

INVESTIGATING ALLEGATIONS
OF SEXUAL EXPLOITATION AND ABUSE
OF CHILDREN OCCURRING
IN HUMANITARIAN SETTINGS:

REFLECTIONS FROM PRACTICE



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RAPID
RESPONSE**



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Project Enhancing Justice for Child Survivors of Sexual Exploitation and Abuse (SEA)

Justice Rapid Response, with support of the Oak Foundation Children First Fund, a Tides Foundation fund.

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¹ The Report was written by Carla Ferstman; research and an initial draft text was prepared by Julia Korkman and Ian Plaskett, all certified experts on the Justice Rapid Response Roster. Case studies were prepared by Niamh Gibbons. See Annex 2 for biographies of the author and contributors and a list of experts consulted.

FOREWORD

Children comprise a significant proportion of the victims of human rights violations around the world. In circumstances of conflict, instability, and displacement, children are especially vulnerable to sexual abuse and exploitation (SEA). SEA not only represents a fundamental failure to protect by humanitarian organisations that affects the trust put in humanitarian workers and the reputation of the implicated organisations. SEA also harms populations in contexts of vulnerability, constituting a human rights violation that is seriously detrimental to a child's physical or mental health, education, moral or social-emotional development.

SEA is rampant in the humanitarian sector, yet accountability for acts of SEA against children remains rare. Scandals involving allegations of SEA against international peacekeeping forces, United Nations personnel and non-governmental humanitarian organisations have increasingly come to light. These tragedies have led to an emerging awareness of the extent of SEA in the humanitarian sector, of its disproportionate impact on children, and of the need to address it.

However, despite increased political will, several real and persistent challenges contribute to a culture of widespread misunderstanding and impunity for SEA against children, such as their invisibility in accountability processes, under-reporting of sexual violence, lack of appropriate expertise to independently and impartially investigate SEA allegations while protecting the safety and wellbeing of witnesses and survivors, overall lack of awareness of avenues to redress acts of SEA, and the lack of a consolidated set of internationally agreed best practices around investigation of crimes against children and reparation measures. While best practices around SGBV investigations are widespread, there is little existing literature that can be used as a basis for discussing best practices for SEA against children specifically.

JUSTICE RAPID RESPONSE'S VISION FOR TACKLING SEA AGAINST CHILDREN

In a world where impunity for SEA is rampant among the very actors who are supposed to protect children, we believe that having credible, impartial, and victim-centred investigations is a deterrent for this criminal behaviour, and a sign of hope for children and their communities. Justice Rapid Response addresses the impunity gap for SEA against children through the deployment of investigative teams that can ascertain the facts and provide victim-centred recommendations on accountability and redress avenues. By deploying professional investigators who ascertain the facts and advise on corrective measures and prevention, Justice Rapid Response experts set a precedent and offer a model for how such situations should be handled generally, and how to protect the witnesses and victims, according to international standards.

To date, Justice Rapid Response has deployed more than 30 experts to 13 SEA investigative missions. Nine of these SEA missions focused on Sub-Saharan Africa, three focused on the Middle East and North Africa region, and one was deployed to an international organisation operating worldwide. To collect the huge amount of internal knowledge, based on a decade of practical experience working on this issue in real investigations, Justice Rapid Response launched this project with the aim of articulating and systematizing solutions and best practices in the field of investigating SEA against children.

With this paper, we examine moving forward with a child-centred discussion on how to address and redress SEA against children in particularly challenging contexts. We hope this research will prove useful for humanitarian organisations and humanitarian practitioners alike, and that it will support child survivors of SEA in their search for accountability.

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EXECUTIVE SUMMARY

Sexual exploitation and abuse (SEA) affects persons of all genders and ages and takes place across all segments of society, though young people and children in humanitarian and post-conflict settings are at particular risk and disproportionately affected. This is because perpetrators prey on persons who are vulnerable or marginalised and have less economic or social protections. Humanitarian actors are present in communities to assist and protect vulnerable populations. When they commit SEA, community trust is eroded, and humanitarian operations are undermined. For the victims of SEA who are already in precarious situations, SEA constitutes a “degrading, harmful and traumatic experience.”² SEA often results in severe and long term physical and psychological harm. The effects of SEA can include struggles with trust, ill-health including sexual and reproductive health challenges, mental health problems, isolation from family and friends, community ostracization, dropping out of education, unintended or unwanted pregnancies including at a young age, economic problems, and abuse of alcohol or drugs. Also, SEA “contributes to a context that is conducive to the objectification and exploitation of women and girls, where sexual violence is condoned and excused.”³

While there is growing recognition of the critical problem of SEA within humanitarian and post-conflict settings and increasing efforts by humanitarian agencies and organisations to address both its causes and consequences, more work is needed to specifically address the challenges and obstacles to accountability for SEA involving child victims, which include investigating allegations of SEA involving child victims. There are challenges at all levels – legal, policy, financial, human resource-wise and attitudinal – but there are also examples of good practice and empirical evidence of well-functioning interventions from related areas such as criminal investigations of child sexual abuse and human trafficking that are worth exploring.

The report is geared primarily to humanitarian aid organisations and their personnel working with vulnerable and marginalised populations in fragile settings, whether impacted by conflict, insecurity, weak governance, poverty, disease, or natural disasters. While recognizing that strategies will only be effective if they are adapted to local realities, the report identifies principles, methods, and modes of operation to overcome the key challenges when investigating SEA involving child victims. It does so by i) applying a child-rights lens to SEA investigations; ii) identifying examples of lessons learned and good practice from discussions with experts working in this or related areas; iii) considering and, where appropriate, applying lessons learned from other fields involving child-protection; and iv) identifying gaps or problems that remain to be addressed.

The phenomenon of SEA of children in humanitarian settings is complex and requires humanitarian

² Sexual exploitation and abuse in the aid sector HC 840 (UK House of Commons, International Development Committee, 23 July 2018), Submission by Rape Crisis England and Wales and Equality Now (SEA0058).

³ Ibid.

actors, host governments, international and regional intergovernmental agencies, and others to put in place and implement measures to prevent such conduct, respond to allegations and to the practice as a whole, provide adequate support and assistance to victims, and afford adequate remedies and reparation including guarantees of non-recurrence. This report serves a more targeted function and focuses on investigations. Following an initial consideration of the contexts of children experiencing or at risk of experiencing SEA in humanitarian settings, the report considers what an “effective” investigation requires; the different components of effective investigations for SEA allegations involving children; and good practice when interviewing children (before, during and after interviews). This is followed by recommendations for humanitarian agencies and organisations, which are broken down into the following sub-categories:

- I) POLICY RECOMMENDATIONS – concerning the policies and standard operating procedures the humanitarian sector as a whole, and individual humanitarian agencies and organisations, can adopt to better reflect children’s rights in SEA investigations, and to better anticipate, prepare for and respond to SEA allegations involving children.
- II) TRAINING AND SKILLS DEVELOPMENT – regarding the skills required to anticipate, prepare for and respond effectively to SEA allegations involving children, and how best to ensure such skills are present at both the headquarters and field levels. The recommendations also seek to trouble-shoot challenges associated with the limited availability of specialists in emergency settings and the varying size and capacity of organisations.
- III) OPERATIONAL RECOMMENDATIONS – These recommendations address real-time challenges facing investigators and others involved in SEA investigations involving children on the ground.
- IV) RECOMMENDATIONS RELATED TO MONITORING AND OVERSIGHT – aimed at strengthening organisational accountability and transparency associated with the response to SEA cases involving children, such as identifying practical ways to address child privacy and safety concerns while remaining committed to transparency and accountability.

1. Introduction

Sexual exploitation and abuse (SEA) occur all too frequently in settings that present unequal power dynamics. In addition to being a serious breach of trust, SEA violates organisations' codes of conduct and can constitute a crime. **Sexual exploitation** is any actual or attempted abuse of a position of vulnerability, differential power or trust, for sexual purposes.⁴ This includes when a person who is dependent on another for survival, safety, food rations, medicine, employment, school, books, transport or other services is required or propositioned to perform sex acts in exchange for those services, including but not only, by offering money or other social, economic or political advantages. It includes human trafficking and sexual exploitation of children in/for prostitution.⁵ **Sexual abuse** is the actual or threatened physical intrusion of a sexual nature by force or under unequal or coercive conditions.⁶ Child sexual abuse is any sexual activity between a child and closely related family member (incest) or between a child and an adult or older child from outside the family. It involves either explicit force or coercion, or circumstances where informed consent cannot be given by the victim because of his or her young age.⁷ It may involve instances of actual, attempted, or threatened rape or other sexual violence in which perpetrators carry out sexual acts using duress or fear of further violence.⁸ It may also involve non-physical sexual acts, e.g., staring sexually at a child or making sexualized, harassing comments to a child. SEA occurs in humanitarian settings precisely because of the power imbalances and highly vulnerable local population. It happens when a person in a position of power (such as a peacekeeper, an official or an internationally or locally recruited staff person or volunteer) uses their privilege to secure sexual services from a beneficiary or vulnerable member of the community.

SEA involving children in humanitarian settings takes different forms. In a report documenting SEA in refugee camps in Liberia, Guinea and Sierra Leone, the practice involved casual encounters between the offender and the child, organized prostitution in camps targeting adolescent girls, and international trafficking for sexual exploitation.⁹ Those especially targeted were girls mostly between 13-18 with the youngest reported case being five years of age. The few boys reported to be exploited were in the age range 17-22. Especially vulnerable groups included girls from single adult or child-headed households, separated and unaccompanied children, orphans, girls who were street traders/or whose mothers were street traders.¹⁰ The UN Secretary-General listed these different kinds of SEA against children: rape, sexual assault, child prostitution, trafficking for sexual exploitation and abuse and other.¹¹ These and other factors are also described by the African Commission on Human and Peoples' Rights.¹² Children and young people are often groomed to believe they are in a consensual relationship. They may trust their abuser and not understand that they are being abused. The UN

4 *Glossary on Sexual Exploitation and Abuse : Thematic Glossary of current terminology related to Sexual Exploitation and Abuse (SEA) in the context of the United Nations* (2nd ed, 2017); UN Secretary-General, 'Special measures for protection from sexual exploitation and abuse', UN Doc ST/SGB/2003/13 (9 October 2003).

5 Adapted from: *UNHCR Emergency Handbook* (4th ed): "Protection from Sexual Exploitation and Abuse (PSEA)".

6 UN Secretary-General, 'Special measures for protection from sexual exploitation and abuse', UN Doc ST/SGB/2003/13 (9 October 2003).

7 *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, Inter-agency Working Group on Sexual Exploitation of Children (2016) 18-20.

8 UN Secretary-General, 'Special measures for protection from sexual exploitation and abuse', UN Doc ST/SGB/2003/13 (9 October 2003) 1. See also, UNSG, 'Special Measures for Protection from Sexual Exploitation and Abuse: a new approach', UN Doc A/71/818 (28 February 2017) 41.

9 *Sexual violence and exploitation: the experience of refugee children in Liberia, Guinea and Sierra Leone* (UNHCR & Save the Children UK, 2002).

10 *Ibid*, 10.

11 UNSG, 'Special Measures for Protection from Sexual Exploitation and Abuse: a new approach', UN Doc A/71/818 (28 February 2017) 41.

12 Guidelines on Combating Sexual Violence and its Consequences in Africa (ACHPR, May 2017) para. 3(2)(d).

Committee on the Rights of the Child has explained sexual exploitation and abuse involving children as including the:

(A) inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (B) use of children in commercial sexual exploitation; (C) use of children in audio or visual images of child sexual abuse; (D) child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimisation which is not accompanied by physical force or restraint, but which is nonetheless psychologically intrusive, exploitative and traumatic.¹³

Attitudes and sensitivities around sex create multiple, intersecting challenges when addressing SEA. These challenges are exacerbated and take on added dimensions when involving children. Culture, religion and beliefs, sex, sexual orientation, national origin, personality, and factors such as poverty, inequality, disability, vulnerability as well as children's age, education level and evolving capacities affect how children perceive their experiences of SEA, assess the costs/benefits of disclosing such abuse to adults and express their needs and expectations of justice processes.

SEA investigations involving children can be ineffective due to a combination of a lack of specific training about how to engage with child victims in all their diversity, a lack of child-specific capacity as well as the reluctance to expose an agency or organisation to the notoriety of SEA investigations. It also has much to do with how adults perceive children, their vulnerabilities, the degree to which they enjoy autonomy and how their autonomy interacts with family or community interests.

These perceptions affect responses to allegations of SEA involving children. Amongst some humanitarian professionals, there is a fear of engaging with children in case doing so may exacerbate pre-existing trauma and inhibit their recovery; it is often believed that it is better not to engage than to protect against or deal with the consequences of ineffective engagement. Also, there is a worry that onward reporting of SEA allegations involving children may pose too great a risk to child victims' right to privacy and dignity. However, experts recognise that "children can understand what is happening to them and provide useful information that is true and accurate to others."¹⁴ Also, some might argue that the failure to engage, which will impede children's right to participate in processes that affect them and will invariably inhibit investigations and the possibility of later judicial processes, may not be in a child's best interests either. These are sensitive questions that the humanitarian community continues to grapple with. While recognising that effective solutions will always be context-specific, the report seeks to identify the ways in which experts have navigated these ethical and operational questions, and indeed, to identify what a **victim-centred approach¹⁵ might look like for SEA involving children in particular.**

¹³ CRC Committee, General Comment 13: The right of the child to freedom from all forms of violence, UN Doc CRC/C/GC/13 (18 April 2011) para. 25.

¹⁴ *Moving Forward: Enabling a Child-Centred Approach at the ICC and Beyond* (JUSTICE RAPID RESPONSE, 9 December 2021), Comments by Dr Daryn Reicherter.

¹⁵ Note that some have helpfully called for a "victims' rights" as opposed to a "victim-centred" approach and while at times the phrases have been used interchangeably, a victims' rights approach has not yet been integrated into policy frameworks. See, e.g., J Connors, "A victims' rights approach to the prevention of, and response to, sexual exploitation and abuse by United Nations personnel", (2020) Aus. J HR, DOI: 10.1080/1323238X.2019.1707933. On a "victim-centred" approach, see, IASC and UN Chief Executives Board Task Force on Addressing Sexual Harassment in the Organizations of the UN System, Meeting of Investigatory Bodies on Protection from Sexual Exploitation, Abuse and Harassment Summary Report (26 Nov. 2018) 3: "A broad consensus of the core elements that underpin a victim-centred, rights-based approach has emerged. These elements are to first, do no harm, and the need to craft a tailored response to people in particularly vulnerable situations, such as children, people with disabilities, and lesbian, gay, or transgender individuals. Victims who have already experienced hurt, shame and fear, have a right to privacy and confidentiality, so that information is not disclosed without informed consent. They have a right to information about the process, and safety and protection from reprisals, harassment and retaliation. It is critical that investigations are timely, professional and timebound, and that victims are treated with empathy throughout the process and their perspectives taken into account." Also, UNHCR, Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct, UNHCR/HCP/2020/04 (2020) 6: "a victim-centred approach is a way of engaging with victim(s) that prioritises listening to the victim(s), avoids re-traumatisation, and systematically focuses on their safety, rights, well-being, expressed needs and choices, thereby giving back as much control to victim(s) as feasible and ensuring the empathetic and sensitive delivery of services and accompaniment in a non-judgmental manner."

Most agencies and organisations have developed policy frameworks to address SEA. However, aside from those with child-focused mandates, most have not adapted their policies to SEA involving children, nor have they equipped teams with the specialist expertise and methodologies to engage effectively with child victims. Also, faced with competing priorities in emergency settings and limited funds, many agencies and organisations struggle to implement their SEA policies in practice in real-time on the ground, leading to inevitable gaps.

This report is part of a project instituted by Justice Rapid Response in 2021: Enhancing Justice for Child Survivors of SEA. The goal of the project is to research, collate and systematise lessons learned, solutions, and good practices in the field of investigations and redress for SEA targeting children. It aims to equip humanitarian actors with principles, methods, and modes of operation to overcome the key challenges to investigating allegations of SEA involving child victims. The goal of this project and this report is ultimately to raise the standards of investigations of SEA involving children in a truly victim-centred manner. To achieve this, the report seeks to answer the question: what does a victim-centred response to SEA involving child victims that takes into account the best interests of the child look like in both policy terms and operationally?

The research methodologies employed consist of:

I) DESK-TOP RESEARCH:

A systematic review of legal standards, policy frameworks applicable to UN agencies and humanitarian organisations, specifically with regards to SEA risk management, community-based complaints mechanisms and victim-centred approaches; reports and empirical research. These focused firstly on SEA allegations involving children, however, given the lack of specialist materials on the subject, researchers also consulted materials pertaining to SEA more broadly and pertaining to child sexual violence and trafficking in persons where relevant.

II) QUALITATIVE INTERVIEWS WITH EXPERTS:

The authors consulted an array of experts which are set out in Annex 2. These included experts from UN agencies, humanitarian organisations, consultancy practices and academic bodies. Some of the persons consulted were already known to Justice Rapid Response through its deployment of experts worldwide. Others became known to the authors through the research. In total, 24 experts were interviewed, and two round table discussions were held to provide further opportunities for input, adding valuable points of view, case examples and sources, and to test preliminary findings. Interviews were semi-structured and audio-recorded where consent to do so was provided for the limited purposes of the research.

III) CASE STUDIES:

Several case studies stemming from the research were prepared from case histories, other materials collected and discussions with experts. These have been anonymised. The case studies presented in this report aim to articulate positive examples of SEA investigations that put the interests of child victims first. The case studies draw on the experiences of investigators and SEA focal points who have led investigations in humanitarian contexts. Interviewees recognised that the “gold standard” of investigative practices followed in child abuse cases is not easily replicated in humanitarian settings. Humanitarian crisis environments are often poorly resourced, logistically challenging, and involve a high degree of security risk. Many humanitarian operations also occur in environments where the national justice system lacks the resources and safeguards to fully address child rights. Nevertheless, the case studies presented here offer examples of practices organisations and investigators have employed to put the best interests of child victims first.

CASE STUDIES: CONTEXT

Except for the Kavumu case, all case studies take place in the fictional country of Newland. Newland hosts hundreds of thousands of refugees from Oldland, where intense conflict has been ongoing for several years. Newland hosts Oldland refugees in camps close to the border. United Nations agencies, large international NGOs, and local Newland-based NGOs all participate in the humanitarian response. Employment and education opportunities for refugees are scarce in the camps, particularly for women and young people, so refugees are mostly dependent on humanitarian aid. The justice system in Newland functions relatively well in cities but the refugee camps are in remote locations where the police presence is insufficient. And although both countries have attempted to advance gender equality, gender norms remain unbalanced, and discussion of sexuality is taboo. Against this backdrop, we follow the stories of three fictional individuals as they interact with the SEA investigative process.

In addition, a Senior Advisory Board was instituted, and members were consulted throughout the research and report drafting. All errors and omissions remain those of the author.

The report considers what an “effective investigation” into SEA involving children requires, derived from human rights law and adapted in this report as appropriate to the needs and circumstances of children. Effective investigations must be prompt, sufficiently independent, impartial, and transparent. They must also be capable of achieving their objectives (e.g., the ability to uncover the truth; empowerment and dignification of children through the process and respect for their privacy; identification of child victims who require protection, support or assistance, and the provision of services tailored to their needs; cessation of ongoing SEA and the implementation of guarantees of non-repetition; sanction of perpetrators and the provision of remedies and reparation to child victims).

The report then turns to an operational analysis of SEA investigations involving children. It considers how to operationalise the key components of effective investigations, and the need to integrate the notions of “victim-centred approach” and the “best interests of the child”. The report outlines key problems that have arisen in SEA investigations involving children, identifies the different approaches taken to address those problems including by revealing both good practice and lessons learned and insights from other domains of practice. This is followed by a section on interviewing children (and key considerations before, during and following the interviews). The focus is on how to assess the need for, plan and conduct interviews with children in a way that is child-friendly, reliable, and evidence-based.¹⁶ This is followed by recommendations for humanitarian agencies and organisations, focusing on recommendations pertaining to policy; training and skills development; operational issues pertaining to investigations; and monitoring and oversight.

