

**INTER-AGENCY PROTOCOLS FOR THE
PREVENTION OF EXPLOITATION AND ABUSE IN
THE KENYA REFUGEE PROGRAM**

Nairobi, Kenya

March 2006

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PART ONE: INTRODUCTION

(a) The “Protocols” contained herein have been elaborated by the signatory agencies, also referred to as “the parties”, for use in addressing in a manner consistent across the signatory agencies, complaints of sexual exploitation or abuse that may be brought to them or their staff by or on behalf of their beneficiaries, above all refugee women, girls and children. In particular, the Protocols represent a further development of the instruments for the implementation of commitments set out in the Inter-Agency Code of Conduct for Humanitarian Workers in the Kenya Refugee Programme adopted on 9 October 2003 and are part and parcel of the on-going activities of the Prevention of Sexual Exploitation and Abuse (PSEA) Project launched in Nairobi on 3 February 2005.

(b) The protocols, which have resulted from a series of workshops and consultations among the signatory agencies, have been elaborated utilizing the IASC’s *Model Complaints and Investigation Procedures and Guidance Related to Sexual Exploitation and Abuse*¹. They have been elaborated in the same spirit as was the Inter-Agency Code of Conduct referred to earlier, namely to enhance and promote the concrete implementation of not only that Code, but also other Codes, Protocols, policies, standards and regulations already in force in the signatory agencies that have the same purpose. The Protocols are not intended to replace or in any way detract from them.

(c) The package as a whole includes a total of seven “Protocols”, highlighted in the respective boxes below and each elaborated according to the particularities and considerations which were identified in the series of workshops and consultations mentioned in the preceding paragraph. The Protocols were culled and transcribed from the IASC Guidelines, although adjustments or additions have been effected to cater to the particular issues or circumstances in the Kenya refugee programme.

PART TWO: THE PROTOCOLS

Protocol I: Universal acceptance of the Complaints and Investigation Procedures and Guidance Related to Sexual Exploitation and Sexual Abuse Protocols

1.1. As indicated above, the signatory agencies have, in developing the Protocols herein, considered in detail the IASC Task Force’s *Complaints and Investigation Procedures and Guidance Related to Sexual Exploitation and Sexual Abuse*. The agencies find that this document outlines a comprehensive and useful set of procedures on how to conduct investigations and interviews in cases involving allegations of sexual exploitation and abuse against beneficiaries and should continue to be relied upon accordingly by the agencies as relevant.

¹ This document was originally prepared by the Inter-Agency Task Force (TF) on Protection from Sexual Abuse Exploitation and Abuse (PSEA) funded by and developed on behalf of UNICEF. A Sub Group of that Task Force, co-chaired by UNICEF and Save the Children, and including representatives from the United Nations High Commissioner for Refugees (UNHCR); the Department of Peace Keeping Operations of the United Nations (DPKO); OXFAM; the International Rescue Committee (IRC); and the Office for the Co-ordination of Humanitarian Affairs (OCHA) later adapted the original document and issued the guidelines referenced in this footnote in March 2004 as a draft.

1.2. With regard to the Protocols herein, the agencies have also agreed as follows:

1.2.1. The signatory agencies shall adopt the Protocols and, bearing in mind their own agency procedures and guidelines, use them as a guide for conducting investigations into cases of sexual exploitation and abuse with which they may be faced.

1.2.2. In each case reported to an agency, it is vital that clear and comprehensive information should be gathered about the complaint itself, as well as on the situation of the complainant/survivor.

1.2.3. The information can be gathered in two steps. Where the complaint is initially reported to an officer not in the line of dealing with PSEA cases within that agency, the Sexual Exploitation and Abuse Complaints Form² attached to these Protocols as Annex A should be completed. It is expected that this form should be easy to complete by functional staff at any level. The completed form must then be forwarded immediately to the concerned PSEA line officer, focal point or supervisor as established by each organization.

1.2.4. The line officer, focal point or supervisor will then interview the complainant/survivor and complete the more detailed Kenya Refugee Program Model Complaints Referral form for Sexual Exploitation and Abuse³ contained in Annex B.

1.2.5. If, from the onset, the complaint is made directly to the line officer, focal point or supervisor concerned, it shall not be necessary to fill the form contained in Annex A, in which case the form contained in Annex B should be completed directly.

Protocol II: Acceptance of a standardized procedure for supporting the needs of survivors and complainants

2.1. A comprehensive approach is required to ensure that the protection needs of survivors, complainants, and, where applicable, their families, are fully catered to. Under this approach, the medical, psychosocial care, legal referral, protection from retribution, security and other service needs should all be taken into account and addressed properly. An indicative list of the services available and the agencies which provide them in Nairobi and Kakuma and Dadaab refugee camps is contained in Annex C.

