

# **Challenges and options in improving recruitment processes in the context of Protection from Sexual Exploitation and Abuse (PSEA) by our own staff**

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This report outlines the challenges and options in improving recruitment processes in the context of PSEA within the UN system and NGO system (separately). The report outlines good practices and recommendations to be presented at the IASC Principals' meeting in December 2013.

**UNDP**

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## **Executive Summary**

“The problem of Sexual Exploitation and Abuse (SEA) has been in the forefront of our thoughts since 2002”.<sup>1</sup> While progresses have been made, our reports show that some of our own people continue to abuse their position of power and sexually exploit the people they are mandated to protect.<sup>2</sup> By doing so they destroy hope and undermine our credibility as humanitarian, development and peacekeeping organizations. Evidence shows that the recruitment systems of internationally working organizations are not able to identify these perpetrators, even if they have been separated by another aid organization – or even worse - by another duty station of the same organization.

To respond to this problem a team of specialists (combining the professionalism of United Nations and NGO colleagues working in HR Policy, Recruitment, Ethics, Conduct and Discipline and Protection from Sexual Exploitation and Abuse by Own Staff) have put together a package of complementary recommendations in order to mitigate the liability risk that comes with the recruitment of a person that has a record of unethical behavior. This report contains recommendations for UN Agencies and the NGO Community.

### **The UN recommendations (14 in total) have been divided in three pillars:**

Pillar 1: Applicant (recommendations that address actions to be taken by the Applicant during the recruitment process)

Pillar 2: Agency (recommendations that address individual agencies’ processes and procedures during a recruitment process)

Pillar 3: Information sharing between agencies (recommendations aimed at strengthening information-sharing between UN agencies)

### **The NGO recommendations include a total of six recommendations addressing the importance of:**

1. Making a clear commitment to PSEA in job advertisements and job descriptions;
2. Undertaking thorough reference checks;
3. Categorizing roles depending on their contact with children and other vulnerable groups;
4. Including clauses on conduct in contracts with non-staff who have contact with affected populations;
5. Rigorous adherence to misconduct policies;
6. Sharing information regarding SEA violations (to the maximum extent allowable under law).

### **The Task Team suggests that the Principals encourage each IASC organization to:**

- support the recommendations in principle and to implement (to the extent possible and adapted to their legal context) the recommended actions;
- report back to the IASC Principals by end of 2014 about their progress in implementation of the recommendations.

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<sup>1</sup> Carolyn McAskie (2010) Global Review of Protection from Sexual Exploitation and Abuse, page 11

<sup>2</sup> Special Report of the Secretary General on Special Measures for Protection from Sexual Exploitation and Abuse (A/67/776); IASC (2010) Global Review of Protection from Sexual Exploitation and Abuse

## **1. Background**

In December 2012, the Inter-Agency Standing Committee (IASC) Principals requested:

*“...that Human Resources Directors in cooperation with respective Offices of Legal Affairs and Senior Focal Points organize an ad-hoc task team on identifying challenges and options in improving recruitment processes in the context of PSEA with the goal of providing a report on good practices and recommendations at the next Principals meeting in December 2013.”<sup>3</sup>*

UNDP offered to lead the Task Team looking at the opportunities and challenges within the UN System and brought together a Task team addressing the same for NGOs.

The UN sub-group comprised representatives of the UN Secretariat and DFS, IOM, UNHCR, UNICEF, WHO, and UNDP combining the professionalism of colleagues working in HR Policy, Recruitment, Ethics, Conduct and Discipline, and in PSEA. The sub-group met regularly since March 2013 to define gaps and strengths within the UN recruitment system, upon which the below outlined recommendations were formulated.

The NGO sub-group was composed of PSEA and HR specialists from a cross-section of international NGOs. The Task Team decided to produce a suite of resources, to include the following:

1. Publicity materials on ‘exploding the myth’ – demonstrating that these issues are possible to address (to be made available by end of 2013).
2. Clear guidelines on the legal parameters of addressing this issue, for the main countries where NGOs are headquartered (to be made available by end of 2013).
3. Good Practice Guidelines (included herein), comprising a set of recommendations, followed by guidance based on good practice shared by NGOs.

For more information about the overall mandate of the Task Team, see Terms of Reference (Annex 1).

The scope of this study has been limited to analyzing recruitment procedures and practices. It will not address the very important issue of holding SEA perpetrators accountable or include any other preventive measure.