¹⁶ L. Hope et al, “Urgent issues and prospects at the intersection of culture, memory, and witness interviews: Exploring the challenges for research and practice”, (2021) 27 *Legal & Crim Psych* 1.

2. Effective SEA Investigations Involving Children

Effective investigations in human rights parlance form part of the obligation to afford an effective remedy, whenever an obligation is breached.¹⁷ A remedy is understood as effective when a person claiming to be a victim has access to independent and impartial bodies that can determine the truth of what happened and fairly decide upon a claim of violation of their rights. Remedies (including investigations) must be prompt, accessible to the victims and capable of offering a reasonable prospect of success.¹⁸

These principles apply to investigations involving child victims of sexual exploitation and abuse. Article 19(2) of the Convention on the Rights of the Child stipulates the need for “effective procedures” ... “to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”.¹⁹ The Committee on the Rights of the Child, hereinafter the “CRC Committee”, has explained that “effective procedures” are required to ensure their enforcement, quality, relevance, accessibility, impact and efficiency.²⁰ When explaining Article 19(2), the Committee has indicated that:

Rigorous but child-sensitive investigation procedures will help to ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection and criminal proceedings. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation. Towards this end, all parties are obliged to invite and give due weight to the child’s views.²¹

These principles should apply to humanitarian agencies and organisations when conducting their internal investigations. While human rights obligations are directed at states, certain non-state actors, because of their mandate or functions and the authority they wield over vulnerable populations, are understood to also have duties towards those they are mandated to help. The relevance of human rights principles to SEA and SEA investigations has been affirmed by the independent panel of investigators of the UN response to incidents in the Central African Republic, which underscored that “the UN has an obligation to investigate the incident, report on any violation, protect the victim, and to promote accountability.”²² In the analogous context of trafficking it has been recognised that “states, intergovernmental and non-governmental organisations are responsible for the actions of those working under their authority and are therefore under an obligation to take effective measures to ... investigate thoroughly all allegations of trafficking and related exploitation and to provide

17 E.g., International Covenant on Civil and Political Rights (adopted 16 Dec. 1966, entered into force 23 March 1976) Art. 2(3); Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 Dec. 1979, entered into force 3 Sept. 1981) Art. 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 Dec. 1984, entered into force 26 June 1987) Art. 14.

18 UN Human Rights Committee, ‘General Comment 31’ Nature of the General Legal Obligation Imposed on States Parties to the International Covenant on Civil and Political Rights (26 May 2004) UN Doc. CCPR/C/21/Rev.1/Add.13, para. 15.

19 Convention on the Rights of the Child (CRC), (adopted 20 Nov. 1989, entered into force 2 Sept. 1990).

20 CRC Committee, General comment No. 13, para. 57.

21 Ibid, para. 51.

22 M. Deschamps, H. Jallow & Y. Sooka, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers: Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic* (17 Dec. 2015) [CAR Report] ii.

for and apply appropriate sanctions to personnel found to have been involved in trafficking.”²³ This approach is consistent with the standards adopted by the humanitarian sector itself.²⁴

Human rights standards for effective investigations also apply to the host state, which retains the responsibility to ensure that those operating within its territory do not, through their operations, impede individuals’ rights. This responsibility exists even though many host states in a conflict, post-conflict or emergency setting may be unaware of their obligations or, where they are aware, unable to take the necessary steps to ensure the protection of children even if impacted by SEA. The African Commission on Human and Peoples’ Rights has recognised that “states must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of sexual violence committed by state and non-state actors, prosecute and punish perpetrators, and provide remedies to victims.”²⁵

These principles should also apply to those states with regulatory oversight over the work of humanitarian organisations, e.g., where the organisations are headquartered or registered. UN treaty bodies have determined that states’ due diligence obligations can extend to their oversight of corporate entities based (and registered) in their territory but operating abroad;²⁶ the same principle would apply to aid organisations registered in such countries, many of whom receive government funds. This aligns with the recommendations made by the UK Parliament International Development Committee: “Accountability to beneficiaries would be enhanced by the establishment of an independent aid ombudsman, to provide an avenue through which victims and survivors can appeal for justice and recompense, if they are unable to find this through the established channels.”²⁷

Aspects of an effective investigation, as adapted to SEA investigations involving children, include:

2.1 GEARED TOWARDS, AND CAPABLE OF ACHIEVING THEIR PURPOSES

There may be several purposes for SEA investigations involving children. What is required will depend on what is said to have happened, whether it involves a crime, whether that crime is continuing, the circumstances of the victim(s) and their wishes. All these factors are relevant to determining what should take place, how and by whom.²⁸ The methodology should derive from an examination of the allegations in their context.

It is crucial to respect victims’ choices about justice but also important to understand where these choices come from and how they become articulated. This wider picture about victims’ views on justice and justice options should be part of forward planning about the conduct of child-centred investigations and the delivery of justice to SEA victims in all their diversity. As one of the experts indicated, “We are failing, if they are not choosing to seek justice. ... in circumstances where [the survivors] choose not to seek justice, it is because the justice process is not a viable option. It is not safe for them, it does not protect them, it does not bring them what they most urgently need. It does not even link to services to address those needs. And the justice system is self-serving in that case. That is our mistake.”

23 Recommended Principles and Guidelines on Human Rights and Human Trafficking, UN Doc E/2002/68/Add.1 (20 May 2002), Principle 10.

24 E.g., IASC Plan for Accelerating Protection from Sexual Exploitation and Abuse in Humanitarian Response at Country-Level (2018).

25 Guidelines on Combating Sexual Violence and its Consequences in Africa (ACHPR, May 2017) Principle 6.

26 UN Human Rights Committee, General Comment No. 36: Article 6 of the ICCPR, on the right to life, UN Doc CCPR/C/GC/36 (30 Oct. 2018) para. 22; UN Committee on Economic, Social and Cultural Rights, General Comment No. 24: State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc E/C.12/GC/24 (10 Aug. 2018) para. 28.

27 Sexual exploitation and abuse in the aid sector HC 840 (UK House of Commons, International Development Committee, 23 July 2018) para. 232.

28 N.C. v. Turkey, Appl no. 40591/11, (ECtHR, 9 Feb. 2021).

2.1.1 A CHILD-CENTRED APPROACH

Children have the right to have their best interests given primary consideration, which includes the right to protection and to a chance for harmonious development.²⁹ The CRC Committee makes clear that the “best interests of the child” is a right, a principle and a rule of procedure; it is aimed at ensuring both the full and effective enjoyment of all the rights recognised in the Convention and the holistic development of the child,³⁰ not only the right to be protected but also the right to information, to participation and to justice. Accordingly, the “do no harm” principle which is a minimum standard in humanitarian action that involves taking all measures necessary to prevent and mitigate exposing affected communities to further harm by humanitarian actors, is the starting point from which to derive the positive obligation to develop child-centred procedures which actively protect and support children in attaining their rights.

The child’s best interests are complex, and their content must be determined on a case-by-case basis considering the circumstances and evolving state of development of the child or group of children concerned. That the “best interests of the child” is understood as a rule of procedure is particularly important for the articulation of standards regarding SEA investigations involving children. What is at stake is not just an outcome which is in the child’s best interests; but equally, that the procedure to arrive at the outcome is fair and in the child’s best interests. The CRC Committee has made clear that: “whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account.”³¹ The CRC Committee reiterates that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.”³²

Thus, organisations must not only have a clear decision-making process to evaluate if a proposed procedure is in the best interests of the child, but they also need to provide evidence that the child’s rights have been explicitly considered based on clear criteria. The assessment must assign a role to the children themselves in the decision-making process, and provide reasonable accommodation and support, where necessary, to ensure their full participation in the assessment of their best interests. Aspects of the decision-making process that concern the response to information about SEA involving a child are interconnected and include:

I) A PROACTIVE COMMITMENT TO UNCOVERING SEA RELATED TO CHILDREN

To find out what happened one should not simply wait for children to report, there is a need to have in place an early warning system to detect SEA and heightened risks of SEA. The need for a proactive approach, particularly where vulnerable persons are involved, is consistent with positive obligations towards children and others in vulnerable situations: the need to prevent their ill-treatment of which there was, or there ought to have been, knowledge.³³ Thus, a proactive commitment to uncovering child SEA involves, for instance, robust SEA risk assessment and mitigation systems³⁴ to ensure that those who ought to know about the risk of SEA do indeed know of it, so that they can protect children from it. A proactive approach is also consistent with human rights standards where the obligation to investigate is not triggered by the

²⁹ Guidelines on justice in matters involving child victims and witnesses of crime, UN Doc E/CN.15/2005/L.2/Rev.1 (25 May 2005) Principle 8(c).

³⁰ CRC Committee, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) UN Doc CRC/C/GC/14 (29 May 2013) paras. 4; 6.

³¹ Ibid, para. 6(c).

³² CRC Committee, General Comment No. 13, para. 61.

³³ O’Keeffe v Ireland (GC) Appl no 35810/09, 28 Jan. 2014, para. 144.

³⁴ Discussed below in Section 3.1: Embedding SEA prevention and response policies within institutions.

victim making a complaint; it is triggered by the existence of indicia of the breach, or in certain circumstances, indicia of the heightened risk of a breach, which in turn triggers the due diligence obligation to mitigate the risk or investigate the abuse if it has already taken place.³⁵ It also reflects the reality that vulnerable victims will often not make a complaint.³⁶

II) CESSATION OF ONGOING HARM AND PROTECTION FROM FURTHER HARM

Safe, non-traumatising and thorough risk assessments should be undertaken swiftly to determine whether the child is still suffering SEA, at risk of further SEA or has other needs related to their experience of SEA or an SEA follow-up process or investigation. Risk assessments should also ensure that the child is protected from any further consequences related to past SEA such as digital technologies to solicit children for sexual purposes or the circulation of photographic or video images of the child.³⁷ If the competent agencies or organisations become aware of a safety risk to the child victim or witness triggering their duty to act, an immediate response is required to protect the child from potential harm, ongoing harm, and the risk of further harm materialising.³⁸

As part of the agency or organisation's engagement with children affected by SEA, every effort must be made to ensure that children are treated in a caring and sensitive manner and that their individual needs are accommodated, according to their abilities, age, intellectual maturity and evolving capacity, from the very first moment they are in contact with child protection staff, investigators and support organisations.³⁹

III) PRIVACY AND CONFIDENTIALITY

Protecting child victims from further harm involves respecting their privacy.⁴⁰ LGBTIQ children are particularly vulnerable to SEA and may face added issues of privacy related to their sexual orientation or gender identity such as blackmail, grooming and exploitation.⁴¹ A child's privacy and personal data including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records should be protected at all stages of any investigation or proceedings. No information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity.⁴²

IV) CHILD-CENTRED SUPPORT AND ASSISTANCE

Children who have experienced SEA require and have a right to confidential and survivor-centred support and assistance such as protection/security, physical and psychological recovery services, financial, legal, social, and educational services, and other services necessary for the child's reintegration. These should be interdisciplinary,

35 *Aktas v. Turkey* Appl no. 24351/94, 24 April 2003, para. 299; *Maritza Urrutia v. Guatemala (Merits)*. Ser. C No. 103 (27 Nov. 2003) para. 96.

36 *Bati and Ors v. Turkey*, Appl nos. 33097/96, 57834/00, 3 June 2004, para. 133.

37 CRC Committee, General comment No. 25 on children's rights in relation to the digital environment, UN Doc CRC/C/GC/25 (2 March 2021) para. 81.

38 *Guidelines on justice in matters involving child victims and witnesses of crime*, UN Doc E/CN.15/2005/L.2/Rev.1 (25 May 2005), paras. 32-34. Though the context is different, the responsibility of competent bodies to undertake and respond to risks involving children is set out in *Kurt v Austria (Grand Chamber)* Appl no. 62903/15, 15 June 2020, para. 190. Measures taken must be adequate and proportionate to the level of the risk assessed.

39 *Guidelines on justice in matters involving child victims and witnesses of crime*, paras. 10, 14.

40 *Guidelines on justice in matters involving child victims and witnesses of crime*, paras. 26-28.

41 Women's Refugee Commission, *Addressing Sexual Violence against Men, Boys, and LGBTIQ+ Persons in Humanitarian Settings* (Feb. 2021).

42 UN *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Guideline 10, para. 54.

cooperative, align with their best interests and be available for as long as they are required.⁴³ Support and assistance should include respectful, sensitised case management, including an individual action plan to access health, mental health and psychosocial support and other services, material assistance and livelihood/vocational support where appropriate.⁴⁴ They should be “sensitive to the child’s age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the individual needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.”⁴⁵

Access to support in the aftermath of SEA should be non-discriminatory.⁴⁶ It should take particular account of the individual needs of girls, boys, and LGBTIQ children. Yet, in some countries, given the prevalence of stereotypes around sexual violence, support structures are only available to female victims.⁴⁷

V) CHILD AGENCY AND EMPOWERMENT

Every child has the right to express their views, opinions and beliefs freely, in their own words, and especially to contribute to the decisions affecting their life, including those taken in any judicial processes, and to have those views taken into consideration according to their abilities, age, intellectual maturity and evolving capacity.⁴⁸ The right to be heard is not something that can be ignored on the basis that it is not in the child’s interests; this, as other rights, needs to be approached from the perspective of “how” can the right be maximised in a way that safeguards the child’s best interests, and not “whether” the right to be heard can exist alongside a child’s best interests. Any decision that does not take into account the child’s views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests.⁴⁹ As the CRC Committee underscores, there is a positive obligation to foster agency by addressing the particular barriers that contribute to disempowerment: “As the experience of violence is inherently disempowering, sensitive measures are needed to ensure that child protection interventions do not further disempower children but rather contribute positively to their recovery and reintegration via carefully facilitated participation. The Committee notes that barriers to participation are faced by particularly marginalised and/or discriminated groups. Addressing these barriers is especially relevant for child protection, as such children are often among those most affected by violence.”⁵⁰

The context in which children exercise their right to participate should be enabling and encouraging, so that the adults who are responsible for the proceedings are willing to listen and seriously consider their views.⁵¹ As one expert explained, the view that

43 Guidelines on justice in matters involving child victims and witnesses of crime, paras. 22, 24, 43.

44 Women’s Refugee Commission, *Addressing Sexual Violence against Men, Boys and LGBTIQ+ Persons in Humanitarian Settings* (Feb. 2021) 28.

45 Guidelines on justice in matters involving child victims and witnesses of crime, UN Doc E/CN.15/2005/L.2/Rev.1 (25 May 2005), para. 16.

46 Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel adopted by the General Assembly, A/RES/62/214 (21 December 2007), para. 9.

47 Asian Development Bank (2014), “More Police Service Centers in Nepal Help Reduce Violence Against Women,” 12 Nov. 2014, <http://www.adb.org/news/features/morepolice-service-centers-nepal-help-reduce-violence-against-women>.

48 Guidelines on justice in matters involving child victims and witnesses of crime, para. 9. See also, Inter-American Commission on Human Rights, *Fulfillment of Children’s Rights*, OEA/Ser.L/V/II.166 Doc. 206/17 (30 Nov. 2017) para. 286.

49 Article 12 CRC.

50 CRC Committee, General comment No. 13, para. 63.

51 *Moving Forward: Enabling a Child-Centred Approach at the ICC and Beyond* (JUSTICE RAPID RESPONSE, 9 December 2021), Comments by Dr Daryn Reicherter.

children do not know what is best for them is pervasive in the humanitarian sector and needs to be actively countered.

CASE STUDY: CHILD-CENTRED PRACTICES IN A CHALLENGING ENVIRONMENT

John is a fifteen-year-old citizen of Oldland who fled to the camps in Newland when fighting broke out in his town. In one camp, John became involved with a skills training programme for displaced adolescents. Global Refugee Assistance (“GRA”), an international NGO, ran the training programme. One of the programme facilitators, a man from Newland, took an interest in John’s training, but when John stayed late for extra help after the programme, the facilitator began showing him graphic sexual images on his phone, touching him inappropriately, and demanding that he perform oral sex. He took photos of John and threatened to share the photos with his family if he refused or told anyone.

Other GRA staff developed suspicions, noticing that the facilitator spent time alone with John and other programme participants when no-one else was at the training premises. When staff members reported their suspicions, GRA made initial inquiries, including meeting with John to ask him questions. But GRA took no disciplinary action against the facilitator at that time, and soon afterward, John and his family left the camp. GRA conducted no further investigation and provided no assistance or support to John.

GRA staff continued to have concerns about the facilitator’s relations with programme participants and other staff members. Despite receiving multiple reports, the organisation did nothing until a new Head of Mission took over leadership of its Newland response. Realising GRA had an obligation to respond to the reports, the new Head of Mission brought in an independent investigation team.

By this time, John had moved to another camp in Newland. He first heard of the independent investigation when staff of another organisation contacted him at his shelter. They explained it was essential for him to take part in an interview with the investigation team, but John was not interested. He had already answered questions about what the facilitator did and received no help. Nothing was done to punish the facilitator the first time, and John could not see why he should speak again. He also knew there was nowhere in the camp where he could speak privately with the team of investigators without other camp residents suspecting what the meeting was about. John did not want people thinking he wanted to do what the facilitator made him do because people would reject him as a homosexual.

In response to John’s concerns, the investigation team spent time speaking with him, explaining the independent investigation was different from the questions GRA initially asked him and that it had a higher likelihood of leading to real consequences for the facilitator. They made a plan to ensure John’s privacy and the confidentiality of the investigation by conducting the interview outside the camp. They arranged with another organisation to drive John from the camp to a private location in one of the urban centres in Newland. These steps gave John a higher degree of confidence in the investigation team, and he agreed to speak with them.

When John arrived for the interview, the team had engaged a psychologist to be present during the interview. The psychologist spoke the same language as John and had no ties to John, his family, or GRA. The investigation team reassured John that the psychologist had signed an agreement committing to keep anything he said during the interview completely confidential.

When the investigation substantiated the allegations, GRA terminated the facilitator's employment with the organisation. The organisation also reported the case to the authorities in Newland and Newland began a criminal investigation. Newland accepted into evidence the statement the investigation team took from John. Although the interview was not video or audio recorded, Newland's prosecutors accepted the statement. Newland's prosecuting authorities spoke with the investigation team to understand the investigative methods used and to evaluate the credibility of John's statement. They did not require John to go through another interview.

GRA arranged for John to receive appropriate medical and psycho-social support during the investigation. On the recommendation of the independent investigation team, GRA undertook a full review of its PSEA practices. It adopted a new policy that it will go straight to an independent investigation for serious allegations of SEA, to increase the chance of preventing future misconduct by the perpetrator and reduce the risk of having to interview victims multiple times. GRA also adopted a new SEA awareness training programme for all staff, more widely accessible reporting lines, and a whistle-blower protection policy.

2.1.2 TRUTH, JUSTICE, AND LEGAL REDRESS

Effective SEA investigations should be designed in such a way that they can establish the truth and lead to justice and legal redress for child victims. This should take into account that much of child SEA will, if proven, constitute a crime which the competent authorities should have the wherewithal to prosecute and punish.⁵² This requires investigations to not only be capable of establishing whether SEA occurred but also, collecting and preserving evidence of the crime for future criminal justice processes. SEA is also a personal injury which can result in long-term physical and psychological harms as well as educational and economic losses and other costs associated with early pregnancies and community ostracisation. Such harms should be capable of being redressed by the perpetrator and/or the agency or organisation where appropriate.⁵³ As the CRC Committee recognises, "where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration."⁵⁴ Not only is it crucial to put in place special protective measures to guarantee the child's survival and development, but it is also necessary to ensure that measures of social rehabilitation or reinsertion are in place to support child victims of abandonment or exploitation.⁵⁵

When considering how to enhance the prospects for justice in all its guises, it is important to understand how children perceive justice. As children are not a homogenous group, their understanding of and appreciation for justice and legal redress will differ depending on their age and maturity. Children's perceptions of justice may also differ in emphasis, timeframe and purpose from adults'

52 Adults engaging in sexual acts with minors below the age of consent is criminalised in most countries. While the age of consent varies between states, most countries criminalise certain acts concerning children under 18, such as child trafficking, sexual exploitation of children in/for prostitution and pornography. Engaging in sexual acts with a child where there is an abuse of a position of trust, or where the child is in a particularly vulnerable position, is routinely criminalised.

