

INVESTIGATION OF CASES OF SEXUAL EXPLOITATION AND ABUSE BY AID WORKERS: CHALLENGES AND RECOMMENDATIONS

Background paper to 2016 CHS Alliance PSEA Conference
5-6 September 2016: Bangkok, Thailand

INTRODUCTION

The CHS Alliance (formerly as HAP International) has been working on Protection from Sexual Exploitation and Abuse (PSEA) for a number of years, and particularly since 2006 when it took on the Building Safer Organisations project, created by the International Council of Voluntary Agencies (ICVA). Investigations of allegations of sexual exploitation and abuse (SEA) pose repeated challenges to organisations, as highlighted in feedback from participants at CHS Alliance events such as training workshops or conferences. Lack of resources, indifference by senior management, improper planning, lack of adequate policies and procedures or insufficient implementation, can affect organisations and appointed investigators.

Nevertheless, effective investigations act as a strong deterrent for potential perpetrators and are vital to prevent further SEA. The limited number of tools and resources available on investigations¹ led participants at the [2014 PSEA conference](#) to identify a crucial need for an exchange of experiences on the subject. The CHS Alliance aims to address this by focusing its 2016 PSEA conference on investigating allegations of SEA by aid workers.

In order to prepare for the conference, a meeting of experts in investigation and/or PSEA was convened on 5 July 2016 to highlight some of the main challenges and recommendations on the theme. This background paper reflects their much-valued contribution. It is not intended to be exhaustive but rather aims to open discussion and offer some good practices and advice.

The paper is divided into:

- Challenges from an organisational perspective.
- Challenges from an investigator's perspective.
- Responsibilities of the humanitarian sector as a whole.
- Conclusion.
- References and other resources.

Participants at the meeting of experts included:

- Christine Ash-Buechner (independent consultant)
- Tristan Burnet² (International Organization for Migration)
- Hannah Clare (Oxfam GB)
- Geneviève Cyvoct (meeting co-facilitator, CHS Alliance)
- Karen Glisson (CHS Alliance)
- Lucy Heaven Taylor (meeting facilitator and independent consultant)
- Paul Nolan (GCPS Consulting)

¹ See the resources at the end of the article.

² Tristan Burnett provided inputs on her experience with interagency community-based complaints mechanisms and referral procedures.

CHALLENGES FROM AN ORGANISATIONAL PERSPECTIVE

Role of management and decision-making authority

Where do PSEA and investigations sit within an organisational structure? Who has the overall responsibility for monitoring the investigation process and its effectiveness? Inadequate structures or lack of clarity can lead to confusion and tension, which prevent effective decision-making and clear guidance to investigators. On the contrary, clarity over who is responsible for decision-making, including on commissioning investigations, will help speed up the process of investigations.

Organisations place PSEA and investigations in a number of organisational levels and departments: headquarters, field office, human resources (HR), programmes, gender, protection, auditing etc. What works best? It seems that the closer PSEA and investigations are to top management, the better, as this increases trust and influence, while creating independence from other departments and reducing layers of line management. If a dedicated PSEA and/or investigations team is not possible, there should be at least one person, located as closely as possible to the organisation's CEO, who has the necessary decision-making powers to perform their role effectively³.

Organisations should prepare possible scenarios they can refer to when a crisis hits so it is clear who plays each role within the staff structure. Some organisations have incidence preparedness plans which include serious incidence teams. These specific teams then come together on a case management basis, with a clear protocol and fixed membership. Investigators should have clear terms of reference that designate one person as the investigation manager to whom they report. The investigation manager will then have responsibility for liaising with other organisational stakeholders, so that the investigators only need to communicate with one person.

It is important that top management constantly sends the message that PSEA is important by supporting the PSEA and investigation unit and also through awareness-raising activities at all levels of the organisation. It is important that this message is tailored to different levels of responsibility within an organisation; for the board it is about risk and legal liability whereas for field staff it is about concrete actions.

Communication: who needs to know what, management of rumours and confidentiality

Managing communications around investigations needs to be carefully thought through. Who needs to know what and how to ensure confidentiality is respected, are important questions. Experts tend to agree that communication is very context specific: in some cases the whole office can be affected and even the community might be aware of the incident. In other cases, communication might be needed only with a much smaller group.

One recommendation is to map out who knows what, then focus the communication strategy on acknowledging what is already known and preventing rumours. It is important to also ensure confidentiality is not breached and individuals are not put at risk. Sometimes, a simple and general message communicated across the office, such as: "complaints about misconduct were received and will be investigated", is what is needed. However, if a case is particularly sensitive and the subjects of complaints are not known, a general message would be detrimental. In such cases,

³ This recommendation is detailed as PSEA minimum operating standard number three in the IASC *Minimum Operating Standards for Protection from Sexual Exploitation and Abuse by our own personnel* (see resources section).

people have to be informed only on a need-to-know basis. How much information is shared and how much is kept confidential can be a hard balance to get right. Policies and procedures defining responsibilities can help and prevent information leaking.