## **2. Recommendations for the United Nations**

It is recalled that the overarching principles regarding the employment of staff “shall be the necessity of securing the highest standards of efficiency, competence, and integrity.”<sup>4</sup> The Secretary-General is accountable for ensuring that these elements are of paramount consideration in securing staff. Staff bear the corresponding accountability to comply with the standards of conduct as set out in the Charter of the United Nations, the Staff Regulations and Rules and other administrative issuances.<sup>5</sup> The

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<sup>3</sup> IASC, Final Summary Record and Action Points of IASC Principals meeting, January 2013.

<sup>4</sup> ST/SGB/2001/1, Article 1, Regulation 1.1

<sup>5</sup> ST/SGB/2011/1, Rule 1.2

following recommendations are based on these overarching principles and are divided in three pillars for the purpose of easier understanding by the readers of this document:

**Pillar 1: Applicant** (recommendations that address actions to be taken by the Applicant during the recruitment process)

**Pillar 2: Agency** (recommendations that address individual agencies' processes and procedures during a recruitment process)

**Pillar 3: Information sharing between agencies** (recommendations aimed at strengthening information-sharing between UN agencies)

## Pillar 1: Applicant

### **1. Self-declaration in p-11**

It is recommended that the use of any kind of United Nations Personal History form (PHP, p-11 etc.) is maintained. The form is completed and submitted by candidates at the time of application. With the submission of this form candidates are requested to certify with their manual or electronic signatures that the information they have given are true, complete and accurate. This way the form becomes the authoritative source for reference checking.

### **2. Certificates attesting to the lack of criminal records (from home country, country of residence, last duty station)**

Details: Many national authorities formally issue reports on individuals' criminal or police records. Where possible, a candidate should be requested to obtain from relevant national authorities such a formal record for submission either as part of the application or during a later verification and reference check phase. As International Organizations' workforce is largely expatriate; such report should be requested not only from the country of nationality but those authorities that may have a record on the individual based on prior (physical) residence.

Benefits: A formal record from a national authority will more reliably provide information on prior arrests and/or convictions than assurances from a candidate alone (such as a PHP), which are often difficult to verify without significant additional administrative burden. This approach will lead to a more solid screening and vetting process, likely without or at least less legal or privacy challenges as the report would have been requested by the individual him- or herself, rather than through the recruiting Organization as a third party.

Risks: Not all countries' national authorities maintain reliable records, or not in a centralized manner that would permit the generation of a report; or do not issue such reports at all (especially for non-residents). Differences in nationality and residency will lead to unequal results and quality of reports for candidates. Further, submissions of any document by a candidate (compared to receiving a document directly from a national authority) are subject to potential forgery.

**Sub-option:** The above mentioned recommendation can be applied to limited functions that are sensitive, such as oversight services staff or staff dealing with children and other vulnerable groups (see recommendation #8).

### **3. Sign information and liability release so hiring entity can undertake checks and former employers are permitted to share information upon request**

Details: A release form (waiver) signed by a candidate (at the time of offer) facilitates collection of information from third parties by a recruiting Organization. The form essentially informs third parties such as universities or prior employers of the candidates' personal permission to share relevant information about his or her qualifications or employment record upon request with the recruiting organization. Some Organizations already use such release forms.

Benefits: The form significantly increases the efficient collection of relevant information from third parties; as third parties would be able to rely on the assurances in the release form that the former employee will not take legal action against such third party for disclosing information to the recruiting organization.

Risks: Depending on the national labour and privacy law background, or an employer's internal policies, not all third parties will provide the requested information even in case of a signed release form for fear of repercussions. Some employers will also not rely on a copy of a release form signed by a former employee without first verifying the authenticity with the former employee directly first. Finally, use of waiver and release forms are relatively recent developments and have not yet proven as a reliable safeguard in the system of the administration of justice. They are, however, a significant improvement to prior practices of information gathering without such a release form. In the personal history form (e.g. PHP) an applicant has the option that the current employer is not to be contacted (to keep the applicants intention to change employer confidential). If this option should be removed there is a risk that less people will apply.

### **4. Present a "Certificate of service", including the information on performance and conduct, when applying for positions within the UN system.**

Details: In many regulatory frameworks of UN system organizations exists a specific proviso on a current or former staff member's right to request a certification of service. These normally include service dates and function, but can also include information on conduct and performance upon request by the staff member<sup>6</sup>.