53 CRC Art 39, which requires States parties to promote the physical and psychological recovery and reintegration of child victims of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.

54 CRC Committee, General Comment No. 5 (2003), General Measure of Implementation of the Convention on the Rights of the Child, UN Doc CRC/GC/2003/5 (27 Nov. 2003) para. 24.

55 *Villagrán-Morales et al. v. Guatemala* (Merits, Reparations and Costs), Series C No. 252 (25 Oct. 2012).

perceptions.⁵⁶ If there is a local culture of blaming the victim or imposing some “solution” like forcing the victim and perpetrator to marry, then victims will not come forward. But the picture is mixed. When given the opportunity to contribute to the uncovering of the truth, some child victims (though not all) may wish to contribute to an investigative process. Experts underscored the need to provide a safe space for children to engage with justice processes. As one expert explained, by not talking to children, one perpetuates the lack of accountability and impedes the opportunity to deter perpetrators. And, the invisibility of the abuses that is fostered by the failure to report and document the incidents, can be extremely harmful. According to some experts, children are most interested in speedy closure so that they can move forward with their lives, and support to move beyond any disadvantage they suffered because of the exploitation or abuse. They are also interested in ensuring that others are not similarly abused.

Some barriers to justice are legislative: for example, the limited recognition of SEA as a crime, for children of any gender. In some countries, the legacy of colonial laws on same-sex activity or cultural norms do not protect from same gender sexual exploitation, and indeed may heighten abuses.⁵⁷ Certain facets of children’s involvement in SEA may be criminalised – e.g., sexual exploitation of children in/for prostitution or the criminalisation of sex outside of marriage. This can prevent children from coming forward and for the harms perpetrated against them to be addressed by the law. Stereotypical gender roles and perceptions about sexual violence may further impede certain victims, particularly boys, from being believed. They are more likely to be arrested and tried as offenders than treated as victims.⁵⁸

The Guidelines on justice in matters involving child victims and witnesses of crime make clear that: “Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow them to give intelligible and credible testimony, with or without communication aids and other assistance.”⁵⁹ Human rights courts also recognise that the vulnerability of the victim (including, their young age) should be taken into account in how information is evaluated and inferences drawn between different versions of events. Where persons are in a heightened state of vulnerability, this requires investigative authorities and domestic courts to show increased diligence in analysing [the victim’s] statements; including the validity of consent to sexual acts.⁶⁰

For such barriers to be overcome, child victims of SEA require access to information on their legal rights. This should be provided “in a manner appropriate for the child’s age and maturity, in a language that the child can understand and in a manner that is gender- and culture-sensitive. Provision of information to parents, guardians or caregivers should be in addition, and not an alternative, to communicating information to the child.”⁶¹ Children should have access to child-friendly legal advice that is accessible, age-appropriate, multidisciplinary and effective, and that is responsive to the range of legal and social needs faced by children and youth.⁶² They should have access to legal representatives who can provide them with impartial advice and represent their interests in legal proceedings should the child, properly informed, choose to engage with the justice process: “Legal aid provided to children should be prioritised, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs

56 See, *Advancing Justice for Children: Innovations to strengthen accountability for violations and crimes affecting children in conflict* (Save the Children, 2021).

57 *Barriers to Compensation for Child Victims of Sexual Exploitation* (ECPAT, 2017).

58 Human Rights Council, “Access to justice for children”, UN Doc A/HRC/25/35, 16 Dec. 2013; *Advancing Justice for Children: Innovations to strengthen accountability for violations and crimes affecting children in conflict* (Save the Children, 2021).

59 *Guidelines on justice in matters involving child victims and witnesses of crime*, para. 18.

60 I.C. v. Romania, Appl. No. 36934/08, 24 May 2016, para. 56; M.G.C. v. Romania, Appl. No. 61495/11, 15 March 2016.

61 UN *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UN General Assembly Res. 67/187, Guideline 10, para 53(e).

62 *How to Write a Child-Friendly Document* (CRIN and others).

of children.”⁶³ Many justice systems provide access to legal aid only for criminal defendants; not for victims of crime or victims seeking to pursue civil or other remedies against their abusers, even when the victims are children. This impedes child victims from considering fully what justice options they may have and being in a position to pursue them.

Legal professionals should collaborate with other professionals such as child psychologists, the police, prosecutors, judges, social workers, court officials, teachers and medical staff so that all those concerned have a full understanding of the child and his or her needs and work together to ensure that a child’s rights are upheld.⁶⁴ Regular multi-agency strategy meetings are useful for this. Coordination is also important throughout the investigative and justice process to ensure that the best interests and dignity of child victims and witnesses are respected.⁶⁵

CASE STUDY: THE KAVUMU PROSECUTIONS⁶⁶

Over a three-year period beginning in 2013, forty-two young girls aged between eighteen months and eleven years were abducted from the village of Kavumu in South Kivu, DRC, and raped in a field nearby. Over the following five years, Congolese medical and legal professionals, with Physicians for Human Rights (“PHR”) and other international stakeholders, worked to ensure the crimes were documented and prosecuted. Eleven men were ultimately convicted. The perpetrators in Kavumu were a lawmaker and ten militia members, so the case was not an example of SEA by humanitarian actors. However, the case involved a range of innovative measures that make it a model of child-centred, trauma-informed investigations in a low-resource setting:

- ▶ The medical and legal personnel involved obtained the victims’ informed consent at every stage of the process.
- ▶ Survivors received both immediate and ongoing care for their physical and psychological injuries from Panzi General Reference Hospital in South Kivu.
- ▶ Both medical and legal personnel – including doctors, nurses, psychologists, police officers, lawyers, and judges – were part of a training and networking programme on sexual violence investigations, overseen by PHR.
- ▶ The PHR programme had trained medical personnel in documentation of forensic evidence of sexual violence and had trained legal personnel in the use of that evidence in legal processes. The programme had also built relationships and trust between actors in the medical and legal systems.
- ▶ Medical personnel documented Kavumu survivors’ injuries using a standardised forensic medical intake form and photographed the survivors’ injuries. With the victims’ consent, they shared this forensic evidence with police handling the investigation. They obtained the assent of the children and the consent of the parents/guardians, who were very much engaged throughout the forensic medical evaluation and investigation process.
- ▶ To avoid multiple interactions with the survivors, a multidisciplinary consultation was held over several days, where survivors met with a paediatric psychologist and

⁶³ UN *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Principle 11, para. 35; Guideline 11, para. 58.

⁶⁴ UNICEF, *Guidelines on Child-Friendly Legal Aid* (Oct. 2018).

⁶⁵ Guidelines on justice in matters involving child victims and witnesses of crime, paras. 29-31.

⁶⁶ This good practice case study is based on the published account of the Kavumu case and the comments of one expert interviewed for this report. See, Karen Naimer, Muriel Volpellier and Denis Mukwege, “The case of Kavumu: a model of medicolegal collaboration”, (2019) 393 *The Lancet* 2651.

a team of physicians and participated in a video-recorded interview about their experience.

- ▶ The Kavumu investigation adopted standards set out in international protocols, including the World Health Organization’s Strengthening the Medico-Legal Response to Sexual Violence Toolkit, the United Kingdom’s International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, and the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (commonly known as the Istanbul Protocol). It also applied the National Institute of Child Health and Human Development (NICHD) Investigative Interview Protocol.
- ▶ Congolese judges were involved throughout the process as part of the medico-legal cooperation network and, when the case went to trial, judges allowed the video interviews into evidence instead of requiring the children be questioned again in court.
- ▶ Judges also allowed witnesses to testify in private sessions or, if testifying in public, to be veiled, behind a screen, and using voice modification and a pseudonym to ensure victim and witness protection.

The Kavumu prosecutions succeeded through the efforts of both Congolese and international stakeholders over several years, building on a long-running process of capacity development among both legal and medical practitioners in Eastern DRC. Most SEA cases in humanitarian settings do not receive this level of coordinated response. However, the case demonstrates the effectiveness of building technical skills and co-ordination networks among actors in the medical and legal systems in locations where humanitarian operations occur. It also demonstrates practical steps that put the interests of child victims at the centre of an investigative process; as such, it provides a model for humanitarian agencies to follow.

2.1.3 GUARANTEES OF NON-RECURRENCE

An “effective” investigation should be able to clarify not only what happened, but why it happened and what changes to policies and practice are required to avoid recurrence.⁶⁷ These are obligations to make good faith efforts and undertake all that is reasonably possible to ensure the non-recurrence of a violation, and not obligations of result. Nevertheless, where measures taken are not successful in preventing recurrence, the agencies and organisations would clearly be required to improve their efforts. What measures would be effective to guarantee non-recurrence will be context specific. As Pablo de Greiff stated, “there is no such thing as a general non-recurrence policy that will be equally effective in all contexts.”⁶⁸

While there is internal reflection within the humanitarian sector about SEA and particularly SEA affecting children, the identification and implementation of measures aimed at guarantees of non-recurrence is still nascent. Measures that would be particularly relevant for SEA involving children include:

I) INSTITUTIONAL AND STRUCTURAL REFORMS:

Within the agency or organisation, this may entail a review of codes of conduct, staff rules and complaints procedures. Where the reviews identify gaps, it may require new

⁶⁷ UNHRC, General Comment 31, para. 17.

⁶⁸ Pablo de Greiff, Statement at the 70th session of the General Assembly (26 Oct. 2015).

ethics, risk analysis or oversight departments or ombuds offices with an enhanced capacity to identify and respond to SEA risks and to receive and respond to live allegations; hiring new specialists or teams to address needs previously unidentified or not catered for or entering into relationships or partnerships with other organisations or service providers to address gaps or build skills. It may also involve instituting mandatory reporting requirements, strengthening protections for whistle-blowers in order to encourage reporting and ensure that those who report do not face negative repercussions. Within a country-level operation, it may involve improving structures for child support and protection within the local justice system, improving access to legal aid for children and strengthening the referrals system so that children feel more confident to engage with justice processes.

II) TRAINING:

Specialist work related to vulnerable children requires professional skills and training, such as investigating abuses and crimes against children, conducting child interviews when necessary, supporting children through the justice process and making referrals. However, front-facing teams that encounter children for a variety of reasons will also need training and sensitisation on a priority and continual basis. This should include how to recognise abuses and crimes against children; how to recognise and prevent intimidation, threats and harm to child victims and witnesses; understanding the impact and consequences of crimes against children; appropriate adult-child communication skills; confidentiality protocols when dealing with children; cross-cultural and age-related linguistic, religious, social and gender issues; relevant human rights standards and principles, including the rights of the child; and the principles and ethical duties of their office.⁶⁹ Sufficient financial resources are required for training of appropriate depth and continuity. A challenge is that in most countries, donor dependence means that once the funds run out, the processes disappear.

III) LEGAL REFORMS:

Within agencies or institutions, reforms akin to legal reforms may include sector-wide commitments to be bound by certain standards or agreements to lift privileges and immunities in the limited instances in which they may apply to bar criminal or civil proceedings involving agency personnel or to prevent agencies from collaborating fully and sharing information with local investigators or prosecutors. Within a country-level operation, legal reforms may include: reforms to laws that regulate how humanitarian agencies and organisations operate in-country; how SEA incidents are reported and followed-up in country; reforms to national laws or the enactment of new laws to better account for child rights in legal proceedings; reforms to the criminal code to expand the types of abusive or exploitative sexual conduct that may give rise to a criminal offence; to better account for the different types of persons (ages, genders, sexual orientations) who may be considered victims of such conduct and to prevent children who have been victimised from being at risk of being charged with criminal offences should they report the abuse (e.g., the offence of sexual exploitation of children in/for prostitution; the offence in certain cultures of sex outside of marriage or sex with a person of the same gender).

IV) VETTING:

"Vetting can induce trust, not just by "re-peopling" institutions with new faces, but thereby demonstrating a commitment to systemic norms governing the hiring and retention of employees, disciplinary oversight, prevention of cronyism and so on."⁷⁰ Vet-

⁶⁹ Guidelines on justice in matters involving child victims and witnesses of crime, paras. 34, 42.

⁷⁰ P. de Greiff, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc A/70/438, (21 Oct. 2015) para. 19.

ting involves taking steps to ensure persons against whom there are credible SEA allegations are no longer employable on the basis that their track record makes them unsuitable to work in the humanitarian sector with vulnerable people. The humanitarian sector has introduced inter-agency processes to ensure that persons deemed by one agency as unsuitable for work for reasons related to SEA (e.g., persons who were dismissed or resigned while an SEA investigation/disciplinary process was pending) are not employed by another agency.⁷¹ These are important but nascent processes which require monitoring and refinement. They take inspiration from public record checks systems that many countries employ to screen persons prior to employing them to work with or care for children or vulnerable adults.

2.2 INDEPENDENCE AND IMPARTIALITY

For an investigation to be effective, investigators must be able to proceed without interference or influence and without fear of reprisals or expectation of a benefit for coming to a particular conclusion. For an investigation to meet the requirements of independence and impartiality, it must be conducted by persons independent of those potentially responsible. There must be a lack of hierarchical or institutional connection, as well as independence in practice.⁷² This is important both for the integrity of the investigation and its results. It is also important to avoid any perception of bias, which is crucial for the legitimacy and effectiveness of the investigative process.

⁷¹ Some UN agencies use the screening database “ClearCheck” [see: <https://unsceb.org/screening-database-clearcheck>], whereas another system employed by humanitarian (mainly non-UN) organisations is entitled the Misconduct Disclosure Scheme [see: <https://misconduct-disclosure-scheme.org/>].

⁷² *Jordan v United Kingdom*, Appl no. 24746/94 (4 May 2001) para. 106.

3. Operationalising Effective SEA Investigations Involving Children: Confronting Key Challenges

Allegations of SEA are likely to arise in any peacekeeping, humanitarian, or emergency context. Some of these allegations will involve children. This section provides guidance on how to operationalise SEA investigations involving children and how to engage children in those investigations. In sum, SEA investigations will only be effective if they are embedded within an organisational culture that recognises and mitigates the risks of SEA and understands the importance of addressing both causes and consequences. Guidance is derived from a variety of sources including policy documents, reports, results of past inquiries and discussions with experts as part of the research for this report.

3.1 EMBEDDING SEA PREVENTION AND RESPONSE POLICIES WITHIN INSTITUTIONS

All humanitarian agencies and organisations should have in place a policy on SEA that sets out at a minimum: what behaviour is prohibited, how information about SEA can be communicated to and within the organisation, what will happen when information about SEA comes to light (including data protection and confidentiality), what support and assistance is available to SEA victims, what are the different responsibilities of staff and who is in charge of ensuring the policy is implemented. Information on prohibited conduct should be integrated into codes of conduct and all staff, contractor and implementing partner⁷³ contracts. SEA should be recognised as gross misconduct and grounds for termination of employment. As SEA may involve criminal conduct and invariably SEA involving children will constitute a crime, all agencies and organisations have a responsibility to ensure that the criminal aspects of SEA are fully addressed, and this responsibility should be embedded in SEA policies. Organisations should have in place training, dissemination, and enforcement strategies to ensure policies are known, understood, and complied with, and they should be able to provide evidence that the policy has been conveyed to staff and senior management at regular intervals. Organisations should also have monitoring and evaluation frameworks to assess the effectiveness of policies and to identify and address any needed amendments.

Agencies and organisations should ensure that the persons they hire (whether on a permanent, short-term, or voluntary basis) have their backgrounds checked prior to employment and have signed on to the organisation's code of conduct. Robust reference checks are difficult in emergency contexts where organisations must quickly recruit large numbers of staff, and consequently organisations should collaborate with local communities to devise suitable alternatives to standard background checks where strictly necessary. Agencies and organisations may require prospective employees to self-declare prior issues of sexual or other misconduct and circumstances of termination of past employment, and to consent in advance to the onward disclosure of personnel records so that they are not re-hired by the same or different organisation without further explanation.⁷⁴

All agencies and organisations should have in place child-specific SEA policies. These may be stand-alone policies or special sections of SEA policies. What is crucial is that organisations are

⁷³ UN Protocol on Allegations of Sexual Exploitation and Abuse Involving Implementing Partners (21 March 2018).

⁷⁴ Minimum Operating Standards Protection from Sexual Exploitation and Abuse by Own Personnel (MOS-PSEA), 6. See also, Preventing Transgressors Moving Through the Humanitarian System (IASC, 31 May 2018).

well-prepared and capable of addressing operationally the issues and challenges associated with preventing, investigating and responding to child SEA and meeting the particular needs and rights of child victims in all their diversity.

GUIDANCE ON THE DEVELOPMENT OF SEA POLICIES IS AVAILABLE THROUGH THE UN AND SEVERAL NETWORKS AND ALLIANCES:

United Nations (<https://www.un.org/preventing-sexual-exploitation-and-abuse/content/policies-and-protocols>);

Inter-Agency Standing Committee (<https://interagencystandingcommittee.org/protection-sexual-exploitation-and-abuse-3>)

International Council of Voluntary Agencies (<https://reliefweb.int/sites/reliefweb.int/files/resources/B80C3F5CCD1341A9852572A400609BDo-icva-safeguarding-lines-feb07.pdf>)

CHS Alliance (<https://www.chsalliance.org/protection-from-sexual-exploitation-abuse-and-sexual-harassment/>)

CHILD-SPECIFIC GUIDANCE ON STANDARDS AND POLICIES IS AVAILABLE THROUGH KEEPING CHILDREN SAFE, HERE:

The International Child Safeguarding Standards (<https://www.keepingchildrensafe.global/wp-content/uploads/2020/02/KCS-CS-Standards-ENG-200218.pdf>)

Developing Child Safeguarding Policy and Procedures (<https://www.keepingchildrensafe.global/wp-content/uploads/2020/02/KCS-Developing-Child-Safeguarding-200218.pdf>)

Management of Child Safeguarding Allegations (https://www.keepingchildrensafe.global/wp-content/uploads/2021/04/KCS_GUIDANCE_ManagementCSAllegations_EN-2016_2020.pdf)

EXAMPLES OF CHILD-CENTRED SAFEGUARDING POLICIES ARE AS FOLLOWS:

Anti-Slavery International: <http://www.antislavery.org/wp-content/uploads/2018/02/Anti-Slavery-Child-Safeguarding-Policy-2017.pdf>

ECPAT International: <https://ecpat.org/wp-content/uploads/2021/06/ECPAT-International-Child-Safeguarding-Policy-2019-11.pdf>

Save the Children : <https://www.savethechildren.org/content/dam/usa/reports/events/child-safeguarding-policy-2020.pdf>,
<https://www.end-violence.org/sites/default/files/paragraphs/download/SAVE%20THE%20CHILDREN%20Child%20Safe%20Programming%20Guidelines.pdf>

Council of Europe Children's Rights Division: <https://rm.coe.int/child-safeguarding-policy-children-s-rights-division-22-may-2018-as-up/16808c8b91>

Terre des Hommes: <https://www.terredeshommes.org/wp-content/uploads/2017/08/TDH-Child-Safeguarding-Policy.pdf>

UNICEF: <https://www.unicef.org/supply/media/886/file/Policy%20on%20Conduct%20Promoting%20the%20Protection%20and%20Safeguarding%20of%20Children.pdf>

3.2 MISSION-LEVEL RISK ANALYSIS AND RISK MITIGATION FRAMEWORKS

SEA is a significant and known risk for humanitarian operations. Better understanding of the nature of the risk in particular settings as well as the variables that influence risk levels helps managers to identify actions to mitigate (or negate) the risk to an acceptable level and increase resilience.