It is necessary to remind everyone involved of the need for sensitivity and confidentiality, the importance of avoiding pre-judging the outcome, and the duty to be cooperative. Some organisations require staff to sign contractual confidentiality agreements for particularly sensitive cases, while others refer to employment contracts that pre-state the requirement of confidentiality. It might also be necessary to monitor information on social media. Lastly, if there are threats to the subject of the allegation and/or the complainant, it might be advisable to involve security to check if additional measures need to be taken, such as relocation.

Overlap between SEA and other types of allegations, such as fraud and corruption

Experience shows that SEA is more likely to occur in a context of breakdown of management practices, leading to increased impunity. In these environments, SEA allegations can co-exist with other types of allegations, such as fraud and corruption. Different forms of misconduct may be investigated by different units, and as such, different types of misconduct patterns involving specific offices or individuals may not be identified. It's often necessary for someone to look at different allegations from a distance to connect the dots. Without this birds-eye view, there is a risk of missing important information. There is also the risk, in the case of investigations being run in parallel, of having the same witnesses interviewed by different teams for different allegations. One way to increase communication across units is to have a mechanism in place, such as a case conference team, with an overview of past and current cases. Also, if multiple investigations have to be conducted at the same time, investigators should be able to coordinate and exchange information with one another as necessary. Lastly, it needs to be kept in mind that the incidence of fraud and corruption and/or sexual harassment can be a risk indicator of the occurrence of SEA.

CHALLENGES FROM AN INVESTIGATOR'S PERSPECTIVE

How to perform a watertight investigation

The purpose of an investigation is to gather evidence in order to make a decision on whether an allegation can be upheld or not⁴. An investigation process needs to be as thorough as possible in order to avoid litigation, which can sometime arise from minor elements such as something not being written in the investigation report. In the case of litigation, investigators should be able to demonstrate that due process was followed. Yet, in practice, investigators often face a lot of pressure in a context that is not easy. Challenges include missing documentation, unavailable witnesses, time constraints, and threats toward the organisation.

Investigations are about coming to a conclusion on whether or not, in the balance of probability, the evidence supports the alleged complaint. It is therefore important to manage expectations around what can be achieved. While investigators need to write a good report and be able to show they have followed policies and procedures, organisations need to understand that investigators are not the ones who will take decisions on the allegation. Rather, the investigators will hand over their conclusions to senior management who will make decisions on them. This outlines the need for a strong filing system: complex cases can sometime take years to close. Staff turnover and

⁴ For more detailed explanation on the purpose of an investigation, see p. 26 of the CHS Alliance *Guidelines for Investigations*, indicated in the resources section.

repeated allegations mean that information must be easily retrievable by the staff responsible, without compromising confidentiality.

Competences of investigators

Investigators need to have the appropriate knowledge and skills to perform their role. They need to understand the risks and responsibilities that come with investigations, be familiar with planning and evidence-gathering, and be skilled at interviewing and report writing. Training is a necessary step for all those who have to carry out an investigation. Eighty percent of participants trained through the CHS Alliance investigations training workshop carry out investigations afterwards. While it is advised that organisations ensure their staff members who are responsible for investigations attend relevant training, there are not many SEA investigation training providers. Smaller organisations also cannot necessarily afford training, unless funding is made available for PSEA training to be accessible to all. Another limitation of training is that it does not replace personal skills and experience. Coaching or mentoring by more experienced investigators should be encouraged, especially when experience is lacking.

Coaching is often performed when a programme location calls for a remote investigation, as is often the case in the humanitarian sector. Coaching is usually performed by an experienced investigator, to assist field staff in carrying out the investigation. This comes with its own challenges: lack of local capacity, time differences, and prioritisation of the investigation over other duties.

Important advice for coaching during remote investigations:

- It is important that the person who usually coaches has regular relationships with key stakeholders within the organisation at times outside of the investigation period. This could include for instance calling regional focal points on a regular basis.
- When allegations arise, the coach needs to be present at every step of the investigation in order to maximise the chance of success.
- As interviews are one of the most delicate aspects to coach remotely, questions should be prepared in advance. It is also important to remind the interviewer that if new pieces of information arise during an interview, questions should be revised accordingly.

Another issue often faced by organisations is that once capacity is built, staff leave an organisation. This is an issue of capacity building in general, and organisations need to have some sort of recognition in place for staff members who have increased their capacity over time, such as higher salaries or higher grades. Lastly, in times of restructuring, special care must be taken to avoid losing the capacity that has been invested in.

Personal awareness of prejudice and bias

Prejudice and bias can get in the way of an investigation's effectiveness and even influence the decision to start an investigation in the first place.