Benefits: Such a certification would provide additional information on conduct and performance that is often not shared among organizations in case of movement of staff between them. As a standard procedure is usually already in place, it can be generated by a former employing entity with relative ease

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<sup>6</sup> UN staff rule 9.12 states: "Certification of service: Any staff member who so requests shall, on leaving the service of the United Nations, be given a statement relating to the nature of his or her duties and the length of service. On the staff member's written request, the statement shall also refer to the quality of his or her work and his or her official conduct."

and negligible administrative effort. Since it is issued upon request by a staff member, there appear to be no or only limited legal or privacy issues that would arise.

Risks: There will be differences in being able to obtain such certifications for candidates who have previously served in an entity that has such a rule and policy in place compared to those candidates with a different former employment history. Further, as per recommendation 2 above, submissions of any document by a candidate (compared to receiving a document directly from the source that produced it) are subject to potential forgery.

## Pillar 2: Agency

### **5. Include compliance to standards into recruitment process and the lifecycle of an employee (on job site, in VA, PHP, offer letter, appointment letter etc.)**

Details: There is room for improvement in the currently used online platforms, documents and templates throughout the application, selection and onboarding process. Updating and improving the language components is required to properly inform a candidate, in advance, of the expected standards of conduct, reference checks that will be conducted, consequences of inaccurate information the candidate may have supplied, and consequences of any changes in conditions applicable to an offer of employment or of information provided by the candidate.

Benefits: Clarity in language on expectations from a candidate on conduct and on providing and updating information submitted at the time of application throughout the recruitment process, and consequences of inaccurate information or of not reporting changes in relevant personal conditions will close identified gaps in the currently used instruments for a number of scenarios that have proven challenging for Organizations. It will also address shortcomings found by the UN Dispute Tribunal in the communications between candidate and Organization. To illustrate, an offer may state that it is subject to medical clearance, visa and reference checks, but not what the consequences are when those do not materialize (withdrawal/rescission/payment of indemnity etc.), nor consequences of changes in conditions between acceptance of offer and entry into duty. On inaccurate information provided by an applicant, additional clarity is also required to address the different stages between date of application, date of offer, acceptance of offer, and entry on duty. Finally, stronger language in the letter of appointment referring to the information supplied at the application stage and thereafter would facilitate administrative action for “facts anterior” that would have prevented the person’s appointment.

Risks: The adjustments to vacancy announcements, inter- and intranet-sites, offers, confirmation of offers and letters of appointments should be closely coordinated with respective legal affairs offices in each Organization to avoid imprecise changes in language that will not add value.

**6. “Establish transparency on reference checking on highest standards of efficiency, competence and integrity visible (to be noticed by any person who considers to apply) - from the job sites, the VA, to pre-offer, offer and appointment letter)”. (JIU/NOTE/2013/1)**

Details: Best practices call for informing external candidates at the application stage about the reference check procedure and its implications in their recruitment process, and explaining what kind of cooperation is expected from them and at which step in the process. Candidates can be involved in the process without compromising its integrity, for instance with regard to, inter alia, updating contact details of persons or entities that should be contacted, and collecting certificates of criminal records. Informing candidates early about reference checks helps expedite the process, as this may facilitate human resource management or recruiters’ communication with appropriate sources of information on the personal history of candidates.” (JIU/NOTE/2013/1)

Benefits: Candidates are aware of the expectation of the employer even before they start the application process and the message is continued throughout the application, selection and recruitment process. It may deter candidates who do not meet these highest standards and result in improved quality of applicants. It also shows commitment by the UN organizations to these standards as they are reiterated at each step of the process.

Risks: “Reference checks are not conducted in a thorough, systematic and timely manner and results are not properly documented and stored, the reality may differ from the process outlined in writing. This could raise concerns of applicants and staff about the real commitment behind the words.” (JIU/NOTE/2013/1)

**7. “Request a liability release from each candidate (Means the candidate by applying agrees to waive their right to sue the organizations and individuals involved in reference obtaining and giving)”. (JIU/NOTE/2013/1)**

Details: “The application forms and/or the personal history forms incorporate a liability release agreement, by which the candidates authorize the organization to make inquiries on their background and agree to release both the organization and the respondents to these inquiries from any legal claim and liability. The manually or electronically signed release agreement forms or relevant application excerpts accompany the organizations’ requests for information on the candidates.” (JIU/NOTE/2013/1)

The JIU report (JIU/NOTE/2013/1) states that, the “United Nations OHRM agreement form is considered the most appropriate form for all organizations, given that this model protects the organization’s interests. Its text explicitly names the organization and its employees in the list of parties that the candidates release from any liability for collecting information on their background.” (JIU/NOTE/2013/1)

Benefits: Reduces the risk to those providing information to face legal claims and could potentially facilitate the parties’ response.