Humanitarian agencies and organisations will have complex risk management processes that help them identify, evaluate, prepare for, monitor, and respond to evolving internal and external threats. SEA will be part of this analysis. Risk management helps operations to better anticipate threats and through different actions, to reduce and/or avoid those threats from materialising.⁷⁵ For example, cultural attitudes that tolerate or condone exchange of money or gifts for sex and/or the high numbers of vulnerable street children around humanitarian operations may heighten the risk of child SEA.⁷⁶ There may be aspects related to the country context that present specific opportunities to commit SEA involving children, such as a lower age of sexual consent which “normalises” sex between an adult and a child,⁷⁷ a legal and/or open commercial sex industry which does not exclude children specifically; a high proportion of the population living in poverty or unemployed; or a weak rule of law that is unlikely to hold humanitarian actors to account for criminal acts.⁷⁸ Attitudes towards abuse or exploitation of certain groups of children or adults may be normalised locally, such as child marriage, gender-based violence or corporal punishment, and some staff may believe such conduct is acceptable, or may hold prejudices against certain children (e.g., LGBTQI children, young boys who may be stigmatised for disclosing abuse and labelled wrongly as LGBTQI, children with disabilities or from certain marginalised communities) or may have a mistaken belief that children can consent to taking part in sex work.⁷⁹ COVID and other health emergencies can heighten risks of child SEA, given school closures and the increase in children living without parental care.⁸⁰ Other factors that can heighten the risk of child SEA include unscreened, poorly vetted and untrained staff and volunteers recruited at short notice in emergency operations who are unaware of or do not observe safeguarding standards, and inadequate protocols to protect confidential data. Risk analysts should assess what past trends say about children most vulnerable to SEA (e.g., teenage school girls, street children, out-of-school children, unaccompanied migrants; children living in camps, children with disabilities) and what factors may influence reporting (e.g. socially-conservative attitudes about extra-marital sex; countries where homosexuality is illegal and would discourage reporting of SEA involving boys/men; (un)availability of reporting channels).⁸¹ Risk assessments should consider the different entry points children have to the organisation (as targeted or other beneficiaries of assistance; community members living in proximity to humanitarian actors etc).

The risk of child SEA is not just a human resources (comportment) risk. It involves community health and safety, public relations, and compliance with host country law. This should impact how the threat is assessed, classified, and addressed. Risks of child SEA should be classified as extremely serious, meaning that the consequence of the risk materialising should be understood as unacceptably high. Thus, mitigation measures must be targeted, robust, scalable and under continual review. Those assessing risk will need to assess whether the measures in place to provide early warning and to mitigate risks are adequate given risk levels or whether the number and grade of personnel, training programmes, community awareness activities etc. need to be enhanced. There should be systematic monitoring of mitigation measures to ensure that identified measures are implemented and effective.

75 Sexual Exploitation and Abuse Risk Management Toolkit (UN CDU/DFS 2018), 1.

76 Ibid, 31.

77 Safeguarding (or SEAH) risk assessment and management tool (RSH Nigeria), 3.

78 Sexual Exploitation and Abuse Risk Management Toolkit (UN CDU/DFS 2018), 53.

79 Safeguarding (or SEAH) risk assessment and management tool (RSH Nigeria), 3-4.

80 Threats and Trends - Child Sexual Exploitation and Abuse: Covid-19 Impact (Interpol, September 2020) 14.

81 Sexual Exploitation and Abuse Risk Management Toolkit (UN CDU/DFS 2018), 53.

3.3 TRAINING

The intended recipients, content, and frequency of training on child SEA should depend on what the organisation does, where and how it operates, and the diverse ways in which it and its employees, contractors and partners interact with children. How training is conceived and the role it should play alongside other child SEA prevention and response work should depend upon the analysis of child SEA risks. Training will be part of the risk mitigation plan, though it is unlikely on its own to mitigate the risks to an acceptable level.

SEA training is focused on building knowledge and skills and changing attitudes. Most agencies and organisations afford a mixture of mandatory pre-deployment training, in-mission induction training, and periodic specialist training which depends on job functions during the mission. There may be specialist training for commanders or managers,⁸² SEA focal points or investigators. The Core Humanitarian Standard Alliance offers specialist training on SEA investigations and SEA for managers.⁸³ Pre-deployment training focuses on SEA policies, code of conduct and discipline issues. Induction training tends to be mission specific and will cover individual and management responsibilities, reporting misconduct, disciplinary and administrative procedures, and the rights and responsibilities of personnel. Some organisations and networks have produced country- or region-specific training tools.⁸⁴ Also, many agencies and organisations have online training programmes which are used for pre-deployment or to supplement in-person induction and ad hoc training during the mission.⁸⁵

CASE STUDY: EQUIPPING FRONTLINE PROTECTION STAFF TO SUPPORT AND ACCOMPANY CHILD VICTIMS DURING THE INVESTIGATION⁸⁶

Anne is a Protection Assistant with Children First, an organisation based in a border province of Newland where one of the largest refugee camps is located. A trained social worker, Anne's role with Children First involves providing child protection and gender-based violence response services for Oldland refugees in camps. Anne is also the liaison person between Children First and its international partner, International Assistance Partners ("IAP"), a humanitarian NGO with protection programmes in every camp in Newland.

Anne has managed numerous cases of sexual violence against children since refugees started to arrive from Oldland. In some cases, children report that the perpetrator is someone associated with one of the humanitarian agencies working in the camp. The perpetrator may have required the child to engage in sexual acts to receive aid or they may have coerced the child through force or manipulation. Anne is aware that she is obliged to pass on all such reports to Children First and that Children First is obliged,

82 Commanders' guide on measures to combat Sexual Exploitation and Abuse in United Nations military (May 2018).

83 <https://www.chsalliance.org/get-support/training/>

84 See, e.g., Ethiopia: Training Manual by the Ethiopia Protection from Sexual Exploitation and Abuse (PSEA) Network https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ethiopia_psea_network_training_package.pdf; Myanmar: resources of the Myanmar Information Management Unit: <http://themimu.info/sector/protection-sexual-exploitation-abuse-psea>; https://www.youtube.com/channel/UCNo8vDp786YQKsWVV7ewRbQ/play-lists?view=50&sort=dd&shelf_id=2; Americas: Regional Toolkit for Protection from SEA, Sexual Harassment (PSEA/SH); Inter-Agency Community-Based Complaint Referral Mechanism in the Americas https://rssn-americas.org/fileadmin/rssn-americas/documentos/PSEASH_Tools_and_Toolkit/Updated_October_23/Toolkit__Complaint_Referral_mechanism.pdf.

85 Saying No to Sexual Misconduct (IASC, 2020); Safeguarding Essentials (Humanitarian Leadership Academy); Prevention of Sexual Exploitation and Abuse (PSEA) e-learning course (UNICEF).

86 This case study is based primarily on expert interviews. Other relevant resources are provided in footnotes.

under its contract, to report them to IAP. Ultimately, the NGOs receiving the report are obliged to bring it to the attention of the agency where the accused person is employed so that the agency can investigate.

Anne always prepared her reports based on the victim's description of their experience of SEA. But she noticed that when investigators came to gather evidence and interview the victim, they asked her for details about the case that she sometimes did not have. Sometimes they asked her for contact information for other people involved with the child's case or records of medical examinations or tests Children First had arranged for the child. Because no-one at Children First was familiar with the investigative process, they did not have a system in place for recording the information investigators requested.

After Anne completed her report and passed it on, she often remained in contact with the child who made the report. The child was entitled to medical assistance and psychosocial support throughout the investigative process, and because Children First provides these services in the camp, Anne still sees the child and their family during the investigation. Anne began to realise that the investigative process was often tiring and distressing for children. The interviews were long, sometimes without breaks, and children told her the questions were difficult to understand. After the interview, they seemed nervous and tired, and some showed signs that the interview caused them to re-live the trauma of describing the sexual violence they suffered.

In addition, children and their families often asked Anne questions about the investigation process because they knew and trusted her. They asked for status updates, for the timeline of the investigation, when results would be available, or what would happen afterward. Anne was not familiar with the details of the process, so she was unable to answer. The SEA investigators who interviewed the victims were only in the camp for a brief time and were not available to address questions afterward.

Anne discussed these difficulties with her NGO colleagues and with other members of the PSEA Network in Newland. Children First then worked in collaboration with other PSEA Network members to draft informal guidelines and training modules on how to support child victims involved in SEA investigations. The guidelines recommended that protection staff should receive training on what information to record when a victim makes an initial report; that a support person should always be present during interviews with children; and that protection staff should be kept informed on the progress of investigations and able to share updates with victims.

Because of the guidelines and training, Anne now records and preserves specific details of a child's SEA report that she knows investigators will need later. This includes the name and contact details of the victim, their family, and any staff members who interacted with them. It also includes accurately recording the child's description of the conduct while avoiding unnecessary questioning. Children First also now works with medical personnel to ensure physical evidence, such as medical samples, or documents such as test results or medical reports, are preserved. Children First has revised its data management system to ensure that victims' case files are protected securely.

Anne or one of her colleagues now accompanies any child being interviewed by SEA investigators. They serve as support persons or child advocates, accompanying the child before, during, and immediately after the interview.⁸⁷ Before the interview, they meet with the child to let them know what to expect and let the child ask questions. If the victim's family is involved, the support person coordinates with the family to plan

⁸⁷ The practice of having a child advocate present with a child at key moments in the legal process, as is used in some justice systems, often in high-income countries. See, e.g., Child Law Advice, Advocacy, <https://childlawadvice.org.uk/information-pages/advocacy/> (child advocates in the United Kingdom "offer advice and support to a child or young person" and "enable children to express their wishes and feelings" during the justice process. They do not represent them in court).

the interview. During the interview, the support person stays in the interview room. They do not participate in the interview or serve as translators, but they observe the child and ask for breaks if the child seems tired or upset. After the interview, they debrief with the child to discuss how they are feeling and assess whether they need immediate psycho-social support. They also follow up with IAP and with the accused's employer to ensure the victim receives medical, psychosocial, and other services.⁸⁸ Anne and other support persons are trained on the importance of confidentiality and how to advocate for the child without compromising the investigation.

Anne and other protection staff in Newland have also attended information sessions on the investigative process. She also now attends regular case review meetings, where personnel involved in SEA investigations can coordinate and share information with service providers. Investigative personnel share updates on the status of the investigation while service providers give updates on assistance provided to victims. After these meetings, Anne can communicate with victims and their families on any developments in the investigation. The case review meetings and information sessions also allow her to better address their questions about the investigative process.

88 According to the 2019 UN Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse, each UN agency is responsible for "providing assistance to any victim of sexual exploitation and abuse perpetrated by personnel of their respective agency, fund or programme and, where appropriate, by personnel of implementing partners. Assistance is provided in accordance with the referral pathways at country-level; assistance may be provided directly by the United Nations agency, fund or programme, through contractual partnerships, and/or through collaboration with appropriate service providers at country-level. Upon referral, UNICEF is the provider of last resort vis-à-vis the United Nations system with regard to the provision of assistance to child victims of sexual exploitation and abuse." See *Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse* (12 Dec. 2019).

Child SEA training materials

Materials which focus specifically on child SEA tend to be more limited or basic.⁸⁹ As part of an organisation's overall risk management action plan, it may be necessary to produce and deliver bespoke training materials which address the in-country risks and signpost available services. Training on child SEA should be given in all areas of operation, and given the high turnover of staff, contractors and volunteers, at regular intervals. Training should also be geared towards community organisations and beneficiaries who will often be the first to learn of allegations. It should also engage children proactively so that they know to whom abuse should be reported, what will be the steps taken if abuse is reported, and what can be expected from the process. Community training should focus on helping communities to identify early warning signs of child SEA, explaining how to report allegations, and providing guidance on how communities can support child victims of SEA in a way that contributes to their healing and inclusion.

TRAINING SHOULD COVER AT A MINIMUM:

What is SEA affecting children?

Training must underscore that sexual activity with children (under 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in a child's age is not a defence.⁹⁰ Training should be context specific, identifying the types of behaviour that occur frequently in the community in humanitarian settings. It should address stereotypes and cultural taboos including homosexuality, sexual practices which may be accepted or tolerated within the community, and deal with scenarios involving persons of trust acting inappropriately (e.g., doctors, teachers, religious or community leaders).

EXAMPLES OF SEXUAL EXPLOITATION INVOLVING CHILDREN:

- ▶ A head teacher, employed by an NGO, who refuses to allow a displaced child to enter his school unless her mother sleeps with him.
- ▶ A UN driver who regularly provides rides in the official UN vehicle to village schoolchildren travelling to school in a neighbouring town, in exchange for him taking photographs of them posing naked.

EXAMPLES OF SEXUAL ABUSE INVOLVING CHILDREN:

- ▶ Local NGO staff touches a 6-year-old girl inappropriately while playing with her as part of psychosocial intervention.⁹¹

⁸⁹ See e.g., a training video on child safeguarding in emergencies: <https://safeguardingsupporthub.org/multimedia/child-safe-guarding-emergencies>.

⁹⁰ Special measures for protection from sexual exploitation and sexual abuse (UNSG, 2003) ST/SGB/2003/13 para. 3.2(b).

⁹¹ *Guidelines: Inter-Agency Community-Based Complaints Mechanisms (Protection against Sexual Exploitation and Abuse)* (IASC, April 2016) 95.

How to identify children at risk of SEA?

Given that children often do not come forward, it is crucial for training to cover possible behavioural indicators (e.g., display of sexualised behaviour; changes in emotional wellbeing; being increasingly isolated or secretive; having money or new things; having older boyfriends or girlfriends; being involved in fights; missing school; returning home late or drunk; spending time at hotels or brothels) and physical signs (changed physical appearance; unexplained physical injuries, scars from self-harm).

What to do if one learns of a case of child SEA?

This advice should be detailed, practical and context specific, considering the available resources within the community and the humanitarian sector, and recognising where appropriate that usually child SEA will constitute a crime. It should explain why it is important to disclose allegations of SEA (regardless of the hierarchy or rank of the person against whom the allegation is made), how to disclose allegations and what procedures are in place to protect whistle-blowers and how to access them. Employers must not only explain the policy of mandatory reporting to the institutional hierarchy within their agency or organisation, but also why the policy exists and what the consequences are for not following it, giving examples.

The best interests of the child

Training should explain what this means in the context of SEA, reporting SEA and responding to SEA. It should be made clear and explained how the best interests of the child is a right, a principle, and a rule of procedure, and what this means practically.

More specialist training (and specialist skills) is required for: persons conducting child interviews; child SEA investigators; and persons providing psychosocial support or counselling or other advice to children.

In some emergency settings, it may not be feasible for all organisations to have such trained personnel on staff. Organisations would be alerted to such gaps through risk assessment exercises and should pool resources with better serviced organisations working in-country; this may also contribute to the independence of the investigation. Another solution may be to locate and train appropriate local professionals, providing them with first-hand support for the investigation. According to one of the experts consulted, in a recent investigation involving young adult victims in vulnerable situations, due to COVID-19 restrictions, international investigators were unable to travel to the site of the investigation. The investigators located appropriate local professionals (who were able to communicate with young persons) and trained them to conduct the investigation, planned the investigation in close cooperation with them, remotely. There can be pros and cons to choosing investigators from the local community, and where this is a suitable option will depend on the context. Local investigators are likely to be more familiar with local habits and dialects, probably leading to fewer misunderstandings, however, victims may feel worried that the information may not be kept confidential, or they may feel ashamed to talk about sexual matters with someone they might continue seeing in the community. This may be particularly true for boys who have been abused by men and may fear being labelled as homosexuals. An outsider “leaves and takes those stories away”, as expressed by one of the experts.

In sum, it would be ineffective mission-planning to identify child SEA as a significant risk and an absence of specialist staff as a barrier to effective investigations, and not to mitigate those risks.

3.4 CREATING OPPORTUNITIES FOR DISCLOSURE

Often, children (with the likelihood to disclose further differentiated along age⁹² and gender lines⁹³) and/or their caregivers will refrain from making official complaints about SEA. Children may fear they will not be believed, because there is a history and a culture which children have internalised of not being taken seriously; “they are pushed away, dismissed, laughed at or scolded for making things up. And so, what happens is then children clam up, they go inward, they don’t talk to anyone else.”⁹⁴ SEA experiences may go unreported or not disclosed because child survivors (and their families) may fear the potential impact that societal stigmatisation, shame, and social exclusion can have on their lives. This may include fear of potential negative economic impacts for a family, for example the child survivor (and often their sisters) now being perceived as unmarriageable. In contrast, children are more likely to make allegations, especially against non-family members, when a close relative is supportive and believes them.

Entrenched gender norms combined with cultural and religious taboos, and scarce or inaccessible services, make it near impossible for males to disclose SEA, and this is further entrenched by community attitudes.⁹⁵ Additionally, many won’t disclose or report because the police and judicial system mirrors these societal norms and provides many entry points for revictimisation⁹⁶ or because they feel powerless – “If an aid worker rapes me, I could try to go to his boss to tell him, but I won’t be able to because I’ll be scared of him, he has money and I don’t even speak [the language].”⁹⁷ COVID and similar public health emergencies which have reduced many agencies’ and organisations’ field presences have also presented barriers to disclosure as there has been less time and opportunity to build up the necessary trust for disclosure to happen.

Absent or infrequent reporting should not present a false sense of security that child SEA is not happening or that children have no interest in having the abuse stop, nor should it serve as a license to do nothing. Considering the known risks of child SEA, agencies and organisations have positive

92 Compared to adolescents, younger children (pre-puberty) may be more inclined to disclose sexual abuse to adults, though the picture is mixed. While younger child victims may not realise their experiences are abusive, adolescent victims may experience more feelings of guilt, self-blame and shame, and be aware of the stigma often surrounding the issue of sexuality and sexual abuse. See, C. Leach, MB Powell et al, “The Relationship Between Children’s Age and Disclosures of Sexual Abuse During Forensic Interviews”, (2016) 22(1) *Child Maltreatment* 79; KH Nguyen et al, “Disclosure of Sexual Violence Among Girls and Young Women Aged 13–24 Years: Results From the Violence Against Children Surveys in Nigeria & Malawi” (2021) 36(3-4) *J Interpers Violence*. See, however, I. Hershkowitz et al, “Trends in children’s disclosure of abuse in Israel: A national study” (2005) 29(11) *Child Abuse & Neglect* 1203, which found that the rate of children’s disclosure of abuse increased as children grew older.

93 Girls are 2-3 times more likely to report SEA experiences than boys (although not in every country or organisational setting [see, K. Ji et al, “Child Sexual Abuse in China: A meta-analysis of 27 studies”, (2013) 37(9) *Child Abuse & Neglect* 613; G. Nikolaidis et al, “Lifetime and past-year prevalence of children’s exposure to violence in 9 Balkan countries: the BECAN study”, (2018) 12(1) *Child & Adolescent Psychiatry & Mental Health*; C. Ward et al, “Sexual violence against children in South Africa: a nationally representative cross-sectional study of prevalence and correlates”, (2018) 6(e) *Lancet Global Health* 460. Studies on boys 18-24 years old who experienced sexual violence prior to 18 years of age showed non-disclosure rates of more than 70% in Zimbabwe [Zimbabwe National Statistics Agency, UNICEF, & Collaborating Centre for Operational Research and Evaluation, 2013 cited in V. Josenhans et al, *Gender, Rights and Responsibilities: The Need for a Global Analysis of the Sexual Exploitation of Boys*, (2019) ch 3.2, *Child Abuse & Neglect Volume 110, Part 1*; 62% in Cambodia [Kingdom of Cambodia Ministry of Women’s Affairs, UNICEF Cambodia, & US Centers for Disease Control and Prevention, 2014 cited in Josenhans et al, *ibid*] and almost 50% in Honduras [Government of Honduras, 2019 cited in Josenhans et al, *ibid*]. Boys may be concerned about their masculinity, displaying weakness and some may not perceive their experiences of sexual violence as a problem because they are groomed by their perpetrators on how to interpret their victimisation. If abused by male perpetrators, boys may be worried about being labelled homosexual, which is taboo in many countries and illegal in some. Boys can be punished for being victimised, and are in danger of arrest, removal from their families and/ or placement in juvenile detention centres. Further, socio-cultural taboos deter boys help-seeking because they fear stigmatisation, shame, discrimination, and rejection.

