**Terms of Reference (TOR)**

**Joint UNHCR – (Name of NGO partner)**

**Investigation Team[[1]](#footnote-1)**

**Introduction**

The new Standard Clause[[2]](#footnote-2) on “Inspection, Monitoring, Audit, Investigation and Ethical Considerations” in the Standard Partner Agreement states, inter alia, that:

***6.03.4 The Partner shall ensure close coordination with UNHCR regarding the planning and conduct of any investigation or administrative action into allegations of such abuse and possible misconduct, and shall share with UNHCR the full investigation report. Where UNHCR deems it necessary and appropriate, UNHCR may conduct the investigation in coordination with the Partner and share the findings with the Partner. The attached Appendix 2 on Standards of Managing Misconduct, setting forth minimum investigation-related standards which partners are expected to have in place, is an integral part of this Agreement.***

One aspect of close coordination between the partner and UNHCR is the **referral** of cases, and the related sharing of investigative reports and sensitive case information. Referral and collaboration on misconduct cases are signs of trust and partnership. In some instances, a joint UNHCR-NGO partner investigation will be planned and carried out. These Terms of Reference (ToR) define the elements and parameters thereof.

**NOTE:**  These ToR are applicable only **to joint** UNHCR – NGO partner investigations, and do not concern joint investigations carried out by UNHCR and a governmental partner.

**Purpose of Terms of Reference**

These ToR supplement the UNHCR Guidelines on Conducting Investigations and Preparing Investigation Reports (2012) and the (name of NGO) Investigation Guidelines.

The purpose of these TOR is to clarify the composition, responsibilities, duties, and limitations of any joint investigative team appointed by UNHCR and the (name of NGO), for the purpose of conducting a joint investigation. This document does not provide the criteria for joint investigations, nor describe investigative procedures, techniques, or requirements. Nor does it recommend specific disciplinary actions, organizational structures, or services to be provided to victims of sexual abuse and exploitation.

**Mandate of Joint Investigation Team**

The mandate of the Joint Investigation Team is to plan and conduct a joint investigation into any form of misconduct, by:

- a staff member of the (name of NGO), or

- staff members of the NGO and **UNHCR** who are implicated together.

Following the investigation, the joint investigation team will prepare either an investigation report when the established facts substantiate misconduct, or a closure report when the investigation has determined the allegation to be unfounded or cannot be substantiated.

**Agreement on the Joint Investigation**

All allegations of possible misconduct on the part of the UNHCR partner, connected to activities of the Agreement and activities that fall under the UNHCR mandate, must be initially referred to the Investigation Service, Inspector General’s Office (IGO). Depending on the seriousness of the allegation, the IGO, in consultation with the NGO, will determine the most appropriate course of action to take. One option, agreed by UNHCR and the implementing partner, will be a joint investigation. Whether UNHCR or the NGO partner will take the overall “lead” for a specific investigation will be determined on a case-by-case basis, taking into consideration respective organizational capacities and the nature of the allegation.

**Appointment and Composition of Investigation Team**

In the case of a joint investigation, the Head of the UNHCR Investigation Service and the Head of (name of NGO) are responsible for appointing the Joint Investigation Team. Team members may come from UNHCR, the NGO, or a pool of properly trained and qualified investigators. To ensure objectivity and accountability, the Investigation Team shall comprise a minimum of two persons, one lead investigator and one investigator, and where feasible one male and one female.

Both investigators will keep all information relative to the investigation in the strictest confidence and will agree to sign a Confidentiality Agreement **(ANNEX 1)[[3]](#footnote-3)** whereby each investigator agrees that any information or evidence to surface during the investigation will be shared only with UNHCR and the relevant Head of (name of NGO).

**Responsibilities of the Joint Investigation Team**

The appointed Joint Investigation Team is responsible for the following:

* Developing a clear and comprehensive investigation plan (template found as **ANNEX 2.)**
* Conducting the investigation in accordance with the investigation guidelines and procedures of UNHCR and the NGO. **NOTE:** Where the respective Guidelines and procedures conflict or diverge, UNHCR and the NGO will agree on the course of action to follow before the investigation, as determined on a case-by-case basis.
* Evaluating and making recommendations on the needs of the victim and witnesses.
* Reporting the conclusions of the investigation and the investigation process to the Head of the UNHCR Investigation Service and the Head of (name of NGO).
* Producing an accurate and comprehensive report of the investigation.

