investigation failed to substantiate allegations made against Mr. Kompass shows the UN system of justice works. However, were it not for the findings of the External CAR panel, convened only because information about the improper actions of the OIOS and UN senior officials leaked to the public, it is clear that the OIOS investigation might well have found otherwise. The leaked e-mails among UN oversight officials showed quite clearly that “the fix was in,” and rather than proceed with such a tainted exercise, the then Director of the Investigations division at OIOS recused himself.

There have been serious consequences as a result of the UN’s actions. Firstly, Mr. Kompass has received neither an apology, nor any sign of appreciation for what he did and what the UN subjected him to as a result. Secondly, I am convinced that the very public pillorying of Mr. Kompass is having and will continue to have a serious chilling effect on the reporting of abuses in peacekeeping missions. Thirdly, the reputation and stature of the United Nations, as an international organization that promotes integrity in governance, peacebuilding and human rights, are badly damaged.

While the UN Secretary General has announced an intention to implement the recommendations made by the External CAR Panel and has announced measures for tackling sexual abuse in peacekeeping, these do not address the structural barriers to reporting, nor provide protections for UN staff who report wrongdoing by the institution. These measures do not address the UN internal accountability for abuse of authority towards staff members.

Following a visit to the Central African Republic, recently appointed UN Special Coordinator on Sexual Exploitation and Abuse Ms Jane Holl Lute, stated that “we have to create an environment where the victims “can come forward when these

behaviours have occurred,” “levy allegations without fear,” and see that “justice is done.”⁵

Creating an environment where victims can come forward and report sexual abuse without fear is the first step. Where children or minors are involved, the UN must implement its protection mandate and take immediate steps to stop the abuse. Currently neither the victims nor the reporters are properly protected and there is little accountability for retaliation against either of them. This is a single point of failure, which could be fixed. Securing justice for the victims and holding the perpetrators to account is a more complex challenge as it necessarily involves changes to existing peacekeeping structures, the agreement of troop contributing countries and other Member States.

There is no Freedom of Information Access at the UN and as such the Member States must rely on the UN leadership to uphold the highest standards of conduct and management and on whistleblowers to report wrongdoing, including sexual abuse, and abuses of authority. The UN Special Rapporteur on Freedom of Expression, David Kaye (an American Professor of Law at the University of California, Irvine), stated in his report to the UN General Assembly in September 2015⁶:

“Basic structural gaps in international organizations leave whistle-blowers at risk in ways that those who report wrongdoing in national systems may avoid. In particular, nearly all international organizations are opaque to the public, which has limited access to information, and few have effective policies on access to information. As bureaucratically dominated organizations, they avoid the strict scrutinization by the press that is often found in national contexts, and they are naturally isolated from direct contact with members of the public or the press.

⁵ <http://www.un.org/apps/news/story.asp?NewsID=53644#.VwqTTfI96Hs>

⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/70/361.
http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/361

They are, moreover, subject to reputational demands in order to maintain financial and political support of Governments. Furthermore, persons who report wrongdoing have limited access to independent systems of justice. They generally lack access to national courts when complaining about retaliation, and the human rights bodies are unlikely to apply protection in the face of retaliation. The immunities enjoyed by international organizations in national and other external jurisdictions result in minimal legal pressure on the organizations to respond effectively to allegations of wrongdoing. The mechanisms themselves generally face substantial problems of independence because of those structural barriers.

The track record for whistle-blowers in the United Nations system reinforces the difficulties. Very few whistle-blower complaints are fully investigated. Between 2006 and 2014, only 15 cases of a total of 403 “inquiries” sent to the Ethics Office of the United Nations were found to meet prima facie standards for retaliation, while only 4 were established as retaliatory cases. The low numbers, in a system of more than 40,000 employees, are likely to send a message to employees that the reporting system will not provide effective protection or redress.”

The Special Rapporteur concluded by saying:

“Lastly, those who identify wrongdoing — especially evidence of serious legal violations and human rights abuses, such as sexual and gender-based violence — should be protected from retaliation when they make public disclosures to the media, civil society or Governments. To be sure, disclosures should respect the rights and reputations of others, but in the absence of effective internal systems, external disclosure provides a necessary safety valve to promote accountability and ensure that the public has information about serious wrongdoing.”

The UN's whistleblower protection policy is over ten years' old (issued in 2005). On 8 April 2015, a coalition of UN whistleblowers expressed their concerns about the UN's whistleblower protections in an open letter sent to the UN Secretary

General and UN agency heads (see Attachment D)⁷. There have been significant advances in whistleblower protection policy and legislation around the world over the past decade, notably in the US. The UN's policy must be updated to reflect these developments.

Finally, I would like to emphasize that my motive for testifying before you today and for blowing the whistle on the abuse of authority in relation to the Kompas case, and prior to this in another UN organization, is to protect the UN as an institution and uphold the principles on which it was founded. This has come at a considerable personal sacrifice. I lost my job at OHCHR. I remain hopeful that the High Commissioner for Human Rights Zeid Ra'ad Al Hussein will reinstate me in my position at OHCHR in Geneva. I hope that my testimony today, which has not held back on what I witnessed, will not impact on the High Commissioner's decision.