94 Input from an SEA expert consulted during the preparation of this report.

95 *Working with Men and Boy Survivors of Sexual and Gender-Based Violence in Forced Displacement* (UNHCR, 2012) 4.

96 T. Heiberg, *Commodities in Stigma and Shame: An international overview of Save the Children’s work against child sexual abuse and exploitation* (Save the Children, 2001), 12.

97 *Perceptions Around Sexual Exploitation and Abuse (SEA) and Barriers To Community-Based Reporting: Equateur Prov, DRC (UNICEF 2021)* 13. See also, *Advancing Justice for Children: Innovations to strengthen accountability for violations and crimes affecting children in conflict* (Save the Children, 2021).

obligations to seek out information about SEA. Best practice in terms of creating opportunities for disclosure consists of the following:

3.4.1 FIELD-BASED COMPLAINTS MECHANISMS WHICH INCORPORATE COMMUNITY STRUCTURES

Community based complaints mechanisms are structures in which trusted community actors receive complaints from community members which are then forwarded to the relevant humanitarian agencies for follow-up. They are seen as preferable to hotlines set up and managed by the agencies or organisations themselves in that they involve community consultation and are in principle adapted to the local cultural context and tend to elicit greater community trust. Nevertheless, the barriers associated with child reporting remain, and need to be considered specifically.

Experts consulted in the preparation of this report spoke of concerns that the process undertaken by many organisations is insufficient. Children's voices are often under-represented in community consultations despite children representing a high percentage of SEA survivors.⁹⁸ Setting up entry points for children to submit complaints requires special approaches, such as using trusted teaching staff as community focal points to meet the needs of school-going children, or using schools, religious organisations and child activity centres as desirable locations for child-accessible entry points. However, sometimes these people and places are precisely where SEA can occur, and therefore it is crucial to ensure that education to prevent SEA is extended to structures that regularly interact with children.⁹⁹ The best way to engage with child SEA victims may not be obvious from the outset. Good practice is to arrange focus groups with the target group to determine what may work best. For example, in the Democratic Republic of the Congo, the PSEA Network held targeted discussions with child heads of households to understand their attitudes around revealing sexual abuse and to identify the environments in which they felt most comfortable reporting it.¹⁰⁰ Experts also recommended developing and disseminating culturally relevant language tools for SEA-related terminology; this would help with education and outreach in addition to facilitating field-based complaints.

3.4.2 EXPLAINING, GETTING BUY-IN AND ENFORCING MANDATORY REPORTING OF SEA

Most agencies and organisations have in place mandatory reporting obligations which apply to employees and other categories of personnel and volunteers. Increasingly, they also apply to sub-contractors and implementing partners.¹⁰¹ These are reflected in codes of conduct and the failure to report to the appropriate person or body within the organisation can constitute serious misconduct.¹⁰² Nevertheless, the culture of mandatory reporting is often lacking for four principal reasons:

- I) Some staff might not understand or agree with the mechanism and think it will put vulnerable victims at risk. Typically, this stems from a misunderstanding of what mandatory reporting is. Mandatory reporting is to the hierarchy within the organisation so that, in the case of child SEA, child protection specialists can assess the allegations and develop a forward-looking plan which takes the child's best interests into account.

⁹⁸ Guidelines: Inter-Agency Community-Based Complaints Mechanisms (Protection against Sexual Exploitation and Abuse) (IASC, April 2016) 25.

⁹⁹ *bid*, 45.

¹⁰⁰ Best Practice Guide on Inter-agency Community-Based Complaint Mechanisms: IOM's observations from PSEA implementation (2020) 4.

¹⁰¹ UN Protocol on Allegations of Sexual Exploitation and Abuse Involving Implementing Partners (21 March 2018).

¹⁰² See, e.g., Protection against retaliation for reporting misconduct and for cooperating with duly authorised audits or investigations ST/SGB/2017/2/Rev.1 (28 November 2017).

Whether an allegation is reported to local authorities is a separate consideration which depends on the strength of the allegations, the child victim's interests and wishes. However, in some countries, national law requires certain agencies and types of professionals (e.g., health workers; social workers; teachers; staff at orphanages) to report allegations of interpersonal violence to local authorities. Thus, in such circumstances, an internal report could result in mandatory reporting to the competent authorities, regardless of the victim's consent.¹⁰³ While this is not the practice in the majority of countries, it is an issue the humanitarian sector continues to grapple with, particularly in emergency settings, where established and safe mechanisms to report child sexual abuse might not exist locally and where security can be unstable and dangerous. In such cases, service providers should follow a decision-making process that first considers the child's safety and then the legal implications of not reporting. Supervisors should always be consulted in decision-making to determine the best course of action.¹⁰⁴

II) Some staff misunderstand what constitutes SEA and thus only report the acts they perceive as most concerning, such as rape. Misunderstandings may stem from differing cultural norms in the local context. This underscores the need for continual training and awareness-raising.

III) Some staff think that certain instances of SEA are so "obvious" that someone else would have certainly reported it or the organisation is wilfully blind. Particularly misogynistic work environments in which SEA and sexual harassment are pervasive do not inspire staff confidence to report. The attitudes being reinforced within the workplace lead would-be whistle-blowers to fear that there would be retaliation for reporting.¹⁰⁵ Such attitudes may be especially prevalent when there has been a failure to respond appropriately to past instances of SEA or sexual harassment.

IV) Organisations may do little to enforce the policies and sanction those who fail to report so staff do not feel the pressure to report. This culture must change.

3.4.3 PROACTIVE INVESTIGATIONS

Despite best efforts to make community-based complaints mechanisms child-friendly, much of child SEA will not be captured if agencies and organisations await complaints. It has been recognised, progressively, that there is a need for proactive engagement to capture SEA and particularly child SEA. The IASC has recognised, in the context of its technical support mission to the Democratic Republic of the Congo that rumours or other indicia of abuse should be proactively investigated:

some immediate action can and should be taken as rumours are indicators of potential patterns of misconduct. This could include community consultations on PSEA and to assess the effectiveness of the complaint mechanism entry points in that particular location and modify according to the feedback; analyse relevant programme delivery methods that relate to the forms of SEA in the rumours and adjust as appropriate and increased risk mitigation measures. These actions may contribute to prevention, facilitated reporting, and increased trust by communities. Allegations or rumours that are not acted upon can result in further deterioration of trust in the humanitarian system.¹⁰⁶

¹⁰³ Revictimised: The humanitarian consequences of mandatory reporting of sexual violence (British Red Cross, 2019).

¹⁰⁴ Caring for Child Survivors of Sexual Abuse: Guidelines for health and psychosocial service providers in humanitarian settings (International Rescue Committee and UNICEF, 2012) 93.

¹⁰⁵ D. Mazurana and P. Donnelly, Stop Sexual Assault against Humanitarian and Development Aid Workers (Feinstein International Center, 2017) 44.

¹⁰⁶ Senior PSEA Technical Support Mission to the Democratic Republic of the Congo (IASC, 2018) 23.

Agencies and organisations can seek to intensify community presence and beneficiary consultations and interventions to ensure that opportunities for disclosure arise. As one of the experts consulted as part of the research for this report said: "Community-based interventions actually work, but we do not take the time to do them." Experts underscored the need to teach "basic listening" skills to persons active within the children's surroundings, religious and local leaders, teachers, and persons within the humanitarian and international sectors. Community safety mapping was also highlighted by experts as a useful tool to help children identify and talk about the risks they face in daily life. In such exercises, children are asked to draw the areas where they feel safe or not, or where they feel most safe, where they feel less safe, and who they could turn to in case they did not feel safe. Exploring children's understanding of right and wrong, also in relation to SEA, gained positive results in identifying harm and abuse within communities, and was brought forward as one of the ways to prevent child SEA.

Another proactive tool is to integrate SEA investigators into field locations with high risks of SEA and ensure those investigators are fully supported and empowered by senior management in missions and in the field. Having SEA investigators integrated within field locations helps avoid delays and bureaucracy to commence formal investigations on the ground. This will not always be possible, particularly for smaller operations though greater use of in-mission pooled investigative resources may help with resource constraints and foster greater independence in investigations.

3.5 INDEPENDENT AND IMPARTIAL INVESTIGATIVE PROCESSES

Independent and impartial investigative processes are important to ensure that there is no bias, improper interference or influence in the conduct of the investigation or its outcome. It is also important to ensure that the investigation is free from the perception of bias, which increases faith in the process and its outcome. However, sufficiently independent investigations are rarely in place for allegations of SEA.

Agencies and organisations tend to conduct internal investigations when faced with SEA allegations. SEA is usually reported to or brought to the attention of the agency or organisation for whom the alleged perpetrator was working or affiliated. This will trigger an internal case management process. Humanitarian organisations tend to conduct investigations purely on an in-house basis. Exceptionally, outside investigators may be brought in where there is weak in-house capacity, or where the role of the alleged perpetrator makes a purely internal investigation impossible. In the UN system, usually SEA allegations that are formally reported¹⁰⁷ are referred to the (hierarchically distinct) investigative units of the agencies concerned. For some agencies, the UN's Office of Internal Oversight Services (OIOS) would be asked to investigate, who would then report back to the agency concerned. The agency would then decide what steps to take, if any, in light of the findings. According to the OIOS, SEA investigations involving "serious misconduct" are "by policy considered appropriate if handled by OIOS due to the professional expertise and independence needed for investigating such complex matters."¹⁰⁸

SEA investigations involving child victims proceed similarly, with some added procedures to account for the child's best interests and to ensure that the principle of do no harm is respected. Considerations of the child's best interests will arise during the initial case management process and thereafter. Typically, this will consist of child protection advisors internal to the agency or organisation consulting with, providing support to, and expressing views about what actions should occur in the child's best interests. If the child is interviewed, a child protection advisor or support worker would typically be present. Furthermore, any decision about what would happen following an investigation, if and how cases are moved forward and whether national police or other competent

¹⁰⁷ Many allegations will not be formally reported through accepted internal channels, despite mandatory reporting obligations.

¹⁰⁸ *Evaluation of the prevention, response and victim support efforts against sexual exploitation and abuse by United Nations Secretariat staff and related personnel* (OIOS, 19 March 2021) Assignment No: IED-21-010, para. 102.

national authorities are contacted, typically stem from in-house administrative decision-making processes geared towards ensuring the best interests of the child and doing no harm.

Assessing and determining the best interests of the child requires transparent and impartial decision-making by knowledgeable decision-makers. This is especially important for SEA allegations involving employees or contractors of agencies and organisations where the allegations, if proven, may engage the responsibilities of the agency or organisation or potentially affect their reputation. However, many of the experts consulted for the purposes of the report underscored the conflicts of interest which underlie SEA investigations involving children. The absence of independent advice and support for children during SEA processes where crucial issues related to their best interests are being considered, raises concerns about both the presence of actual bias and the perception of bias. As one expert explained, “for a lot of the children we speak with, whether they are unaccompanied migrant children or child soldiers or children in detention, the adults that are supposed to be taking care of them have interests that conflict with the children’s interests.” As another expert explained,

a survivor-centred approach is aimed to be an antidote to that. We’re dealing with individuals here who have been through horrendous process, and it is them that we need to maintain our focus on, constructing the response and the investigative process should be with them in mind, and involve them and make sure that we address their needs and wishes and communicate with them and get them to participate in decision making and give them agency and choice in a situation where that was removed for them. However, in practice, the organisational considerations and priorities such as human resources, publicity and reputational damage quickly come to the fore. People very quickly lose focus.

To introduce more independence into child SEA internal processes and investigations, agencies and organisations should consider:

- ▶ Pooling resources so that those involved in decisions about a child’s best interests and doing no harm are external to the agency or organisation against whom allegations of SEA have been made.
- ▶ Providing legal aid and resourcing so that lawyers or independent child’s rights advocates are in place from the outset of child SEA investigations so that children’s interests can be independently ensured.

3.6 PROMOTING THE AGENCY OF CHILD VICTIMS

Children should have as active a role as they wish in SEA investigations by which they are affected. Those conducting investigations are duty-bound to ensure that children are able to be involved. This should start early on. Outreach and awareness-raising on SEA should include activities that target children specifically using child-friendly techniques so that they become aware of risks and seek help if they need to and wish to. Good practice standards related to community-based complaints procedures indicate that: “A child’s ability to provide consent on the use of the information and the credibility of the information will depend on his/her age, maturity, and ability to express him/herself freely.” Complaints bodies should build expertise on how to interact with child complainants “by involving persons who are trained to handle the special needs of child survivors of sexual abuse and who are familiar with national laws and policies relating to the protection of children.”¹⁰⁹

Children should be able to engage with decisions that affect their interests in ways that are age-appropriate, build their resilience and treat them fairly without discrimination. In order to express their

¹⁰⁹ *Guidelines: Inter-Agency Community-Based Complaints Mechanisms (Protection against Sexual Exploitation and Abuse)* (IASC, April 2016) 57.

views effectively and take decisions about services and support options (e.g., consent to medical examinations, paternity or DNA tests, referrals for psychological support or other services), security requirements as well as the progress of complaints, children should be given information in an age-appropriate way about their rights, the different options they have and any positive and negative aspects related to their participation. Before seeking a child's consent, the child should be asked what they are consenting to, what the scope of their consent involves, and made aware of their right to withdraw consent or refuse a service at any time without it limiting their access to additional forms of support and assistance. Children should be kept informed throughout the process and informed of the outcome. Also, child SEA victims should be provided with the contact details of the SEA investigator or other appropriate person and others involved in providing support to the child.¹¹⁰

CASE STUDY 3:

STREAMLINING THE PROCESS AND ENSURING INFORMED CONSENT TO DNA TESTING¹¹¹

Akira left home with her mother, fleeing a series of attacks on her community in Newland. She was fourteen when she arrived at a refugee camp in Newland. A.B., an NGO worker from another country, Homeland, approached her as she waited in the line at a food distribution point in the camp. She spoke with A.B. while she waited, but when he asked if she would meet him at the end of the day, she refused. The following day, A.B. handed her a smaller portion of food than she had seen others receive. He told her that she would receive less than others unless she agreed to meet him. Akira believed she had little choice and agreed.

They began to meet regularly and were soon having sex at every meeting. Akira didn't want to at first, but A.B. put more and more pressure on her each time they met, and he started allowing her to move to the front of the food line. Sometimes he also gave her extra food or small gifts. Some of her friends were in similar relationships, but she kept it secret from her mother and the older people in the camp, knowing they would not approve. Akira realised she was pregnant a few months later; she kept it quiet for as long as she could, but eventually she had to tell A.B. A.B. denied being the father and not long afterward, Akira heard he moved to work at another camp in Newland.

Akira went to a clinic in the camp to get maternity care. The clinic staff asked about her age and what support she would have after the baby was born. Akira was reluctant at first, but eventually told them what had happened with A.B., her fears about her mother's reaction, and worries about taking care of a baby alone.

The staff member informed Akira that, because A.B. was an NGO worker, they had an obligation to report Akira's case to their management. Akira did not know which organisation A.B. worked for, but the clinic said their management would find out and pass the report on to A.B.'s employer. This worried Akira because she knew A.B. would deny being the father and that he would be angry with her. A nurse at the clinic explained to Akira they had to pass on the report because A.B. had committed a crime by pressuring her into a sexual relationship with him when she was only fourteen years old and violated the "Zero Tolerance" policy barring relationships between humanitarian workers and aid recipients. They also told Akira that if they could prove that A.B. was the baby's father, she could get legal help to ask a court in Newland to require A.B. to pay child support.

¹¹⁰ Caring for Child Survivors of Sexual Abuse (IRC & UNICEF, 2012), 89–90.

¹¹¹ The good practices presented in this case study on DNA testing are based on expert interviews. Akira's story is based on women's experiences recounted in: *Empowered Aid: Transforming Gender and Power Dynamics in the Delivery of Humanitarian Aid*, (2020); *Shades of grey in sexual exploitation and abuse* (Orly Stern, 2018); *Litigating Peacekeeper Child Sexual Abuse* (REDRESS, 2020).

A.B.'s employer, an international NGO named Nutrition Global Service ("NGS"), began an investigation into Akira's case. NGS worked with the camp's child protection coordinator to make sure Akira received home visits, regular counselling, and extra support. NGS connected Akira with a legal services organisation to advise her on what a criminal prosecution of A.B. would mean for her and whether she wanted to file a paternity claim. The organisation's lawyer explained that it would become difficult to get A.B. to make the payments if he left Newland, but that they would help her pursue her case. They also explained that either Newland or Homeland, A.B.'s country, might charge A.B. with a crime because sexual abuse of children was a crime in both countries. Homeland's laws allowed its authorities to prosecute individuals for sex offenses against children in other countries.

At the same time, NGS connected Akira with a support person, Fatima, who would accompany Akira when the investigator came to interview her. Fatima told Akira what to expect during the interview: that it was confidential, that there would be detailed questions, and that it would include a DNA test. Fatima explained that the test was important because it would provide undisputable proof that A.B. was the baby's father. Fatima also explained the need for DNA testing to Akira's mother and arranged for her to be present at the start of the interview to give consent to the test as Akira's guardian. She also explained the interview would happen after the baby was born so they could do the DNA test at the same time. This would mean that Akira would not have to meet with the investigator on two separate occasions.

On the day of the interview, Akira, her mother, and the baby went to the clinic to meet Fatima, the investigator, and a translator. They sat in a private room, and after Akira and her mother consented, a nurse took swabs from Akira and the baby for the DNA test. Akira's mother left with the baby and Akira stayed in the room speaking with the investigator, with the translator's help and Fatima present. The investigator asked for Akira's consent to video record the interview.

After the interview, NGS ensured that Akira continued receiving healthcare and counselling at the clinic and that her child protection case manager continued to visit her at home. For a few months, Akira heard nothing about the investigation. Then Fatima visited her shelter and told her that A.B. had agreed to the DNA test and that someone from the investigation team would be coming that week to tell Akira the result. A few days later, an investigation team member came to Akira's shelter and told her that the test confirmed A.B. was the baby's father. They also told her that A.B. had left Newland to return to Homeland and that NGS wanted to refer Akira's case to the prosecuting authorities in Homeland.

The investigation team asked Akira if she agreed for NGS to hand over the results of its investigation to the Homeland authorities. Akira did not know what this meant for her because her family had never been involved in a court case in their own country, not to mention another country. The legal services organisation explained that the process could be long but committed to supporting her throughout. Akira agreed to having the investigation results sent to Homeland.

The prosecuting authorities in Homeland accepted the video recording of Akira's interview and the DNA test as evidence in the criminal case against A.B. A.B. was convicted under Homeland's statute providing extraterritorial criminal jurisdiction over sexual abuse of a minor abroad. The legal services organisation successfully pursued Akira's paternity claim in Newland and handed the Newland court's child support order over to the Homeland authorities to require A.B. to make payments.

For children who are too young to understand their rights and service options, this information should also be shared with their trusted adult who can support the child to participate in making a deci-

sion.¹¹² Good practice generally dictates that parents (or guardians/caregivers) should be informed about open cases as they are in the best position to provide support and protection. It should be recognised, however, that not every child will have a guardian or caregiver. This is particularly the case with children living on the street, unaccompanied children in displaced persons or refugee camps, etc. Such children should not be excluded from exercising agency in SEA proceedings because of the absence of an appropriate guardian; how best to support the child in such circumstances should be determined on a case-by-case basis. In some circumstances, a child may not wish their parents/guardians to know, and it is important to explore the reasons behind this. It may be in the best interest of the child not to inform the parents, e.g.:

- if a parent is suspected of facilitating the SEA;
- if the child could be subjected to retaliation, including physical or emotional abuse, expulsion from home, or have his/her well-being compromised, LGBT status being revealed without consent or that the disclosure puts them at risk in their household;
- if the child does not want parental involvement and is competent to take such decision; or
- if the child is unaccompanied.¹¹³

At times, parents can pressure children to accept “amicable arrangements” between the perpetrator and child’s family, in the form of goods or money to the harmed family. Agencies and organisations must be attuned to such dynamics and seek to ensure that children’s voices and perspectives are not hidden, and their rights upheld.

Even where parents are informed, this does not obviate the need for social workers, investigators or others who may be involved in following up a complaint to keep the child informed. In this sense, informing a parent does not displace the right for a child to be kept informed and to engage directly with the process.