² The sexual exploitation and abuse complaints form was designed by representatives of the signatory agencies in order to make the complaints and reporting procedures more accessible to potential complainants, especially refugees who do not have easy access to the identified supervisors or focal points.

³ This form is adapted from the 'Model Complaints referral Form (Sexual Exploitation and Abuse)' that was originally developed by the IASC. This form may be adapted further in the future to more closely meet the needs of complainants.

2.2. While fixing priority attention on the problems of exploitation and abuse or of beneficiaries, the signatory parties are also aware that allegations of sexual abuse and exploitation are sometimes made maliciously and without foundation. The need to pay attention to the victims/survivors of such allegations is also fully recognised.

2.3. In view of all the above, the signatory agencies hereby agree that:

2.3.1. The person who receives the complaint should consider the protection/health/assistance/legal needs of the complainant, seeking advice from senior staff as appropriate. Information on the services available within the organisation receiving the complaint should be provided to the complainant and access to those services facilitated in every way possible.

2.3.2. Where the services are available elsewhere, the agency receiving the complaint should still help the complainant, victim or survivor in gaining access to them, if necessary providing staff to accompany him or her.

2.3.3. All efforts must be made to protect and support the privacy, confidentiality and needs of the survivor or complainant.

2.3.4. All those who are designated to receive complaints must have the appropriate information at hand, including the name of Police Officers or other law enforcement authorities trained or designated to receive and deal with such cases.

2.3.5. Where it is clear that a person has been the victim of malicious, unfounded allegations, every effort should be made to help clear and restore his or her good name. Counselling should also be provided for any psychological strain that may have been caused.

Protocol III: Systematised procedure for referring cases to the appropriate legal authorities when possible crimes have been committed

3.1. A complaint of sexual exploitation and abuse being addressed under the framework of the Inter-Agency Code or these Protocols may at the same time amount to a crime under the laws of Kenya. Consideration has thus been given to the question when and at what point in the investigation of such a complaint the legal authorities of the country should be notified of the complaint/crime?

3.2. The parties herewith approve of the following guidelines for purposes of dealing with situations of this kind:

3.2.1. At the point of receiving the complaint, the agency concerned should, in liaison with its SGBV staff or focal points if that agency has them and its agency legal advisers, advise the victim/survivor of the option to report the incident to the Kenya Police.

- 3.2.2. In conjunction with UNHCR Protection personnel, the agency can itself report the incident to the Police with the victim's written consent. The victim should however be encouraged to report the case him or herself, as they will in any case be required to record statements.
- 3.2.3. If written consent is received but it is known that reporting the incident will put the person in danger, then all efforts must be made to improve the security of the victim prior to reporting the incident. Legal advice should also be sought in line with what is set out in paragraph 3.2.1 above.
- 3.2.3. In certain instances, the organisation can override the victim's/survivor's refusal to consent to national legal process. This can include, but is not limited to, cases where the victim is a minor, mentally incapable of making informed decisions, or where there have been multiple allegations against the alleged perpetrator. Formal legal advice should be sought from an authentic legal source including, but not limited to the respective agencies' legal advisors prior to overriding the victim/survivors refusal to consent.
- 3.3. In some cases, a staff member the subject of a complaint of sexual exploitation and abuse may in the meantime have been relieved of his or her duties or posted outside the country. What should happen in such a case? If the return of the staff member to the country becomes necessary, who shall be responsible to ensure this, and at whose cost?
- 3.4. The signatory agencies consider that these situations are best dealt with in line with the following guidelines:
- 3.4.1. In cases where the complainant/survivor has agreed that the case can be reported to the Kenya Police or other law enforcement authorities, it shall become the prerogative of those authorities to seek the extradition of the subject.
- 3.4.2. Where there is overwhelming evidence that the alleged perpetrator has indeed committed the crime, the employing organisation should support the criminal investigations and favourably consider financing the extradition process.
- 3.4.3. In all cases where criminal proceedings have been initiated, details thereof should be reflected in the personnel file of the alleged perpetrator.
- 3.3.4. For cases which do not give rise to criminal proceedings, administrative investigations by the agency concerned should in any case still be completed, whether the person concerned remains in the country or not, and notwithstanding that she/he may have ceased to be an employee of the organisation concerned. This is vital, among other reasons, if, for instance, the former employer is approached for a reference concerning this person, or she/he later reapplies for employment within the same organisation.
-

Protocol IV: How should cases involving more than one agency simultaneously be handled in terms of both reporting and investigating procedures.

4.1. A complaint may involve personnel from more than one agency. In such cases, how can the investigations procedure be streamlined so as to maximise the resources of both agencies and to minimise the trauma of the survivor and the subjects of the complaint?