In terms of reforms and recommendations, I have limited these to issues on which I have first-hand knowledge as a senior UN human rights officer working with sexual abuse in a peacekeeping context and as a UN whistleblower.

I respectfully request the Committee consider demanding the following:

From the UN leadership:

- 1) Emphasize the UN's protection mandate and demand that all victims of sexual abuse by peacekeepers are afforded immediate protection. Secure a public commitment from the UN leadership that when child sexual abuse is encountered, the UN will take immediate action to stop it. Monitoring and reporting for accountability purposes is extremely important, but immediate protection must come first.
- 2) Recognize that there are significant and wide-ranging barriers in reporting sexual abuse by peacekeepers and UN personnel. These must be clearly identified and addressed. Peacekeepers are often responsible for the

⁷ <http://www.whistleblower.org/sites/default/files/%10Letter%20to%20UN-Secretary-General.pdf>

- physical protection of their victims (many of whom are IDPs) and for the UN staff who report the abuses. An independent external review should be commissioned to provide recommendations on addressing the serious conflicts of interests inherent in the current reporting of sexual abuse by peacekeepers and UN personnel.
- 3) Issue UN system-wide procedures and provide meaningful training to all UN staff working in peacekeeping missions on reporting sexual abuse by peacekeepers and other UN personnel. Institute mandatory reporting of child sexual abuse to the appropriate authorities.
 - 4) Recognise that protections afforded to UN staff who report externally sexual and other abuses by peacekeepers and other UN personnel, are presently inadequate and that changes to existing accountability structures are urgently needed. The Secretary General has referred to the peacekeeper abuses as a “scourge” and has recognized that the UN has failed to protect vulnerable people, including children, from sexual abuse. He should now recognize that the UN has also failed to protect its own staff members who reported and exposed these failures.
 - 5) Institute zero tolerance for all senior UN officials whose conduct fails to meet the highest standards of ethics and integrity – conduct that amounts to actionable abuse of authority is set too high. The UN leadership must itself uphold the highest standards. Recent failures to hold UN senior officials to account have eroded trust in the UN leadership. This negatively affects the UN’s image, reputation and ability to deliver on its important mandate and through the impunity it creates, further contributes to a climate of fear among staff members that reduces reporting of abuses.
 - 6) Apologize to Mr. Kompass.

From the US State Department;

- 1) Public confidence in the UN and hence its ability to deliver on its mandate has been seriously eroded by the peacekeeper sexual abuses and by the Kompass case. Demand zero tolerance for all senior UN officials whose

conduct fails to meet the highest standards, irrespective of their role, function or nationality. Where the State Department has reason to believe a UN official has not upheld the highest standards, or public confidence in that UN official has been eroded, call for the official's removal from office. This is to protect the UN as an institution.

- 2) Publicly recognize the serious flaws in the protections from retaliation afforded to UN staff who report sexual and other abuses by peacekeepers or UN personnel. As the Kompass and other cases show, existing internal accountability structures lack independence and afford little protection from retaliation. Until such time as UN whistleblower protections are improved, the State Department should exercise its good offices in selected high profile whistleblower cases, such as the Kompass case, to limit reputational damage to the UN.
- 3) Seek amendments to the UN frameworks for the Administration of Justice (UN General Assembly resolutions) and whistleblower protections (Secretary General's Bulletin SGB/2005/21) to:
 - Amend the narrow definition of a "protected activity" and hence the definition of a UN whistleblower to ensure that UN staff, such as Mr. Kompass who reported allegations of child sexual abuse by foreign peacekeepers are not excluded. Reporting of all violations of human rights must be included under the definition of protected activity, regardless of who commits them.
 - To expand the UN whistleblowers' access to justice, ensure that they have access to independent external arbitration, consistent with the provisions of the US Consolidated Appropriations Act 2016, Section 7048; such access does not currently exist.
 - Institute special protection measures for whistleblowers who report allegations of wrongdoing by the UN leadership. Whistleblowers may be vulnerable to retaliation across the UN system (not just in the organization where they blew the whistle) and for the duration of their career. Because of the political linkages at the top of the organizations, UN whistleblowers

- can be subject to retaliation, in other parts of the UN system, even many years later. Moreover the nature of immunity of international organizations can breed impunity at the highest levels.
- Best practice in relation to burdens of proof. Currently, where there are adverse employment decisions taken against a UN whistleblower, the onus is on the whistleblower demonstrating retaliation, as opposed to the best practice of placing the onus on the employer to prove that no retaliation occurred.
 - 4) Implement the provisions of the US Consolidated Appropriations Act 2016, Section 7048, on whistleblower protections.
 - 5) Ensure that the next UN Secretary General is committed to eradicating sexual abuse in peacekeeping and is committed to protecting whistleblowers from retaliation. This is especially important given the lack of Freedom of Information Access at the UN.

I thank this Committee for its ongoing engagement and look forward to working with the Committee and US Government to see that meaningful and effective reforms are instituted.