3.7 CHILD-CENTRED SUPPORT STRUCTURES

Child victims of SEA should benefit from the assistance they require to support their well-being, safety, and protection (e.g., medical care, psychosocial support, legal assistance, school, and community reintegration support). Assistance and support to child victims should be provided in a manner consistent with the “best interests of the child.”¹¹⁴ Support should be accessible to child victims, avoid exacerbating disparities, be non-discriminatory, and be targeted to their specific needs.¹¹⁵ Support may also be required for those who support the child – parents or care givers, and for children born out of SEA. At times, support for the child may require helping to foster shifts in attitude within the society – helping the community to recognise the need to integrate the child in a way that respects the child’s rights and reflects the child’s best interests.

To avoid disparities within communities, parallel services for SEA victims should be avoided; SEA victims should in principle benefit from gender-based violence and child protection programming within their communities and referral pathways should reflect this.¹¹⁶ However, such programmes are chronically underfunded in most humanitarian operations, are subject to precarious subcontracting and often do not exist in remote, dangerous areas or those affected by health challenges. Therefore, it should be underscored that agencies and organisations are obliged to ensure that appropriate and sufficiently specialized support is available and accessible to child SEA victims, for as long as it

¹¹² Technical Note on the Implementation of the UN Protocol on the Provision of Assistance to Victims of SEA (UNICEF, 2021), 8.

¹¹³ Guidelines: Inter-Agency Community-Based Complaints Mechanisms (Protection against Sexual Exploitation and Abuse) (IASC, April 2016) 57.

¹¹⁴ Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse (12 December 2019) para. 3.1.

¹¹⁵ Core commitments for Children in Humanitarian Action (UNICEF, May 2010) 8.

¹¹⁶ Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse (12 December 2019) para. 5.3.

is needed. Guidance makes clear that the “unavailability of [gender-based violence and child protection] services locally does not absolve the concerned organisations from having to take action to ensure the victims receive assistance. Where services are not locally available for victims, agencies of last resort are obliged to find a way to provide assistance, and this can mean acting as a case worker for a victim.”¹¹⁷ This level of support is not yet standard.¹¹⁸

Children participating in investigation processes should receive:

- ▶ Child-centred trauma support before, during, and after an investigative interview
- ▶ Accompaniment by a case worker during the investigation processes. Child victims should always be accompanied by a case worker and their trusted ‘safe’ adult
- ▶ Accompaniment by a protection/security actor to the appointments during the investigation processes
- ▶ Logistical support such as translation and transportation for interviews and lodging for persons with disabilities and others who require it
- ▶ Information on the status of their cases, and regular updates from their case worker or contact person¹¹⁹

It is always important for those making referrals for assistance and support for children to ensure that the agreed treatment was actually provided. Insufficient follow-up of referral pathways to ensure treatment was provided, was an issue that arose in the Central African Republic (also stemming from inadequate agency resources, use of sub-contractors and gaps in programme funding):

at the conclusion of the interviews, UNICEF referred the children to a local [NGO] partner for medical care and psychosocial support. While the local partner notified UNICEF that the children were being provided with medical care, it is now clear that the full extent of the services provided by the NGO at that time was a two-hour session in which a social worker, assisted by legal counsel, interviewed the children and filled out paperwork provided by UNICEF. The NGO made no assessment of the children’s medical or security needs and did not contact the children in the following months, either to provide additional services or to assess their well-being. While the services provided by the NGO were clearly inadequate, the failure of UNICEF to monitor the conduct of its partner NGO or to follow up with the children themselves is even more disturbing. Furthermore, neither UNICEF nor the Human Rights and Justice Section took any steps to locate the additional child victims who had been referred to in the course of the interviews to determine if they, too, were in need of protection services.¹²⁰

3.8 CONFIDENTIALITY AND CONSENT

Confidentiality is at the heart of safe, ethical, and dignified SEA investigations and support structures. It impacts all communications with SEA victims as well as how personal data and information

¹¹⁷ *Technical Note on the Implementation of the UN Protocol on the Provision of Assistance to Victims of SEA* (UNICEF, 2021) 16.

¹¹⁸ See *Evaluation of the prevention, response and victim support efforts against sexual exploitation and abuse by UN Secretariat staff and related personnel* (OIOS, 19 March 2021) Assignment No: IED-21-010, paras. 138, 139, where it is noted in respect of support services provided by the UN, that medical, legal, psychological and immediate material care for victims and children born from SEA was not funded and support to victims was provided by missions in an ad hoc manner. Further, between 2015-2018, 37% of victims who made allegations received no assistance. Members of community-based complaints networks and victims interviewed in the Democratic Republic of the Congo and Central African Republic said UN support for victims was inadequate, unpredictable and severely lacking in cases involving paternity.

¹¹⁹ *Technical Note on the Implementation of the UN Protocol on the Provision of Assistance to Victims of SEA* (UNICEF, 2021) 13.

¹²⁰ Deschamps et al, CAR Report 6.

concerning what happened to them and their views and perspectives about any investigation and follow-up (including photographic, video, and electronic) is collected, stored and where appropriate, shared.¹²¹

The purpose of confidentiality is to preserve victims' autonomy, dignity, and privacy. An investigator or support worker can only speak to a child victim of SEA after obtaining informed consent. Children's informed consent is necessary and implies that they have access to all appropriate and relevant information to help them make decisions. A child's informed consent should take into consideration their evolving capacities; depending on their maturity, informed consent should come from the child and, where appropriate, also from the parent/guardian.¹²² Children with disabilities may also need specific support based on the nature of their impairment, whether it be physical, intellectual or mental, to give consent.¹²³ How best to obtain consent from children who do not have a caregiver or guardian must be determined on a case by case basis in light of the prevailing circumstances. It may be that an independent child rights' advocate or counsel should be appointed to support and assist the child to understand the implications and decide about consent.

Seeking and obtaining consent from children – particularly those that may have suffered multiple traumas because of the humanitarian crisis and sexual exploitation or abuse – is sensitive and must be handled with great care, ideally by professionals who are experienced in child protection. In dealing with child victims and witnesses, the key concern is that consent must be obtained in a manner that is cognisant of, and sensitive to, their level of understanding, so that the broader goals of protection and prevention are achieved.¹²⁴

Even if informed consent is granted, the caseworker or investigator retains an obligation to assess the potential implications of the use of information for the safety of the child considering their best interests and others involved, and to minimise any additional risk. Any subsequent meeting will only take place if it is consented to, and on their terms. Information (including notes, photos, and videos) can only be collected from a victim with informed consent. A part of informed consent is about ensuring that the child understands fully why the information is being collected and what will happen with that information. The child should also understand that consent is optional; it can also be partial or limited. There is no requirement for children to consent to everything or to anything, or to make a decision straight away.

It is crucial to understand whom the child victim does and doesn't wish to know about their harm and abuse, and why, and only share information after gaining explicit permission.¹²⁵ However, there are legal limits to confidentiality involving child victims (e.g., the need to follow up with colleagues or supervisors; mandatory reporting legislation; the need to take urgent steps to protect the victim's safety or security, obtaining consent from a parent or guardian for urgent treatment) and a crucial task for caseworkers is navigating these limits ethically and responsibly in the best interests of the child. Children should be informed about these limits in an age-appropriate way so that there is no misunderstanding.¹²⁶

All agencies and organisations should have in place privacy and data protection policies and pro-

121 See also in this Report: Section 4.1.3: Consent to interview.

122 In addition to the child's development and maturity, a child's ability to provide consent may be influenced by the censorship power of parents, socio-cultural norms regarding the obedience of children, collective decision making or fear of stigmatisation and shame. Other influences may stem from a community's *culture of hospitality* or children's wish to demonstrate respect for adults, including case workers. Not all parents will operate with a view to ensuring their child's best interests are met. Notably, a parent's self-interest may stem from fear of community ostracisation, stigma or shame. Or they may fear that their own abuse toward their child will be revealed or worry of being implicated in the alleged SEA. See generally, "Informed Consent", in *Ethical Research Involving Children* (Centre for Children and Young People et al, 2013), 63, at: <https://childethics.com/wp-content/uploads/2013/10/ERIC-compendium-Ethical-Guidance-Informed-consent-section-only.pdf>.

123 Art 12, *Convention on the Rights of Persons with Disabilities* (Adopted 13 December 2006, entered into force 3 May 2008).

124 Deschamps et al, CAR Report 32.

125 *Caring for Child Survivors of Sexual Abuse* (IRC & UNICEF, 2012), 95.

126 *Ibid*, 96.

cedures with clear mechanisms to ensure that team members are aware, receive the necessary training and fully comply. An internal data protection protocol should clarify who collects information, how it is recorded, who can access it and in what form, how to ensure the security of records (in paper and electronic format) and to define an emergency plan to protect and back up records as needed. Firewalls should be in place to restrict access to sensitive information (all personal data and case specific information should be classified as highly sensitive). Data protection measures should be in place for all victim and witness records: e.g., use of pseudonyms, codes, as well as for referrals made and protective measures taken. Reports should be anonymised, and the identities of victims only shared with those who have a clear need to know. Data protection specialists should have responsibility for data security and ensuring all personnel comply with security protocols.

At times, the victim's right to privacy becomes wrongly confounded with an organisation's wish to protect itself from the notoriety of SEA allegations. The right to privacy belongs to the child and not to the agency or organisation whose employees have been accused of perpetrating SEA on that child. Privacy should not be used as an excuse to avoid institutional transparency related to SEA. It is expected that agencies and organisations are transparent about the number and types of SEA allegations they receive and how these allegations are dealt with. This is important for institutional accountability, accountability to donors and the local beneficiary population.¹²⁷ It is also important for staff of the organisation to understand how policies on the prevention and response to SEA are being actioned in practice. It should be mandatory for agencies and organisations to release information. Good practice is to release statistical data that are not sufficiently precise to be able to reveal (even inadvertently) confidential information about a particular individual or case. Also, an agency's privileges and immunities should not be used to impede SEA investigations, for instance by imposing barriers to sharing information collected by the agency with competent national investigators, whether from the country where the abuses took place, or the country of nationality of the alleged perpetrator, where different. As the independent panel of investigators of the UN response to incidents in the Central African Republic, made clear:

The principle of confidentiality is not an end unto itself, but rather a means to protect victims, witnesses and staff. Confidentiality should not be used as a shield to prevent United Nations staff from taking appropriate and necessary action to protect civilians and ensure accountability. Rather, the principle of confidentiality must be balanced against the equally important goals of prevention and accountability.¹²⁸

¹²⁷ Increasing Transparency on SEA in the Aid Sector: The Importance of a Harmonized Approach to SEA Data Collection and Reporting (GCPS Consulting, Sept. 2021).

¹²⁸ Deschamps et al, CAR Report 11.

4. Interviewing Child Victims as Part of SEA Investigations

This section explains some of the key aspects involved in interviewing child victims of SEA, however, it is not a guide to prepare inexperienced interviewers. Interviews of child victims of SEA should be carried out by skilled professionals.

4.1 CONSIDERATIONS BEFORE THE INTERVIEW

4.1.1 DECIDING WHETHER TO INTERVIEW A CHILD VICTIM OF SEA

Putting the victim at the centre of the process requires that they be informed, consulted, and involved in the investigation as much as possible. However, interviewing a vulnerable child may not always be essential for the purposes of uncovering the truth and can be traumatising. Experts agree that vulnerable children should only be interviewed if it is necessary to do so, and only where the interviewer (or person accompanying them) has the appropriate skills to conduct such an interview. For example, the independent panel of investigators of the UN response to incidents in the Central African Republic, decided not to interview the child victims as they were so over-exposed to interviews. Instead, it used the original interview notes taken by others and interviewed other informants with relevant information. The decision whether a child victim is sufficiently resilient to interview should be based upon an individual risk assessment of the child's personal characteristics which considers the following factors:

PROTECTIVE ENVIRONMENT: What factors provide or contribute to the child's protective environment?	ADVERSITY: What factors threaten a child's well-being or safety (e.g., abuse, neglect, stigma, retaliation)?
RESILIENCE: What factors support the child's resilience in coping with difficult circumstances (e.g., sociability, secure attachment, personality, age, stage of development, level of education)?	VULNERABILITY: What factors increase a child's vulnerability to negative events (e.g., disability, lack of attachment to parents/guardians, conflict, displacement, poverty)?

Children assessed as having both high adversity and vulnerability present the greatest risk for interview. Mitigation measures must be in place prior to interview; where adequate mitigation is impossible, the interview should not proceed.

If a child is suicidal or homicidal or at risk of being hurt or killed, they will need immediate assistance from service providers and/or the police. This requires parental/guardian consent, provided the par-

ents are not implicated in the harm or abuse.¹²⁹ Also, if there is reason to believe SEA is continuing or at risk of recurring, this must be addressed immediately.

4.1.2 AGE CONSIDERATIONS FOR INTERVIEWING

INFANTS, TODDLERS, AND VERY YOUNG PRE-SCHOOL CHILDREN (ROUGHLY AGE 0-3):

- Are in the process of acquiring linguistic skills.
- Can recall persons and experiences but are not able to describe them.
- There are no other – nonverbal or other – evidence-based means of collecting information from children of this age about possible experiences in a reliable way. However, for some 2–4-year-olds, non-verbal play can still be used with experienced social workers to provide an account or contribute to their account of what may or may not have happened.
- SEA investigations directed at the youngest children should rely on information from other sources.

PRE-SCHOOL CHILDREN (ROUGHLY AGE 4-6):

- Are in the process of acquiring conversational skills. Around age 4, typically developing children begin to possess the necessary skills to describe events.
- Often, they still have very limited language and memory skills.
- Attention spans may be very short, dependent on time of day, being tired, hungry, nervous etc.
- Are extremely vulnerable to suggestion, implying poorly conducted interviews involving leading, closed, or coached questioning can result in completely distorted accounts.
- Other investigative methods should be given preference.
- Where it is necessary to conduct a child interview, this must be conducted by a specialised child interviewer (and in case needed, an equally specialised interpreter).
- Usually, an interview should take place as a matter of urgency, as memory fades very quickly. However, the timing of the interview should be trauma-informed and good practice is to be led by the child as to when it is best for them to recount their experience.
- If the child has previously been subjected to suggestive questioning by anyone, a forensic interview is not to be recommended, as the chances of obtaining reliable information are very limited.

YOUNG (PRE-ADOLESCENT) SCHOOL-AGED CHILDREN (7-10):

- Have typically acquired the necessary skills for describing events to previously unfamiliar persons and are often able to concentrate for longer periods of time.
- Are still vulnerable to suggestive questioning and to the expectations of adults.
- Respond well to interviews when they are motivated to tell and remember the events under discussion.
- Interviewers must be properly trained and tailor interviews to needs of the individual child.

¹²⁹ Caring for Child Survivors of Sexual Abuse (IJC & UNICEF, 2012), 96.

ADOLESCENT CHILDREN (11-18):

- Have developed adult-like cognitive skills, however, emotional development is still in progress.
- Older adolescents run the risk of being over-estimated in their capacities by interviewers, because they look and appear adult. Interviewers risk neglecting the vulnerabilities of adolescents.
- Sexual development and hormonal changes affect mood and reasoning.
- Adolescents are still suggestible and known to be at a heightened risk of, e.g., false confessions, which needs to be taken into consideration in any interview situation.
- If children of this age want to be interviewed, interviews should be sensitive and trained.
- As for all children, they should be interviewed in a non-judgmental way, relying on open-ended prompts, and should be given an opportunity to tell – but never be manipulated or coerced into telling.

4.1.3 PREPARING FOR THE INTERVIEW

Interviews with children should be conducted by trained professionals. It is crucial to prepare in advance of the interview to anticipate the challenges that may arise. This is to ensure that the conditions to interview the child are as safe, discreet, supportive, and non-confrontational as possible. The child and her/his parent/guardian and legal representative if applicable should also be prepared for the interview: for example, they should be told the purpose of the interview, what types of questions will be asked and how long the interview is likely to take.

It is important that the investigative team anticipates the issues that are likely to arise and what support will be needed and plans for specific support to be available as needed, prior to conducting the interview.

From an evidentiary standpoint, SEA cases are difficult to prove, and it is important that the interviewers ask the right questions and connect the questions with other data that may be available. There is a need to avoid unnecessary re-interviews to address gaps in initial questioning and careful planning will help to avoid this.

4.1.4 REMOTE INTERVIEWING: PITFALLS AND POSSIBILITIES

Remote interviewing has become prevalent during the COVID-19 pandemic. As put by one of the experts: “It was remote or nothing at all.” Contrary to expectations, some research and several of the experts found that if well planned, remote interviewing could be a useful alternative to in-person interviewing. For example, experts gave anecdotal examples of adolescents who felt more comfortable disclosing sensitive information via phone, video or voice message. However, fully remote interviewing will not be possible in all contexts due to a lack of infrastructure, and in cases where remote interviews are considered, preparation would need to be as thorough as for in-person interviews, if not more. Often, remote interviews will involve some hybrid elements, where the child victim attends a physical location to connect to a video feed, and/or a support person is available on site where the child is located, to provide any needed assistance before, during or following the interview.

4.1.5 CONSENT TO INTERVIEW

Gaining informed consent from children and parents /guardians should be risk informed and done in an age and disability appropriate way, cognisant of a child's vulnerabilities,¹³⁰ maturity and evolving capacities.¹³¹

Table 1: Risk informed and age-appropriate informed consent and assent¹³²

AGE GROUP	CHILD:	PARENT / GUARDIAN:	IF NO PARENT/ GUARDIAN OR ITS NOT IN THE CHILD'S BEST INTEREST:	MEANS:
16-18 YEARS	Informed consent in accordance with national law.	Only seek consent from parents / guardians with the permission of the child or if Age it is necessary.	Child's informed consent and sufficient level of maturity takes due weight.	Written consent.
12-15 YEARS	Informed assent.	Informed consent (unless it is not appropriate, if applicable).	Another trusted adult or the child's informed assent. Sufficient level of maturity (of the child) for due weight.	Written assent. Written consent.
LESS THAN 12 YEARS	Informed assent.	Informed consent.	Other trusted adult or caseworker's informed consent.	Oral assent. Written consent.

Knowing a child's precise age can be difficult in many jurisdictions where civil registration is low. Birth certificates will not always be available and SEA investigators and case workers may need to be creative to assess age, considering the best evidence that may be available locally.

Determining if a child survivor is mature enough to make decisions about their own best interests therefore may require an alternative or complementary tool. The Gillick competency, initially developed for the medical field, assesses a child's capacity to provide consent / assent by considering:

- a) the child's age (or approximate), maturity and mental capacity;
- b) their understanding of the process, including advantages, disadvantages, and long-term impact;
- c) their understanding of the risks and consequences that may arise from their decision;
- d) their understanding of the advice being given to them;
- e) their understanding of alternative options, if available; and
- f) their ability to explain and rationalize the reasons for their decision.¹³³

¹³⁰ Vulnerability refers to factors that increase a child's susceptibility to protection concerns or other hazards and difficulties. Vulnerability factors might include displacement, lacking parental care, disabilities, or association with armed groups. See, *Inter-Agency Guidelines for Case Management and Child Protection: A Guide for Policy and Programme Managers and Case Workers*, Global Protection Cluster: Child Protection (Jan. 2014) 36.

¹³¹ See also in this Report: Section 3.8: Confidentiality and consent.

¹³² Adapted from "Tool 3.2.0: Guidance on Basic Case Management and Basic Referral Pathway", in *Protection, gender and inclusion in emergencies: toolkit* (IFRC, 2020) 7.

¹³³ *Gillick competency and Fraser guidelines* (NSPCC, 10 June 2020).