Risk: Needs to be checked if this is compatible with UNDT/UNAT or ILOAT case law.



**8. “Distinguish between specific groups of staff/personnel (key sensitive functions such as oversight services staff or staff dealing with children and other vulnerable groups)” (JIU/NOTE/2013/1)**

Details: The JIU report recommends that background checks on education, employment and character and personal checks are conducted for all staff. For specific groups of staff the JIU report recommends additional checks. “Human resources officials document recruitment cases for posts of security officers and other key sensitive functions (for example, oversight services staff or staff dealing with children and other vulnerable groups) with certificates of non-conviction or equivalent certificates relevant to their criminal record; the collaboration of Member States is sought for the expeditious issuance of such documents.” (JIU/NOTE/2013/1)

Along these lines the task force recommends that staff working with children and other vulnerable groups should be under-going additional checks for example for past criminal convictions or disciplinary measures and sanctions imposed by an UN organization.

Risks: Potentially overlooking other groups of staff by limiting the checks to a small group of staff. In view of the fact that various organizations have a rotation policy and given that staff are horizontally mobile within organizations, it may be prudent to apply a “higher” standard to all employment and stringent checks should be made for horizontal reassignments.

**9. Include language into the offer of appointment and the appointment letter that provides the organisation with the right to react to the new information when it arises independent on the length and quality of a staff member’s services**

Details: Ensures that the organization has the right to react to wrong or incomplete information provided by or about the candidate, whenever the accurate information arises (also after 10 years of good service). This recommendation provides the organization with legal grounds to address any wrongdoing of an applicant or staff member through disciplinary procedures, even if the organization did not realize the misconduct close to its occurrence or before hiring the person.

**10. Include non-staff personnel in the system of reference checks**

Details: “A JIU review of individual consultancy in the United Nations system found that the use of non-staff across the United Nations system is on the rise and that such personnel represent a significant part of the total workforce. The report suggests that reference checking for non-staff should be established and/or reinforced as well” (JIU/NOTE/2013/1). This is specifically important in view of the fact that non-staff personnel’s misconduct is as damaging to the organization’s reputation as any staff member’s misconduct. Moreover, non-staff personnel are an important source of new talent.

Risks: Expanding screening to additional non-staff members, if not done presently, might require allocation of significant additional resources, both in terms of staff and funding.

## Pillar 3: Information sharing between agencies

### **11. Exchange of names and relevant information regarding civilian personnel who have been terminated or otherwise separated from service in substantiated cases of SEA or other misconduct.**

Details: The Secretary-General's commitment to PSEA was reconfirmed in his recent report on Special measures for protection from sexual exploitation and sexual abuse<sup>7</sup>. In the context of strengthening governance, oversight and enforcement, the Secretary-General committed to work with the United Nations agencies, funds and programmes "to ensure that systems are agreed upon to exchange information confidentially. This will include both information on reported allegations of sexual exploitation and abuse, as is currently the case, and the names of all civilian personnel who have been terminated or otherwise separated from service in substantiated cases of sexual exploitation and abuse."<sup>8</sup>

It is recommended that the United Nations expand the strict commitment to share information regarding all civilian personnel who have been terminated or otherwise separated from service in substantiated cases of sexual exploitation and abuse to include similar circumstances in cases of misconduct beyond SEA, and cases of civilian personnel who have "resigned under a cloud" when disciplinary proceedings were outstanding. By doing so, the Task Team recognises the importance of informing agencies of other forms of misconduct (in addition to SEA) and making best use of such information-sharing system.

The Task Force considered it prudent that each entity have their Legal Offices review the recommendation for consideration of its applicability within their specific legal framework.