Examples of prejudice and bias:

- Investigators already having conclusions in mind and using the investigation to "prove" them.
- Gender bias such as thinking only men can be perpetrators; it is only recently that women have started to be prosecuted for sexual abuse.
- Blaming the victim who is then held partially responsible for what happened.

Again, it must be emphasised that the role of the investigator is not to make a judgment but to obtain information and document it in a report. It is important that managers and investigators do not jump to conclusions, and that they recognise their biases and are able to put them aside.

RESPONSIBILITIES OF THE HUMANITARIAN SECTOR AS A WHOLE

Capacity and support available within the sector

How could the investigation capacity gap be filled? Besides training, the CHS Alliance has been offering ongoing support, including through recommending investigators to organisations. The IASC Accountability toward Affected Populations/PSEA Task Team also offers helpdesk support. However, is there more we can do to fill the capacity gap? One suggestion is to focus on existing coordination structures for greater impact and to wider disseminate existing resources on PSEA. For instance, we could advocate for humanitarian coordinators to be provided with a list of available trained investigators to assist agencies, either directly or through coaching, looking for additional capacity should they need to investigate allegations of SEA. Other suggestions might be to build a community of practice, using online platforms or applications, as well as engaging with PSEA champions who can help support others and further advocate for PSEA.

Additional guidance and tools to strengthen PSEA capacity of organisations

Alongside the above, how could additional support and tools help organisations strengthen and roll out their policies and procedures including their staff code of conduct, complaints policies and procedures, and investigations guidelines? While more and more organisations are equipped with PSEA policies and procedures, they do not always align with the organisation's staff structure to the extent that staff members have a good understand of their role in PSEA and investigations. Hence, once allegations arise, mistakes and delays can impact confidentiality and effectiveness. If we were to develop additional guidelines for organisations, what would they be? How can these best target specific roles and needs within an organisation? Middle management and country managers seem to be those who are most left out of current guidance on PSEA and investigations. PSEA is not their field of expertise, yet they need to know when and how to act, including where they should report cases if necessary.

Joint investigations

The incidents of SEA by humanitarian workers and peacekeepers in West Africa discovered in 2002, as well as subsequent similar cases, involved allegations of SEA by staff from several agencies. As the number of joint complaints mechanisms implemented increases⁵, allegations involving several agencies are likely to be on the rise. How do we avoid running parallel investigation processes? How can agencies work together on investigations? Trust and information-sharing appear to be one of the challenges here, as organisations wish to control the process and own the results. Different organisational sizes and capacities might also bring barriers for collaboration on an equal basis across agencies. Positive examples of joint investigations point to the need for pre-existing good relationships and trust amongst staff of the different organisations involved.

⁵ Examples can be found in *Protection from Sexual Exploitation and Abuse: Compendium of Practices on Community-Based Complaints Mechanisms* (IASC, 2012) and *Best Practice Guide on Inter-Agency Community-Based Complaint Mechanisms* (IASC and IOM, 2015) (see resources section).

CONCLUSION

Agencies need to follow a number of steps when an allegation of SEA is received. Most of these steps involve decision-making by senior management on whether to investigate, naming an investigation manager, appointing investigators, following up on the investigation and outcome, and determining a communication strategy. Recommendations point to the importance of preparedness through awareness-raising at all levels of the organisation, crisis management plans, investigation management protocols and investigation expertise. Management support and resources must be dedicated to the process. PSEA should be part of an organisation's strategic objectives and HR plans. Appointed investigators also have an important responsibility in planning the investigation, gathering documentary evidence, interviewing witnesses and submitting an investigation report. These activities can be stressful, even for most experienced investigators. Clear procedures, adequate line management and support will help tremendously.

Yet questions remain: what is the best organisational set-up to support investigations? How do we strengthen investigation capacity in the sector? There is certainly a call for more innovative solutions and joint efforts. Increasing the visibility of PSEA in coordination structures would enhance prevention and preparedness and make collaboration easier should allegations involving multiple agencies arise. Communication and confidentiality are other issues requiring scrutiny. As practice shows, they should be tackled with great care and there is no one size fits all solution. Lastly, a subject that has not been addressed by this background paper but which requires attention is: what support and redress can be given to survivors? While efforts are made by protection working groups to map out referral possibilities to support victims of gender-based violence and SEA, the recent independent review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic⁶ has shown that referral to support services providers needs to be carefully monitored.

There is definitely a need for further discussion around these challenges and the 2016 CHS Alliance PSEA conference, 5-6 September in Bangkok, Thailand, will be one place to discuss these topics in more detail. We have come a long way since SEA issues were first raised and started to be addressed in 2004 but every step further matters in this particularly sensitive field.

⁶ Deschamps, M., Jallow, H. B., Sooka, Y (2015), pp. 41-44

REFERENCES AND OTHER RESOURCES

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