Respecting the principle of autonomy of child victims and determining their legal capacity to provide consent, will therefore stem from case workers' and the SEA investigator's efforts to determine children's capacity to understand, make independent decisions, and act according to their own best interests when providing informed consent, assent, or dissent. The steps involved in this process are as follows:

Table 2: Steps to obtaining informed consent¹³⁴

STEPS OF INFORMED CONSENT / ASSENT

STEP 1: PROVIDE ALL INFORMATION

- Explain to the child, in an age-appropriate way, what will happen at each stage of the case management process.
- Ensure the child understands specific conditions or limitations for participating in the interview and video/audio/photography options.
- Ensure the child understands that their collaboration is a choice. They can refuse to collaborate at any time without limiting their access to support and, conversely, collaboration does not result in additional forms of support or assistance.
- Inform the child of their right to withdraw consent at any time; right to refuse to answer a question or stop an interview at any time; their right to refuse any service or component within the case management process.

STEP 2: ENSURE THE CHILD'S UNDERSTANDING

- Ask the child to tell you what they are consenting to and to make sure they understand the scope of their consent.
- Make sure the child understands the implications of participating in the process, for each stage, and implications of their case information being shared with other organisations and services along the referral pathway.

STEP 3: ENSURE THEY UNDERSTAND THE LIMITATIONS OF CONFIDENTIALITY

- Ensure children understand that there are limits to confidentiality. Manage their expectations and don't make promises that can't be kept.
- Explain that case information will be shared on a need-to-know basis along the referral pathway.

STEP 4: ASK FOR CONSENT / ASSENT

- Ensure informed consent / assent is obtained for each stage, including:
- Being interviewed and for the interview to be recorded.
- Be referred to support services and for their case information to be shared with third parties (and specify who these may be).
- Be photographed and / or examined.

STEP 5: ASK CHILD SURVIVOR IF THEY WISH TO PLACE LIMITS ON THE INFORMATION SHARED

- Child survivors, once aware of the benefits and consequences of their case information being shared, should be provided with the opportunity to put limits on what is shared and with whom. Also, for children, there may be legal limits to confidentiality in some circumstances e.g., mandatory reporting laws, the need to protect a child's emotional/physical safety, parental/guardian consent.

¹³⁴ Adapted from "Tool 3.2.0: Guidance on Basic Case Management and Basic Referral Pathway", 6.

4.2 CONSIDERATIONS DURING THE INTERVIEW

There are a range of matters to consider during the interview as follows:

4.2.1 ENSURING THAT THE INTERVIEW PROCESS IS AS STRESS-FREE AS POSSIBLE

All children should be approached with extreme sensitivity and their vulnerability recognised and understood. It is important to establish a rapport with the child before beginning the interview, and provide non-suggestive support throughout the interview, using open-ended and facilitative prompts supporting the child's free recall, and formulating the questions in accordance with the child's developmental level.¹³⁵ All interactions should be conducted in a child sensitive manner according to her/his abilities, age, intellectual maturity and evolving capacity. Interviews should also take place in a language that the child uses and understands.

Interviews should occur in a neutral environment that accommodates the child's individual needs. The interview space should be calm, free from distractions, and located so that the child does not feel scared or embarrassed to be seen going to the interview location. As one expert explained, "I have seen rooms that are dedicated within health centres, wh-tech equipmehere other patients in a long line of people waiting to get into the health centre may not realise that there is also a very sensitive process underway in a corner." Interviewers should also be conscious that certain hight may be particularly alienating to some victims and communities, and this should be weighed against the added benefits for the accuracy and completeness of the interview. From a documentation quality perspective, child interviews should be video- or at least audio recorded.

Interviews should be conducted by trained professionals who proceed in a sensitive, respectful, and thorough manner. Interviewing children also requires a special kind of understanding, patience and flexibility that can put children at ease and to help them find ways to express themselves. As one expert explained, "sometimes you can see a child who cannot express himself with words, but he can draw for example. If you gave him a paper and a pencil, he could draw something with details." There also needs to be a clear understanding of what is appropriate culturally. For instance, as another expert explained, in some countries "if you are a man, you can never interview a woman;" this just would not be appropriate. Elsewhere it will be less obvious, and the child should be asked whether they have a preference.¹³⁶

As few people as possible should attend the child interview. While it may intuitively seem like a good approach to allow the child's parent(s) to be present, many of the experts consulted and the bulk of the research suggest that the presence of parents should be avoided where possible. Children may worry how their parents will react and avoid talking about certain topics in their presence. Extra care should be taken to ensure that any persons providing support during the interview also possess the sensitivity, training, and skills to interact with vulnerable child victims in full confidence. This includes interpreters. If the interpreter is not highly skilled and does not possess good knowledge of the appropriate terms to describe the different facets of SEA in the child's language, having a skilled interviewer may be useless, as the underlying principle of, for instance, not posing leading questions, may not be understood and the interpretation can lead to hazardous interviewing practice. Several examples of problems with interpretation were provided by the experts, and several research publications speak of this problem.¹³⁷

¹³⁵ M.E. Lamb et al, *Tell me what happened: Structured investigative interviews of child victims and witnesses* (2nd ed; Jhon Wiley & Sons 2018); C. Newlin et al, "Child forensic interviewing: Best practices", (2015) *Juvenile Justice Bulletin*, US Dept of Justice.

¹³⁶ *Caring for Child Survivors of Sexual Abuse* (IRC & UNICEF, 2012), 30.

¹³⁷ Studies from Australia (M.B. Powell et al, "Professionals' perspectives about the challenges of using interpreters in child sexual abuse interviews", (2017) 24 *Psychiatry, Psychology and Law* 90); USA (L.A. Fontes and A.C. Tishelman, "Language competence in forensic interviews for suspected child sexual abuse" (2016) 58 *Child Abuse & Neglect* 51); and Sweden (E. Ernberg et al, "'It doesn't work at all, that's my experience': Swedish forensic interviewers' views on interpreter-mediated child interviews", (2021; pre-print) PsyArXiv, doi:10.31234/osf.io/375a6).

4.2.2 INTERVIEW MODELS

When asking the child to describe what happened, or is happening, to them in their own words, always begin with open-ended questions. Avoid the use of leading questions and use direct questioning only when open-ended questioning/free narrative has been exhausted, e.g., do you remember any more about that? can you tell me what was happening before that or what was happening after that? Structured interviewing protocols can reduce interviewer bias and preserve objectivity.

Memory research indicates that the way experiences are stored is influenced by sociocultural differences¹³⁸. Talking about sexual matters can be challenging, particularly in settings where sexuality is taboo, or children lack the language to describe sexual acts or intimate body parts; using euphemisms like “the shame place” or “he did something dirty to me”.¹³⁹ Sometimes pictures can help. One expert explained that in South Sudan, a humanitarian organisation and their local partner designed a beautifully illustrated book which they used to educate children and to interview children who could point to the pictures of the body part that was being inappropriately touched. Although culture affects how children are taught to communicate, it is common for adults across contexts to address young children in a way that expects them to give short and often rather superficial answers to closed questions (“Did you like school?”, “Did someone do something bad to you?”). Children understand the general idea of a conversation – that a question requires an answer and conversations go forward in turns – at a very tender age. Early on, they also become used to situations where adults evaluate their knowledge, and where a wrong answer might be followed by an “Are you sure?”, a negative reaction or a restating of the question. In these situations, it will often be desirable for children to answer “correctly” – i.e., according to what the adult seems to think is correct. This may lead to children giving accounts that merely mirror the expectations of the adult counterpart rather than reflecting the child’s own thoughts or experiences. However, in investigative interviews, the aim is the contrary: to get as reliable an idea as possible of the child’s own experiences. This might take some time for the child to get used to.¹⁴⁰

When interviewing child witnesses, it is crucial that the interviewer carefully considers children’s strengths and limitations so that the way they are interviewed is adapted to their mental abilities and current stage of development. The interviewer must be mindful of the fact that all children, but younger ones in particular, are sensitive to adults’ expectations of them. Where young children easily incorporate adult’s understandings of their experiences, even adolescents and young adults may be very sensitive to suggestion and social pressure. Interviewers thus need to be careful of both their outspoken and their unspoken reactions to the accounts of the children. In the case of young children, the time they will be able to concentrate will be limited. Thus, interviewers should plan their interviews well and decide beforehand what information is most crucial to cover. While children’s developmental capabilities impact how much they are able to remember and talk about events, the behaviour of the interviewer can influence the account of the child to a great(er) extent. While it is clear that from a memory, language and suggestibility perspective, younger children are more vulnerable in the interview situation, adolescents face certain vulnerabilities particular to that developmental stage. For instance, younger children might be more likely to be believed (but also more likely to be misunderstood) when disclosing sexual abuse than adolescents, who in turn are at risk of being blamed themselves, as was shown in a recent study in Indonesia.¹⁴¹

There are many evidence-based interviewing guidelines, the most researched and used of which

¹³⁸ A.H. Gutchess & A. Indeck, “Cultural influences on memory”, (2009) 178 *Progress in Brain Research* 137; Q. Wang, “The cultural foundation of human memory”, (2021) 72(1) *Annual Review of Psychology* 151.

¹³⁹ C. Katz et al, “‘Yes, my Uncle, I’ll do whatever you say’: Experiences of Israeli Muslim Arab children during forensic interviews following child sexual abuse”, (2022) 37(5-6) *Journal of Interpersonal Violence*.

¹⁴⁰ For a comprehensive overview of the child forensic interviewing literature, see Lamb et al (2018): Tell me what happened (2nd edition).

¹⁴¹ The study compared participants’ assessments of a story by a 15-year-old compared to that of a 5-year-old. See, N. Sumampouw et al, “Potential for Police Investigator Bias”, (2021) *Police Practice and Research*.

are the PEACE model¹⁴² and the Cognitive interview.¹⁴³ Based on the same general principles as these, several child-adapted interview protocols have also been developed, including the protocol developed by the National Institute for Child Health and Human Development (NICHD).¹⁴⁴ Key elements of most interview guidelines on conducting interviews with child victims of sexual abuse are summarised as follows:

1 INTRODUCTION: Introduce yourself and possible other persons at the start of the interview and explain, according to the child's development, the purpose of the interview.

2 CREATING RAPPORT AND NARRATIVE TRAINING: Familiarise yourself with the child and make the child feel at ease.

3 GROUND RULES: These should be adapted to the framework within which the interviews take place:

The child should be asked whether they consent/assent in an age and disability appropriate way, cognisant of their vulnerabilities, maturity and evolving capacities.¹⁴⁵ Consent must be informed; it must be made clear that the child need not consent or can consent (or refuse consent) to specific parts of the interview, particular questions or approaches (e.g., to use of different recording formats). The child may be reminded that they have the right to stop the interview whenever they like or refuse to talk about any things.

In some jurisdictions, it is required to point out that the child should tell the truth. In all cases, the child may be encouraged not to guess and to talk only about things they know/have experienced.

The child should be asked to say if they don't understand a question, don't remember, or don't know the answer.

4 FURTHER RAPPORT AND NARRATIVE TRAINING: Children provide more information in the substantial parts of the interview if given the possibility to practice elaborative telling.¹⁴⁶ This can be done by asking the child to speak about a neutral event in as much detail as possible. "I heard you went to the market two days ago. Can you tell me about the trip, as much as you can, from when you set out until when you got back"? If the child initially provides a shallow account, the interviewer can follow up with cued questions on issues mentioned by the child: "You mentioned going there by car. Tell me more about the car ride." If the child is not communicating by giving detailed descriptions at this point, despite attempting several topics or situations, the interviewer should be mindful that some children are nervous at first encounters but are more at ease and open at later encounters, so a second meeting might be considered. The interviewer might still try to ask, without insisting, if the child knows why they are at the interview and if they want to talk about that.

¹⁴² The PEACE model appears in *Investigating Allegations of Sexual Exploitation and Abuse: A Toolkit For Partners* (UN-HCR, 2021). It provides a five-step framework for interviews. P: Planning & preparation; E: Engage & explain; A: Account; C: Clarification, challenge & closure; E: Evaluation. For an explanation of its efficacy with respect to child interviews, and proposed child-specific considerations, see: R. Odeljan et al, "Investigative Interviews with Children", (2015) 12 *European Police Science and Research Bulletin* 18; A. Cederborg et al, "Investigative interviewing of alleged child abuse victims: an evaluation of a new training programme for investigative interviewers", (2013) 14(3) *Police Practice and Research* 242.

¹⁴³ See, A. Memon et al, "The Cognitive Interview: A meta-analytic review and study space analysis of the past 25 years", (2013) 16(4) *Psychology, Public Policy and Law* 340.

¹⁴⁴ National Institute of Child Health and Human Development (NICHD) Protocol: Interview Guide (2017).

¹⁴⁵ See elsewhere in this Report: Sections 3.8: Confidentiality and consent; and 4.1.5: Consent to interview.

¹⁴⁶ K.P. Roberts et al, "Practice narratives", in M.E. Lamb et al (eds). *Children's testimony: A handbook of psychological research and forensic practice* (Wiley, 2012).

5 ADDRESSING THE ALLEGATION: How the interviewer addresses the allegation will depend on the allegation and the context. A way to open the interview may be to ask the child if they know why they have come to the interview. This may also help to identify and rectify any misconceptions the child may have. The interviewer might address the topic in a general way: "I know you are worried about something that happened to you, tell me about that"¹⁴⁷, or by referring to the disclosure: "I heard you talked to your teacher ... I am here to find out more about that". If the allegation is based on other persons' observations or injuries, bruises or similar, these can be addressed "I heard your doctor/teacher/sister... was worried something may have happened to you (as you seemed upset when coming from school...)" or "I can see that you have (bruises). Can you tell me about that?"

6 EXPLORING THE EVENT: The interviewer's main task is to support the child through active listening, indicating non-verbally and with supportive comments (Ok, hmm, aha) that they are interested in what the child is telling. Most of the questions asked should be phrased as open invitations: "You said you were asked to do something that you did not like to do. Tell me all about that". "Tell me everything from the beginning to the end, even if you think that something might not be important,"¹⁴⁸ or as invitations to tell more: "You said the man had a strange voice. Tell me more about that" and instead of posing closed questions, which can be answered simply by yes or no ("Was he young or old?"), they should be formulated in an open-ended way ("Tell me more about the man"). Also, when looking for information about a certain detail, the question should be cued to that detail but formulated as an invitation: "Tell me about his car" rather than "What colour was his car." This is for two reasons: Firstly, children may guess when asked direct questions to which they do not know the answers. In some cases, their guess may then be incorporated into their memory of the events. The question "Did he have dark or blond hair" when asked about a man with a dark cap, can lead the child to substitute the (vague) memory of the dark cap with a memory of dark hair. Secondly, children may leave out highly significant information if the question itself seems to exclude that information. In response to "What colour was his car," a child might not mention that there were many red bags in the back seat, or that it had a foreign registration plate.

7 CLOSING THE INTERVIEW: End the interview on a neutral or positive topic, to avoid having the child leave the interview in a state of acute stress. In the expert consultations, many underscored the role of the interview to find out the child's needs and hopes for the future. This way, the child interview may provide information for an initial assessment of the child's needs. While more in-depth assessments of the possible need for care may be left to health professionals, the child can be asked "What do you think/how do you feel about (these events) now?" or "What do you wish would happen now?" The answer to this question may take us closer to understanding what justice means for that child. However, in order not to provoke expectations that cannot be met, it is important that the interviewer does not promise what cannot be fulfilled. The interviewer should be clear with the child about what happens next, if this is known, for instance, if a referral will be made or if the child will be contacted by the interviewer to sign a statement. The child should also be provided with the contact details of someone who can be contacted if the child has further questions or needs support.

4.2.3 CHILDREN, TRAUMA, AND CREDIBILITY

Traditional indicia of credibility – such as the ability to retrieve specific memories and details of

¹⁴⁷ Hearing child victims of exploitation and trafficking and children at risk: Practice-oriented guidance for child sensitive communication and interviewing to obtain accurate and reliable statements from children (Council of Europe, 2021) 19.

¹⁴⁸ Ibid.

events without inconsistencies, may not be present with victims' recall of traumatic events, particularly those suffering from PTSD or depression.¹⁴⁹ This can be the case for children.

Several factors have previously militated against some children being regarded as credible victims of sexual abuse. These include:

- the offence was not reported immediately after it was committed;
- the account given was inconsistent;
- the victim 'voluntarily' returned to the alleged abuser; victim has a learning disability or mental illness;
- the victim is perceived as consenting to sexual activity;
- the victim previously told untruths about other matters; victim has been, or is, abusing alcohol/drugs.

However, these factors could be seen as supporting allegations of sexual abuse, not least because the behaviour is often present in victims of abuse. One should therefore look to the credibility of the overall allegation rather than focusing primarily on the credibility or reliability of the child.

4.2.4 DRAWING OUT EVIDENCE OF SEA

Researchers emphasize the need to keep an open mind throughout the investigation to evaluate alternative explanations or hypotheses. The interviewer will likely have a sense of what information the child victim may provide, which may come from conversations with the caseworker. However, not all allegations will be founded, and some allegations will be founded, but will not correspond to what investigators initially anticipated. Interviewers' preconceived views can influence how interviewers ask children questions, which in turn may impact or limit children's responses.¹⁵⁰ It is possible, and even probable, that the account will be different from what is anticipated, and the interviewer will need to be prepared and open to take the interview in whatever direction is needed. Also, the interview may reveal new or added security or safety risks that may need to be acted on immediately. The interviewer must be prepared for these eventualities. On this point, the independent panel of investigators of the UN response to incidents in the Central African Republic expressed concern that the UN investigators had not followed up the leads they had learned from the children:

Given that the information reported by the children indicated the possibility of a broader pattern of sexual violence by some international peacekeeping troops, further investigation was warranted.¹⁵¹

4.3 CONSIDERATIONS POST-INTERVIEW

After the interview concludes, the interviewer should review the notes as soon as possible and if the process requires it, prepare the statement to be signed off by the victim. Whether the statement should be signed may depend on the purpose of the interview and the local procedural laws; in some countries having a sworn statement taken by anyone other than a competent investigator or prose-

¹⁴⁹ B. Graham et al, "Overgeneral memory in asylum seekers and refugees", (2014) 45(3) *J Behav Ther & Exp Psy* 375; J. Herlihy & S. Turner, "Untested assumptions: psychological research and credibility assessment in legal decision-making", (2015) 6(1) *Eur J Psychotraumatology*.

¹⁵⁰ M.B. Powell et al, "Skill in interviewing reduces confirmation bias", (2012) 9 *Journal of Investigative Psychology and Offender Profiling* 126; N. Sumampouw et al, "Potential for Police Investigator Bias", (2021) *Police Practice and Research*.

¹⁵¹ Deschamps et al, CAR Report 5; See also, p. 37.

cutor may impede its ability to be introduced as evidence in later legal proceedings. A list of action points should be drawn up, which might include specialist referrals; safety measures; additional persons to interview (where the child's evidence took the allegations in a new direction or opened up new investigative leads or there are new opportunities to verify information). If the interview is part of a wider investigation involving multiple victims, the statement would need to be cross-referenced against other data to help identify patterns.

All paper and electronic data collected or generated through the interview process would need to be immediately stored in line with data protection and witness safeguarding policies. After a long interview there can be a tendency to hold off on these types of formalities, to take notes home, with a view to proceeding with the formalities the next day. This is bad practice and should be strictly avoided.

Problems which frequently arise following SEA interviews which investigators should guard against:

I) VAGUE INTERVIEW NOTES: Interviewers need to take detailed notes and make a verbatim transcript if the child makes allegations, to capture precisely what the child has said. Without this, the interviewer may misremember or misinterpret what the child says, which may impede follow-up.

II) NO FOLLOW UP: The investigator should have been clear with the victim and where appropriate, the family/guardian, about next steps. Whilst the investigator should have avoided over-promising, it is natural that the interviewee would want to know what happened with the investigation, and they have a right to be kept informed at regular intervals. Also, following the interview there may be new security risks, possible re-traumatisation which may make it extremely important to maintain regular contact with the victim. A clear point of contact should be tasked with following up (at agreed intervals), and the contact details of this person should also be provided to the victim. A carry-forward system of reminders should be in place to ensure the follow-up happens, and communications with the victim should be recorded in the victim's file.