#### Risks/Challenges:

- The need to develop a shared understanding of the triggering point for information sharing between agencies (e.g. upon request from one agency as opposed to a blanket expectation of proactive, ongoing information sharing);
- The need to develop information management solutions that would take into consideration the need for confidentiality, timeliness and systems' compatibility between agencies;
- If a staff member has been terminated, this is based on an internal administration process. Use of an "internal" decision to prejudice the employment prospects and/or reputation of a staff member outside the institution could be open to legal action by the concerned individual on grounds of defamation. Option: Insertion of a clause in the employment contract (signed by staff member) informing s/he that if s/he is terminated on grounds of misconduct, partner agencies will be informed of termination;

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<sup>7</sup> A/67/766

<sup>8</sup> Ibid, paragraph 29

- With regards to sharing information for civilian personnel who have received a disciplinary sanction other than termination/separation, a staff member may argue that the only purpose of this is to prejudice the reputation and working conditions of the concerned staff member

**12. Exchange of names and relevant information regarding civilian personnel who have received a disciplinary sanction other than termination/separation in substantiated cases of SEA or other misconduct.**

See details, challenges and options listed under recommendation no. 11 above.

**13. Exchange of names and relevant information regarding civilian personnel who resigned from the Organization during disciplinary proceedings in connection with SEA (only).**

Risks: With regards to sharing information for civilian personnel who have resigned from the Organization during disciplinary proceedings, there may be an argument that this proposal undermines the principle of “presumption of innocence” and increases the risk of legal challenge by staff who may argue they resigned during an investigation due to stress or frustration with the Organization.

Option: At the appropriate time, the following is proposed where a civilian staff member has “resigned under a cloud” during the course of an investigation: should a civilian staff member resign during an SEA investigation, the staff member would be asked to sign an agreement with the Organization by which he or she would agree that they would not be rehired unless they cooperate in full with the conclusion of the investigation. The Organization would then agree to the corresponding obligation to finalize the investigation within a determined timeline.

**14. Document the reference checks (to share ref checks for inter-agency mobility) (JIU/NOTE/2013/1)**

Details: “The CEB, through the HLCM, taking into account the benchmarks set out in the present note, should facilitate the standardization and harmonization of reference checking procedures across the system with a view to further support inter-agency mobility and the One United Nations goal.” (JIU/NOTE/2013/1)

### **3. Recommendations for the NGO Community**

#### **1. NGOs should be clear on their organisation's commitment to PSEA when recruiting new staff**

Why: Making it clear that your organisation has a strong commitment to PSEA, and has the policies and procedures in place to address it in the recruitment process, will send a strong message to applicants, and may deter perpetrators from applying.

##### Good Practice Guidelines:

- 1.1 The NGO's commitment to PSEA should be stated in the job advertisement. In the case of the online application processes, this should be reiterated as part of the application steps;
- 1.2 Job descriptions should include clauses outlining the conduct expected from staff, and referring to the NGO's policy on PSEA.

#### **2. NGOs should undertake a thorough reference check in every recruitment process. This should elicit as much information about the candidate's conduct and behaviour with respect to safeguarding concerns, as is allowable under relevant law.**

Why: Perpetrators of SEA are often hired and re-hired by organisations because thorough reference checks are not undertaken.

##### Good Practice Guidelines:

- 2.1 A minimum of two reference checks should be undertaken. One should be from the candidate's line manager or HR manager of the candidate's most recent employer, (with consent of the candidate) whether or not they are given as a referee;
- 2.2 Include questions relating to safeguarding in your reference check;
- 2.3 A thorough reference check procedure should not be waived under any circumstances, even in a first phase humanitarian response. Experience of many NGOs has shown that not undertaking a thorough process often results in more time taken to manage out and replace unsuitable candidates. At worst, it can result in affected populations being exposed to risk;
- 2.4 Consider a pastoral or character reference. For faith-based organisations, this is usually a reference from a religious leader. For other organisations, a person of high standing in the community could be used. These references attest to the candidate's general conduct and behaviour in both professional and personal life. There are often fewer legal restrictions on the kind of information that can be included in a pastoral or character reference. These references should be taken up in addition to the minimum of two professional references recommended in these Guidelines. These should complement, rather than replace professional references.
- 2.5 Great care must be taken when information is received about a candidate outside of the reference process. This information cannot be used as part of the selection process. Where there is cause for concern provided by another organisation, then that organisation must be pressed to provide information in the form of a reference if they are a named referee (if not, the

candidate could be approached to provide details of further referees). Confidentiality should be taken into account at all times. It may be useful to remind the person offering the information of the duty of care that we all have to affected populations and that avoiding full disclosure of the facts (where legally appropriate) could lead to unsuitable candidates being appointed or to candidates being treated unfairly;