The investigative responsibilities of the Joint Investigation Team apply to the alleged misconduct only. They do not apply to other allegations of misconduct that are unrelated to the allegation under investigation. Furthermore, the Joint Investigation Team is responsible for ensuring that the scope of the investigation remains restricted to the allegation and does not involve queries, interviews, document collection, or any other investigative action which seeks information unrelated to the allegation. Should any new allegations arise during the course of the investigation, they should be immediately referred to the Head of the UNHCR Investigation Service and the Head of (name of NGO). Subsequently, the Investigation Team may be requested to expand the scope of the investigations, if required.

**Responsibilities of lead investigator**

The lead investigator’s responsibilities are to oversee the investigation, take strategic decisions and create the conditions for investigators to do their work. This includes:

• making the key decisions about the direction of the investigation

* recommending to the Head of the Investigation Service and Head of (name of NGO) whether to redeploy the subject of the investigation and/or place the person on administrative leave during the investigation

• liaising with external institutional stakeholders, such as national authorities and other agencies

• managing the relationship between the investigation team and the rest of the organisation

• preparing the final investigation report

Where the investigation may result in internal or sensitive information regarding UNHCR or the NGO concerned being examined (previous staff disciplinary action, personnel records, financial information, etc.), the lead investigator is responsible for informing UNHCR and the NGO beforehand and obtaining their approval for proceeding with information collection and analysis. Where it has not been possible to inform UNHCR and the NGO beforehand, the lead investigator will inform the UNHCR and the NGO directly after receiving or recording information which the lead investigator deems sensitive in nature.

**Responsibilities of investigator**

Investigators are responsible for the day-to-day conduct of the investigation, as defined by TORs. Normally, their responsibilities include:

• developing the investigation plan

• assessing and making recommendations on safety and confidentiality

• securing evidence

• gathering evidence

• assisting the lead investigator in preparation of the final report

• making a finding on the evidence

• making recommendations on the policies and practices that may have enabled the exploitation/abuse to occur

**Basic qualifications**

At minimum, investigators must be:

• **professional** – exercise sound judgment and exhibit skill

• **responsible** – trustworthy, dependable and personally accountable for the decisions they take throughout the investigation

• **qualified** – have undergone investigation training, and is experienced in investigations

• **independent** – have no material, personal or professional interest in the outcome of the complaint and no personal or professional connection with any witnesses (especially the complainant and subject of the investigation).

Persons responsible for the investigation must maintain objectivity, impartiality and fairness throughout the investigative process and conduct their activities competently and with the highest levels of integrity.

Investigators will be drawn from a variety of backgrounds both professional and academic. It is extremely important that they have extensive experience in conducting interviews – even in the course of other duties (for example, as legal advisors, human resource specialists, counselors, etc.). Moreover they should be extremely knowledgeable about the organisation’s policies in relation to SEA, fraud, corruption, and other forms of misconduct.

**Witness preferences**

It is always best to focus on the right skill set over witness preferences when composing the team as there is no rule that each member of the investigation team must meet the preferences of all witnesses involved. Nevertheless, the investigators should try to make sure that the survivor and any vulnerable witnesses feel comfortable with whoever is interviewing them. One way to do this is to ensure that an investigation team includes both a man and a woman. Other considerations, when feasible, are ethnic background and religion, though investigators should ask the survivor if s/he has a preference rather than assume that s/he will prefer investigators who share some of

his/her characteristics.

**Interpreters and translators**

In some cases, interpretation and translation during interviews will be necessary. In such cases, the Joint Investigation Team will take measures to ensure that qualified and experienced interpreters and translators are made available to the witness or survivor. Ideally, investigators will speak the language of most of the potential witnesses. If this is not possible, they should choose an interpreter who, like them, is competent, discreet, independent and appropriate. In addition, the interpreter must understand the nuances of witnesses’ language. Moreover, interpreters and translators must sign an oath of confidentiality and should be relied on to maintain that agreement. Interpreters must be instructed to interpret directly what witnesses say without comment or inference.

**Other experts**

Sometimes, managers should consider taking expert advice or assistance from outsiders. These may include computer specialists, lawyers with in-country legal expertise and specialists in interviewing children or people with disabilities.