III) NO (OR INSUFFICIENT) SUPPORT PROVIDED FOLLOWING A REFERRAL FOR SUPPORT: Often, agencies and organisations will have arrangements for support to SEA victims, with local service providers through gender-based violence and child protection referral pathways. At times, the services are inadequate (if the victim has special needs or is in a remote location or given the limited capacity or remit of service providers), or unavailable because the service providers have, after a time, stopped providing the service despite long-term needs of victims. Agencies and organisations need to be reminded that they remain responsible for the victims' support and assistance, even if they have referred the matter to other service providers. There is a need for regular follow-up, monitoring, and evaluation of service provision, and organising new support structures as required.

IV) LOSS OF CONTACT: Largely because of problems ii) and iii), the agency or organisation may lose contact with the survivor which may make the follow-up of accountability and redress processes difficult if not impossible. Given the precarity of the circumstances in which many victims will live, it will not be unusual for victims to move to find employment or to avoid insecurity.

5. Recommendations

5.1 POLICY RECOMMENDATIONS

THE HUMANITARIAN SECTOR AS A WHOLE:

- The IASC or other appropriate humanitarian coordinating body or network should adopt sector-wide policy guidance on a child-centred approach for the prevention and response to child SEA (to include *inter alia*, how to foster meaningful child participation; interviewing children; support and assistance; and accountability and redress for child victims).
- A protocol should be agreed to second experts to/between network members to share knowledge, expertise, and skills regarding child SEA investigations and to improve the independence of such investigations.
- Improve the efficacy and use of inter-agency vetting tools to ensure that persons against whom there is credible information about their involvement in SEA cannot be re-employed in the sector.

HUMANITARIAN AGENCIES AND ORGANISATIONS SHOULD:

- Ensure they have in place a clear SEA policy fully adapted to the particular circumstances of child SEA which includes detailed risk analysis and mitigation, a mandatory reporting policy which recognises the failure to report as actionable misconduct and includes effective systems to protect complainants and whistle-blowers from reprisals, investigation protocols, guidelines for maintaining privacy and confidentiality, monitoring and evaluation and lessons-learned frameworks.
- UN agencies and other intergovernmental organisations with applicable privileges and immunities should ensure they have a system in place to efficiently waive immunities as appropriate and to facilitate the sharing of relevant data with SEA investigators to support SEA investigations and accountability processes.

STATES HOSTING HUMANITARIAN AGENCIES AND ORGANISATION FIELD PRESENCES SHOULD:

- Enhance the terms of cooperation with agencies and organisations to increase dialogue on the prevention and response to SEA and the role of police, justice, health, education, housing, and social services state institutions to address crimes against, and the humanitarian needs of, child victims of SEA.
- Ensure that effective policies and protocols are in place to prevent and respond to SEA involving government officials, and government employees seconded to collaborate with humanitarian agencies and organisations.
- Include SEA protocols in authorisation agreements with humanitarian agencies and organisations about their field presences in the country.

STATES WHERE AGENCIES AND ORGANISATION ARE REGISTERED OR HEADQUARTERED, AND DONOR STATES, SHOULD:

- Ensure child SEA perpetrated extraterritorially is recognised as a crime that can be investigated and prosecuted.
- Ensure that all funding contracts require recipients to have in place SEA policies, risk manage-

ment and monitoring and evaluation frameworks that account for SEA and transparent public reporting on SEA.

- Support humanitarian agencies and organisations as well as governments in countries where humanitarian actors are working, to improve SEA prevention and response frameworks.

5.2 TRAINING AND SKILLS DEVELOPMENT

HUMANITARIAN AGENCIES AND ORGANISATIONS SHOULD:

- Develop ongoing training programmes that respond specifically to in-country risks and local contexts.
- Adapt existing training materials and create bespoke training where needed to address the in-country risks related to child SEA, clarify what needs to be done in real-life situations, and signpost to available services.
- Training should be participatory, problem-based, varied depending on the characteristics of the participants and geared to staff, contractors and volunteers as well as government, local communities, beneficiaries of assistance and, where appropriate, children, and should include components on what child SEA is; what constitute the “best interests of the child”; how to identify children at risk; and what steps to take if one learns of a suspected case of child SEA.
- Where possible, ensure that child SEA experts with investigative skills are in-country at the outset of humanitarian operations, not only when problems arise. Work collaboratively with international and local partner organisations to cultivate a core of expertise on child-centred engagements, investigations, and support.

5.3 OPERATIONAL RECOMMENDATIONS

HUMANITARIAN AGENCIES AND ORGANISATIONS SHOULD:

- Incorporate child SEA into risk analyses and mitigation frameworks.
- Strengthen disclosure pathways by improving community-based complaints mechanisms; intensifying community presence and beneficiary consultations to ensure that opportunities for disclosure arise and clarifying and better explaining the rationale of mandatory reporting structures and how they work in practice.
- Strengthen community engagement on SEA. Move beyond ad-hoc consultation of communities toward regular forums, upscaling community ownership, building trust and finding solutions to barriers.
- Ensure effective referral pathways are in place from the outset of a mission, not once an allegation becomes known. Continue to follow-up on past referrals to ensure the adequacy of support and assistance.
- Pool resources so that those involved in decisions about a child's best interests and doing no harm are external to the agency or organisation against whom allegations of SEA have been made.
- Provide legal aid and resourcing so that lawyers or independent child's rights advocates are in place from the outset of child SEA investigations so that their interests can be independently ensured.
- In an age-appropriate way, actively inform, engage, and seek the consent of children about all matters which concern them. Informing a parent or guardian does not displace the right for a child to be kept informed and to engage directly with the process.

- Ensure that the (anonymised) results of investigations are made public, as well as overall statistics related to complaints, investigations, and accountability processes.
- Support legal and institutional reform efforts in the countries concerned to strengthen child-friendly justice processes, including the criminalisation of relevant conduct amounting to SEA involving children of any gender, and effective victim and witness protection schemes.

5.4 MONITORING AND EVALUATION, AND MANAGEMENT OVERSIGHT

- How agencies and organisations prevent and respond to SEA and child SEA should form part of macro-level, field-level and case-level results-based monitoring and evaluation frameworks.
- Agencies and organisations should be reporting publicly on their progress to achieve set goals that are determined by way of victims' rights, international standards, agreed policies, identification of risks, and through lessons learned from responses to past instances of SEA.
- All cases deserve clear follow-up and there should be a transparent review of whether victim engagement was accomplished, appropriate support was provided, accountability was delivered, and victim redress obtained, and/or whether there were gaps, and the reasons for those gaps.
- Each agency and organisation should have a clear management structure which identifies who is responsible for what, and whose job it is to oversee the successful accomplishment of those tasks, from the local, field-level all the way up the chain of command.
- There should be a clear, sign-posted, and accessible complaints process whereby victims, community members, partner organisations or others can launch complaints about the response to or handling of SEA allegations.

ANNEX 1

Charter of the Rights of Child Victims of Sexual Exploitation and Abuse in Humanitarian Settings

RECALLING the adoption by UN General Assembly resolution 40/34 of 29 November 1985 of the Declaration of Basic Principles for Victims of Crime and Abuse of Power; the adoption by the UN Economic and Social Council in its resolution 2005/20 of 22 July 2005 of the Guidelines on justice in matters involving child victims and witnesses of crime; the adoption by the African Committee of Experts on the Rights and Welfare of the Child of its General Comment No. 7 on Sexual Exploitation (July 2021); as well as the obligation on States Parties to the Convention on the Rights of the Child to take all appropriate legislative, administrative, social and education measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse; and that securing and promoting children's fundamental rights to respect for their human dignity and physical and psychological integrity, through the prevention of all forms of violence, is essential for promoting all of their rights.¹⁵²

REMINDED of the protocols, guidelines and other resources to address sexual exploitation and abuse adopted, or put in place by UN agencies, regional organisations and international humanitarian organisations including: the UN Secretary-General's 2003 Bulletin on special measures for protection from sexual exploitation and sexual abuse; the 2019 UN Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse; the 2012 Guidelines for health and psychosocial service providers in humanitarian settings produced by the International Refugee Committee and UNICEF: "Caring for Child Survivors of Sexual Abuse"; the African Commission on Human and Peoples' Rights' 2017 Guidelines on Combating Sexual Violence and its Consequences in Africa (African Commission on Human and Peoples' Rights and the European Union's 2011 Directive 2011/93 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography.

COGNISANT that sexual exploitation and abuse involving children is a crime, a personal injury and an abuse of power, and that children in humanitarian and post-conflict settings are particularly vulnerable to it because of their age, gender, size, and dependency on others.

RECOGNISING that child victims of sexual exploitation and abuse suffer significant harm because of these experiences and may suffer additional hardship and consequently require special protection when seeking assistance and support and engaging with investigations and justice processes.

CONSIDERING that the rights of child victims of sexual exploitation and abuse have not been adequately recognised, and that better recognition of their rights would lead to improved efforts by all humanitarian agencies and organisations to respect, protect and fulfil their rights, which would enhance protections against and responses to sexual exploitation and abuse involving children.

STRESSES the need to promote progress by all humanitarian agencies and organisations in their efforts to respect, protect and fulfil the rights of child victims of sexual exploitation and abuse.

PRESENTS this Charter, which is designed to clarify the rights of child victims of sexual exploitation and abuse, assist humanitarian agencies and organisations in their efforts to provide timely and appropriate assistance and support to child victims and to foster accountability and reparation to address the harms and contribute to efforts to prevent recurrence.

¹⁵² CRC Committee, *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, CRC/C/GC/13 (18 April 2011), para. 13.

A. CHILD VICTIMS OF SEXUAL EXPLOITATION AND ABUSE

1. A child is a person under the age of 18. Adults are prohibited from engaging in sexual exploitation or abuse of any kind with children regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence.
2. The term “sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another.
3. The term “sexual abuse” means any form of actual or threatened activity of a sexual nature, whether by force, under unequal or coercive conditions, or circumstances where informed consent cannot be given by the victim because of their young age. It does not require a physical act such as penetration, force or touching. It may also involve non-physical sexual acts, e.g., staring sexually at a child or making sexualised, harassing comments to a child.

B. GENERAL PRINCIPLES OF TREATMENT

4. Child victims should be treated in a caring and sensitive manner that respects their inherent dignity, agency, and human rights, and considers their personal identity, situation and special needs, interests, age, gender, abilities, intellectual maturity and evolving capacity, and the specific ways in which they have been victimised by SEA.
5. Every child victim has the right to be protected from sexual exploitation and abuse, and treated fairly and equally, regardless of their or the parent or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic, or social origin, property, disability and birth or other status. This includes discrimination based on prejudices towards commercially sexually exploited children, children who are homeless or children in conflict with the law or based on children's clothing and behaviour. Child victims' access to support services as well as their engagement with investigations and justice processes should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic, and social background, caste, socio-economic condition and immigration or refugee status, as well as to the particular needs of the child, including health, abilities, and capacities.
6. In all actions concerning child victims, the best interests of the child shall be a primary consideration. All decisions affecting child victims, including the determination of their best interests should consider the child's views and give their views due weight according to their age and maturity. The interpretation of a child's best interests involves considering what would best protect a child's physical, psychological, and emotional safety, security and well-being taking into account the child's personal circumstances and local context, and it must be consistent with all of the child's rights, including their evolving capacity to claim their rights, to express views and have them considered and to have access to justice.

C. RIGHTS OF CHILD VICTIMS OF SEXUAL EXPLOITATION AND ABUSE

Right to be protected

7. Children have the right not to be subjected to sexual exploitation and abuse. They have the right to be shielded from any form of physical, psychological, mental, and emotional abuse and neglect.
8. Implementing this duty requires agencies and organisations to ensure that sexual exploitation and abuse is not tolerated within their institutions and within the humanitarian sector as a whole. It requires them to address the multiple and intersecting causes of sexual exploitation and abuse including discriminatory gender norms, unclear policies and codes of conduct, insufficient staff training and protection expertise, inadequate reporting mechanisms, a

culture of institutional protectionism, inadequate whistle-blower protections and ineffective vetting of prospective employees, contractors, and volunteers.

9. Humanitarian agencies and organisations must be proactive when responding to early indications of sexual exploitation and abuse and to seek to uncover more information in order to be in a position to stop the practice and protect children who may be exposed to it, or who may be exposed to further consequences related to past abuse such as preventing or limiting the onward spread of digital or photographic images of the child for sexual purposes.
10. Humanitarian agencies and organisations must take immediate and effective measures to protect children who may have undergone, be undergoing or are at risk of undergoing sexual exploitation and abuse, including protecting children from the harmful consequences of sexual exploitation and abuse such as community stigma and ostracisation and pressure to marry one's abuser. Special strategies and interventions are required for child victims who are particularly vulnerable to recurring victimisation. These should consider the nature of the victimisation, including victimisation related to the receipt of humanitarian aid or assistance, victimisation in educational or institutional settings and trafficking.

Consent, Confidentiality and Privacy

11. Informed consent includes the informed consent of the child, according to their evolving capacities. Consent should be explained at the outset and obtained prior to, or in conjunction with, the provision of assistance to child victims. The need for consent from the child's parent, legal guardian or person acting in loco parentis will depend on the child's evolving capacities and whether seeking such consent could put the child at risk (of retaliation, violence, abuse and/or neglect). Adolescent children have the right to access confidential medical advice without requiring parental or guardian consent and are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services.
12. Interference in a child victim's private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained to ensure fair and equitable outcomes of the justice process. A child's privacy and personal data including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records should be protected at all stages of any investigation or proceedings. Information relating to a child's involvement in an investigation or justice process should be protected.

Right to Assistance and Support

13. Child victims and, where appropriate, the child's parents, legal guardian or person acting in loco parentis and any child born of sexual exploitation and abuse should have access to assistance and support services such as protection, trauma and medical care, legal services, material care, social and educational services, and other services for the child's reintegration. Such services should be provided in accordance with the best interests of the child, in a manner that is victim-centred, rights-based, age, disability and gender sensitive, non-discriminatory, and culturally appropriate. Such services should be available until they are no longer required. All assistance and support should be provided in a manner that does no harm, upholds child victims' rights, dignity, and well-being. It must not increase the trauma suffered by child victims, cause further stigmatisation, or exclude or discriminate against other victims of sexual exploitation and abuse.
14. Child victims of sexual exploitation and abuse have a right to access adequate and effective assistance and support that meets their immediate and longer-term needs, irrespective of whether they initiate or cooperate with an investigation process or other accountability procedure. Where such services exist and are adequate and effective, assistance and support should be provided through existing services, programmes, and their networks.
15. Child victims and where appropriate as stipulated in Paragraph 11 above, the child's parent, legal guardian or person acting in loco parentis, have the right to decide on the assistance

they need, and information should be provided on the full range of options available. The rights of child victims to privacy, confidentiality, and informed consent in respect of assistance shall be respected.

Right to Information

16. Child victims should be informed of their rights, the availability of services and how to access them, investigation, justice, and reparations procedures, what can be expected from them and how to access them, as well as the progress and outcomes of actions or processes that concern them. This should be provided in a manner appropriate for the child's age and maturity, in a language that the child can understand and in a manner that is gender- and culture-sensitive. Informing a parent or guardian is no substitute for informing a child.

Right to child-centred investigations and justice processes

17. Child-centred investigations and justice processes must respect the best practice for effective investigations: which must be prompt, independent and impartial, and sufficiently robust to be capable to lead to the truth and serve as a basis for accountability and legal redress. The best interests and dignity of child victims must be respected during interviews, examinations, and other forms of investigations, which should be conducted by trained professionals who proceed in a sensitive, respectful, and thorough manner. Vulnerable children should only be interviewed if it is necessary to do so, and only where the interviewer (or person accompanying them) has the appropriate skills to conduct such an interview.
18. Child-sensitive procedures such as limiting the number of interviews of child victims, interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration such as allowing where possible video testimony and/or testimony out of sight of the alleged perpetrator, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, should be in place and implemented.

Right to Participate in an Investigation

19. Every child has the right to be consulted, to express their views, opinions, and beliefs freely, in their own words, and to contribute especially to the decisions affecting their life, including those taken in any investigation or judicial processes, and to have those views taken into consideration according to their abilities, age, intellectual maturity and evolving capacity.
20. Age should not be a barrier to a child's right to participate fully in an investigation or justice process. Every child should be treated as a capable witness, subject to examination, and their testimony should not be presumed invalid or untrustworthy by reason of the child's age alone if their age and maturity allow them to give intelligible and credible testimony, with or without communication aids and other assistance.
21. As the experience of violence such as sexual exploitation and abuse is inherently disempowering, sensitive measures are needed to ensure that child protection interventions do not further disempower children but rather contribute positively to their recovery and reintegration via carefully facilitated participation.

Right to access justice and reparation

22. Investigations by humanitarian agencies and organisations into allegations of sexual exploitation and abuse should be designed in such a way that they can establish the truth and lead to justice and legal redress for child victims. Child victims of sexual exploitation and abuse have a right to access to justice that is child-sensitive, considers the nature of the harms they suffered and their seriousness, and to prompt and full redress, reintegration, and recovery for the harms they suffered.
23. Humanitarian agencies and organisations should support local judicial and administrative

mechanisms so that they can better meet the needs of child victims of sexual exploitation and abuse and to enable child victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible.

24. As part of the assistance and support provided to child victims of SEA, humanitarian agencies and organisations should provide funding to child victims to ensure that they have access to child-friendly legal advice that is accessible, age-appropriate, multidisciplinary, and effective, and that is responsive to the range of legal and social needs faced by them. They should have access to legal representatives who can provide them with impartial advice and represent their interests in investigations and legal proceedings should the child, properly informed, choose to engage with the justice process.

Prevention and Guarantees of Non-Recurrence

25. Investigations initiated by humanitarian agencies and organisations should be capable of clarifying not only what happened, but why it happened and what changes to policies and practice are required to avoid recurrence, including institutional and structural reforms; training and capacity building; legal reforms and the institution of vetting and safeguarding procedures. Child victims of sexual exploitation and abuse should be consulted about possible measures of prevention and guarantees of non-recurrence and informed of measures taken.

ANNEX 2

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JUSTICE RAPID RESPONSE – FOCAL POINTS

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ANNEX 3

Relevant guidelines and standards

CHILD SPECIFIC GUIDELINES AND STANDARDS

Adapted Forensic Interview Protocol for Children and Adolescents when Exploitation and/or Trafficking is Suspected (National Children's Advocacy Centre, 2019) <https://calio.org/wp-content/uploads/2020/01/NCAC-Adapted-FI-Protocol-when-Exploitation-is-Suspected-Final.pdf>

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Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN (9 October 2013) https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ASEANdeclarationVaW_violenceagainstchildren.pdf

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ANNEX 4

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About Justice Rapid Response

Justice Rapid Response is the only global facility that provides rapidly deployable specialised justice experts to assist with investigations of reported war crimes, genocide, crimes against humanity, and serious human rights violations. It responds to requests from international organisations, states and civil society organisations to assist in the investigation, analysis and documentation of serious human rights violations and international crimes wherever they occur. It provides criminal justice experts to investigate crimes of the world's most violent conflicts including Central African Republic, Myanmar, South Sudan, Syria, Yemen and others.

Justice Rapid Response provides expertise in some 50 specialisations, including criminal investigations, prosecutions, transitional justice, sexual and gender-based violence investigations, child protection, witness protection and military analysis. Its experts work through United Nations investigations such as commissions of inquiry, national authorities undergoing transitional justice processes, as well as civil society organisations active in documenting violations in order to engage with justice processes.

The organisation contributed experts to several landmark cases, including the conviction of former President of Chad Hissène Habré at the Extraordinary African Chambers, the conviction of Congolese rebel leader Bosco Ntaganda at the International Criminal Court and to the documentation of extensive sexual and gender-based violence in Myanmar. Justice Rapid Response's victim-centred approach enables survivors to participate in justice processes and to define what justice means for their communities.

Justice Rapid Response is registered as an international non-profit association under Swiss law and is led by an Executive Board comprised of ten States (Argentina, the Kingdom of Belgium, Canada (observer), Finland, The Netherlands, Republic of Korea, Sierra Leone, Sweden, Switzerland and Uganda), UN Women and two individuals. The organisation's operations are managed by a secretariat based in Geneva with a liaison office in New York.



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