- 2.6 In some countries it is not customary to provide references, and individuals hold record books detailing their work history. Your NGO will need to decide whether this kind of reference is acceptable in the recruitment process, and if so how to mitigate the risk of the information being incomplete or misleading;
- 2.7 Some larger NGOs have a dedicated department to undertake internal checks. In either case, ensure that the roles and responsibilities of the hiring manager and the department or agency responsible are clearly defined in order to make sure that the entire vetting process actually occurs;
- 2.8 Where possible, ensure the reasons the candidate has given for leaving their previous organisation match the previous employer's reasons for the candidate leaving.

**3. NGOs should consider criminal record and other background checks, in particular for those cases where the risk of SEA is greatest, such as positions that will have contact with children and populations who may be vulnerable.**

Why: Perpetrators of SEA are often hired and re-hired by NGOs because sufficient background checks were not undertaken. Background checks are not limited to criminal record checks (CRC) – they can include checks on professional licences, educational history and others as appropriate.

CRCs are not always available, or may take a great length of time to process. Neither are they always reliable – there is always a risk that they might be fraudulent. CRCs alone will not prevent perpetrators from working for our organisations, but are one of the tools at our disposal to implement a preventative approach to safeguarding the populations we work with.

Good Practice Guidelines:

- 3.1 Request written consent from candidates to conduct a background check. Employers should hold staff members to account for any misstatements, omission or falsification related to the background check process;
- 3.2 Where possible, conduct a CRC for all candidates (national and international) in their home country and other countries they have worked. A CRC is usually obtained from a government agency and many can be obtained via internet. Some larger NGOs have a third party background check company conduct worldwide CRC;
- 3.3 During the recruitment process candidates should complete a disclosure of convictions form, in keeping with the parameters of national employment law;
- 3.4 Ask the referee if they are aware of the candidate having a criminal record or any issues related to child protection that the employer should be aware of.

#### **4. NGOs should include clauses on conduct in contracts with non-staff who come into contact with affected populations.**

Why: The people who come into contact with affected populations most frequently in the course of our programmes are not always employees of our organisations. Partners, volunteers, incentive workers, contractors, consultants, media, visitors and others can all to varying degrees present a safeguarding risk to the populations we assist.

##### Good Practice Guidelines:

- 4.1 Ensure there is agreement between your organisation and your partners as to what is expected of staff in terms of conduct. Undertake a scoping exercise of what safeguards are already in place - partner organisations may have their own Codes of Conduct and policies to deal with SEA. If there are gaps, consider including a clause in your contract with the partner organisation detailing what is expected in terms of PSEA, and where accountability will lie for conduct of partner staff;
- 4.2 Include a clause on conduct in contracts with contractors, volunteers, incentive workers, and other non-staff where a contract is required;
- 4.3 For non-staff who do not have a contract with your organisation, conduct a risk assessment of their contact with affected populations. Measures to reduce risk might include a clear statement on expectations of conduct when briefing them on the work to be undertaken.

#### **5. NGOs should be rigorous in adhering to their misconduct policies when following up concerns of SEA, including undertaking a thorough investigation when appropriate.**

Why: Staff who have committed SEA are often re-hired, or hired by another organisation because there is no record of misconduct. When concerns are raised about staff behaviour, it is our duty to the individual and to affected populations to follow up on them through our formal HR processes. If HR processes find misconduct, records should be stored centrally and confidentially so we can use the information in recruitment processes internally and externally.

##### Good Practice Guidelines:

- 5.1 Ensure your organisation has a clear policy regarding investigations, and trained staff to undertake them. If this is not possible within your organisation, external resources are available (such as HAP's Building Safer Organisations programme) and your organisations should determine what is appropriate;
- 5.2 Where an investigation is necessary, ensure that the policies and procedures of your organisation are followed thoroughly, to completion. Where possible, investigations should be completed even if the staff member leaves the organisation;
- 5.3 Ensure that documentation relating to the investigation is complete and stored centrally and confidentially;

- 5.4 Raise awareness amongst staff on investigations, including under what circumstances they happen, what procedures are followed, and to what extent (if any) the outcome will be shared with stakeholders. This will increase staff understanding and support whistle-blowers;
- 5.5 Whenever possible, ensure that resources for investigation are included in budgeting processes.