**Confidentiality**

Confidentiality during the investigation process is critically important. The survivor, the witnesses, the subject of the allegation, and the investigators themselves can be put in danger as a result of the investigation taking place. Therefore, the Joint Investigation Team will define those persons who will be privy to any information to surface throughout the course of the investigation and ensure that the victim and other witnesses are informed of who will be made aware of the investigation process and conclusions.

**Retraumatization of victims**

It is essential that during any investigation where harm or injury to the victim has occurred, that the Joint Investigation Team does not do further harm. Wherever possible, interviewing survivors of SEA, sexual harassment or other trauma should be conducted by trained, specialized staff, and that account should be taken as testimony from the survivor by the Joint Investigation team. If there are key questions that the investigations team needs to put to the survivor, then this should be managed in coordination with the specialized staff directly assisting the survivor so that the potential for further harm is limited as far as possible.

**Reporting to UNHCR and the NGO**

Throughout the course of the investigation the lead investigator shall keep the Head of the UNHCR Investigation Service and the Head of (name of NGO) informed of any and all developments which the investigator believes may have consequences which reach beyond the scope of the investigation. In particular, the lead investigator will report immediately suspected threats by the subject of the allegation or others associated with the subject as well as any development which suggests that the survivor or other witnesses are being threatened.

**Investigation Report**

The lead investigator will ensure that a final report of the investigation is produced which contains the following:

|  |
| --- |
| **Structure of the Investigation Report:**   1. Background 2. Allegation(s) 3. Legal framework 4. Methodology 5. Investigation findings 6. Investigation conclusions |

The report will remain an internal, confidential record of UNHCR and the (name of NGO).

**UNHCR**

**March 2013**



**ANNEX 1**

# *Inspector General’s Office / Bureau de l’Inspecteur général*

**Confidentiality Agreement[[4]](#footnote-4)**

I, the undersigned, shall exercise the utmost discretion with regard to my involvement in the work of the Inspector General’s Office (IGO). I will keep confidential all information related to IGO investigations to which I have access in the course of my official duties and otherwise, and/or known to me by reason of my assisting the IGO. I shall not use such information for private gain, or to favour or prejudice any third party.

I undertake to carry out my duties in accordance with the provisions of the Inter-Office Memorandum N°009 / Field Office Memorandum N°010/2012 of 7 February 2012 on “The role, functions and *modus operandi* of the Inspector General’s Office”. I have read and understood the said IOM/FOM. If in doubt in the course of my duties, I shall seek the advice of the Inspector General’s Office exclusively.

I understand that this declaration will remain in force after the completion of my assignment with the Inspector General’s Office and/or with UNHCR. I also understand that divulging confidential information to persons who are not authorized to receive it may amount to misconduct, and that the signed original of this declaration will be held by the Inspector General’s Office.

Name & Title: .........................................

Signature: ................................................

Date: ........................................................ Place: ...........................................

**To be filled out by the Officer before whom the oath is taken:**

Name & Title: .................................................................................................................

Signature: ................................................

Date: ........................................................ Place: ...........................................

Reason for taking the oath[[5]](#footnote-5): ……………........................................................................

..........................................................................................................................................



**ANNEX 2**

***Inspector General’s Office / Bureau de l’Inspecteur général***

***This document is protected by the provisions of IOM/009/2012 – FOM/010/2012 of 7 February 2012, concerning the confidentiality of the proceedings related to a preliminary joint investigation conducted by the UINHCR Inspector General’s Office and (NGO.***

**Investigation Plan**

|  |  |
| --- | --- |
| **INV Case No:** | **INV/2012/** |
| **Implicated Personnel:** |  |
| **Department/Mission:** |  |
| **Investigation Plan date:** |  |
| **Investigator(s)** |  |

**1. Allegations**

{A brief summary of the reported misconduct, including circumstances relevant to the matter being investigated}

**2. Applicable legal norms**

{State applicable regulations/rules/law pertaining to the reported misconduct}

**3. Implicated personnel**

{State personnel information from DHRM records, including contractual status; current assignment; appointment expiration date; and other employment issues affecting availability of implicated personnel)

**4. Work Plan steps and timelines**

**A. Investigative action**

{Identify interviewees, their contact details and a tentative schedule. Also, address issues of availability, order of interviews and special needs (e.g. interpreter, guardian} See Annex 1

**B. Evidence / Records preservation and collection**

{Identify known and possible sources of evidence and specify means/process for securing those sources and collecting records – i.e. DHRM files, electronic data etc.} See Annex 2

**5. Travel / mission plan**

{Proposed missions - Include travel dates, length, purpose, location(s), number of investigator(s) required, support required from mission, provide an estimation of costs}

**6. Resources**

1. **Equipment / investigation tools**

{For the proposed missions & the investigation. List required equipment, including laptop computer; portable printer; external hard drive; flash drive; digital camera; digital audio recorder; hard disk cloning software; SIM card reader/back-up; evidence bags/seals}

|  |  |  |
| --- | --- | --- |
| **Equipment** | **Explanation** | **Date required** |
| Laptop | Required for investigation mission |  |
| Cell phone | N/A SIO already has been issued cell phone |  |
| Portable printer | N/A |  |
| Portable scanner | N/A |  |
| Digital camera | Required for investigation mission |  |
| Audio recorder | Required for investigation mission / batteries |  |
| External hard drive | N/A |  |
| Hard driver cloning | N/A |  |
| SIM card reader | Required upon return from investigation mission |  |
| Evidence bags / seals | Required during investigation mission as cell phones and other evidence will be obtained. |  |
| --- | --- |  |

**B. Forensics / external expertise**

{List any forensic/external support or specialized forensic equipment required for the investigation.}

|  |  |  |
| --- | --- | --- |
| **Type of evidence** | **Explanation** | **Date obtained** |
|  |  |  |
|  |  |  |

**7. Potential risks**

**A. Risks to the organization / investigation**

{Identify any risks to the Organization arising from the investigation and indicate any possible solutions to address those risks.}

|  |  |  |
| --- | --- | --- |
| **Type of risk** | **Explanation / solutions** | **High / Medium / Low** |
|  |  |  |
|  |  |  |

**B. Risks to individuals**

{Identify any risks to individuals involved in the investigation, including investigators, other UNHCR staff, victims(s), subject, witnesses, local population, etc. Also discuss any possible solutions to address those risks}

|  |  |  |
| --- | --- | --- |
| **Type of risk** | **Explanation / solutions** | **High / Medium / Low** |
|  |  | Medium |
| --- | --- | --- |
| --- | --- | --- |

**C. Other risks**

{State any other risks and possible solutions to address those risks}

|  |  |  |
| --- | --- | --- |
| **Type of risk** | **Explanation / solutions** | **High / Medium / Low** |
|  |  |  |
|  |  |  |
|  |  |  |

**Annex 1. Proposed Interviews**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **No.** | **Name/Position** | **Status (subject, witness, victim, etc.)** | **Contact Info (phone and e-mail)** | **Purpose of Interview** | **Tentative date/availability** |
|  |  |  |  |  |  |

**Annex 2. Collection of Evidence / Records**

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Evidence / Records to be Collected** | **Means of Collection / Contact Point** | **Date Completed** |
|  |  |  |  |

**Assigned Investigator**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

**Investigation Plan approved by:**

Ruvendrini Menikdiwela \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Head of Investigation Service Head of Investigation Department

UNHCR (name of NGO)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

1. As adapted from : the UNHCR Investigation Guidelines; the HAP Investigation Training Handbook, and the CCSDPT Thailand ToR Investigation Team for Allegations of Sexual Abuse and Exploitation by Humanitarian Workers [↑](#footnote-ref-1)
2. Bipartite Project Agreement (Governmental or Non-governmental Non-profit Partner), January 2013. [↑](#footnote-ref-2)
3. The NGO partner may have its own Oath of Confidentiality or equivalent document, which the NGO member of the Joint Investigation Team may sign. [↑](#footnote-ref-3)
4. *To be signed by UNHCR staff members, consultants, translators, and others, required to assist the Inspector General’s Office in the conduct of investigations and/or who have access to confidential information related to the work of the Inspector General’s Office.* [↑](#footnote-ref-4)
5. *Indicate INV Case N° if applicable, or briefly describe the reason for taking the oath.* [↑](#footnote-ref-5)