**6. NGOs should consider mechanisms to share information with each other regarding SEA violations, to the maximum extent allowable under law.**

Why: Sharing information with other employers can be a valuable tool in preventing perpetrators of SEA from being re-hired. The law varies in different jurisdictions as to how much (if any) information can be shared in this way. Fearing litigation should not be a barrier to addressing PSEA in recruitment procedures; however NGOs need to be aware of the legal implications of sharing information in the public domain.

Good Practice Guidelines:

- 6.1 When dismissing an employee for misconduct, it can be helpful to agree the content of the reference before they leave, as this will provide future employers with the facts while ensuring that the employee is aware of the reference content. Where a settlement is reached it is usual to agree the wording of a reference with an employee as part of the settlement. Where there have been serious problems with conduct or performance that were not put to the employee and properly investigated, then these cannot be mentioned in the reference. If the person was under investigation when they left, this should be stated;
- 6.2 In some countries, it is possible to include a clause, or waiver, in employee contracts that states the employer's right to make public information regarding any serious violations of the employer's Code of Conduct.
- 6.3 Ensure that thorough exit interviews are undertaken, in order to formally capture and document some of the information that would be valuable to a future employer in a reference.

## **Annex 1: Abbreviations**

IASC	Inter-Agency Standing Committee
CRC	Criminal Reference Checks
ILO	International Labour Organization
IOM	International Organization for Migration
NGOs	Non-Governmental Organizations
PSEA	Protection from Sexual Exploitation and Abuse
SEA	Sexual Exploitation and Abuse
SGB	Secretary General’s Bulletin
UNAT	United Nations Appeals Tribunal
UNDP	United Nations Development Program
UNDT	United Nations Dispute Tribunal
UNHCR	Office of the United Nations High Commissioner for Refugees



## **Annex: 2 Terms of Reference**

### **Terms of Reference for a Task Team to identify challenges and options in improving recruitment processes in the context of PSEA**

#### **Background**

In December 2012, the Inter-Agency Standing Committee (IASC) Principals agreed to identify challenges and options in improving recruitment processes in the context of Protection from Sexual Exploitation and Abuse (PSEA) with the goal of providing a report on good practices and recommendations at the next Principals meeting in December 2013.

UNDP volunteered to compose and lead a Task Team to undertake the above mentioned research.

#### **Purpose of Task Team**

The Task Team will review legal issues surrounding the problem of hiring and rehiring persons who have committed misconduct or are alleged to have committed misconduct.

Initial consultations have shown that it should be legally feasible to put in place measures to prevent the hiring of persons sanctioned for SEA related misconduct.

The Secretary-General will work with the United Nations Agencies, Funds and Programmes to ensure that proposals are developed to exchange general information both on reported allegations of sexual exploitation and abuse and on sharing the names of all civilian personnel who have been terminated or otherwise separated from service in substantiated cases of sexual exploitation and abuse as a prevention measure against possible future reemployment in the United Nations.

However, it will be a challenge to develop a good practice, respecting due process for staff and non-staff members when dealing with alleged perpetrators who leave the organisation before an investigation is finalized and disciplinary charges have been made.

Another challenge will be the difference in the legal systems of UN and non-UN organisations. Therefore it is suggested that as a start the Task Team will work in two subgroups: The first subgroup will address issues within NGO's, the second subgroup the issues of UN System organisations. Depending on the outcomes of the two groups' work it might be recommended integrating the work and develop joint recommendations to the IASC Principals.

Specific activities include:

- Identify good practices among UN agencies and the NGO community by undertaking consultations among human resource and legal specialists;
- Develop concrete measures that follow the identified good practices;
- List the issues that have not been addressed so far;

- Clarify if there are solutions to respond to any of the issues still complying with the standards of due process;
- List the issues that the subgroup cannot find any solution to;
- Integrate the work of the two subgroups; and
- Develop recommendations for the final report for submission to the IASC Principals by end of November 2013.

### **Composition**

As mentioned above, it is suggested that the Task Team builds two subgroups in order to facilitate the finding of solutions, as the legal framework of UN System Organizations strongly differs from the legal framework of internationally working NGOs.

Each subgroup of the Task Team should ideally be composed of specialists from the following areas of work: PSEA in international field; international administrative labor law, Human Resources, Audit, Investigation, Accountability, Compliance etc., representing either the international NGO community, or UN System organizations, including peacekeeping, as they face another challenge due to the different kind of personnel.

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