4.2. The parties reiterate that all cases of sexual abuse/exploitation are unacceptable and should be regarded as gross misconduct. They thus agree that:

4.2.1. All disciplinary or other measures taken by the agencies concerned in responding to allegations of sexual exploitation and abuse reflect that those allegations are taken seriously and with the urgency they call for.

4.2.2. Immediately upon a complaint being received, the relevant Heads of Agency must be immediately advised. They will each respectively take steps immediately to investigate the complaints properly, seriously and fully according to the applicable procedures in their respective organizations.

4.2.3. Bearing in mind the procedures established within their respective agencies, they will also make efforts to form a joint investigation team, or, in any case, closely coordinate and share information on the investigations they may launch according to their respective agency procedures and protocols.

4.2.4. In cases where a joint investigation is launched, there will be at least one member from each agency⁴. If one organisation does not have staff qualified to work on an investigation team, then the agencies may agree to appoint one organisation to conduct the investigation or the agency without qualified staff in this regard may appoint another agency/body to conduct investigations on its behalf together with the second agency.

4.2.5. Agencies that have the capacity to provide assistance in investigations will make it available to those that do not. When the two agencies implicated by the complaint do not have capacity to perform the investigation, or if they feel that it would be better for there to be an independent investigation, they may jointly appoint a third agency to conduct the investigation.

4.2.6. The agency that carries out an investigation by itself according to its own procedures or the one that is appointed to conduct the investigation on behalf of the others must demonstrate that the investigation is in indeed in process.

⁴ It is acknowledged that some agencies have organizational investigation regulations, procedures and capacities for addressing allegations of misconduct against their staff. It is these procedures which will usually kick into gear even in the cases provided for under these Protocols. However, even in these cases, the agencies concerned should still work together and collaborate, co-ordinate and share information as far as is possible with the others implicated or affected by the allegations in question.

4.2.7. Where a joint investigation has been carried out, the final findings of the investigation must be provided to the Heads of the agencies affected by the complaint. It shall be the responsibility of each individual agency to ensure the relevant administrative and disciplinary measures are duly taken.

4.3. It is recognized that in investigating or otherwise responding to cases where two agencies are involved, disagreement could occur on one issue or another. Even where a joint investigation may have been agreed and carried out, internal administrative processes could also cause divergences at a certain point.

4.4. The parties recognize that decisions on the most appropriate administrative/disciplinary outcomes are ultimately matters for the individual employing organisation. At the same time, recalling their agreement with the guidance provided in the UN Secretary General's Bulletin⁵, that cases of sexual abuse/exploitation should be regarded as gross misconduct, the parties underscore that:

4.4.1. The resulting disciplinary actions or other steps taken should reflect that the complaints of sexual exploitation and abuse are taken very seriously in all cases.

4.4.2. In the event of a significant disagreement over the findings of the investigation, the investigation should still be finalised and the team should produce a final report clearly outlining the areas and reasons for the disagreement.

4.4.3. The completed report along with all available information should then be passed to the respective Heads of Agency, who, in consultation with each other or, in exceptional circumstances, individually, would make a determination on the findings.

Protocol V: What happens when the employing agency cannot be confirmed?

5.1 A complaint can be made against a subject who is a casual worker and/or has worked for several agencies. It might not be clear which organisation the subject worked for at the time in question.

5.2. In these cases:

5.2.1. If the person is currently employed, then the current employer should conduct the investigation.

5.2.2. If the casual worker is not employed, or if the employer at the time of the act cannot be confirmed, the complainant should be directed to the UNHCR Protection Officer or other line staff, advised of all the services available in the location and informed of the option of referring the matter to the Kenya Police.

⁵ Bulletin ST/SGB/2003/13 dated 9 October 2003, titled "Special Measures for Protection from Sexual Exploitation and Sexual Abuse".

Protocol VI: How can staff make a complaint if a Manager is the alleged perpetrator?

6.1. Fear of repercussions is often a key reason why staff may not report cases of sexual exploitation and abuse either perpetrated by the manager or in the office or operation for which he or she is responsible. So as to ensure that systems are put in place to allay such fears, the following are agreed upon as recommended practices:

6.1.1. It is recognized that most agencies will already have procedures to cater for these situations and that those procedures would be relied upon accordingly. Subject to this, staff should always report upwards. If the direct manager is the subject of an allegation, then the complainant should report his or her concerns to the manager's supervisor at national or regional level.

6.1.2. In exceptional circumstances, the complaint can be made to another organization with established protocols for the prevention of sexual exploitation and abuse. These circumstances include, but are not limited to, the staff member genuinely believing that raising the matter within her/his own organisation would not be effective or would result in further victimization. They also include cases where he/she may have already disclosed the matter to his/her organisation but no effective action has been taken.

6.1.3. In cases where a complaint is made to another agency as summarized in paragraph 6.1.2 above, the procedures outlined in Protocol VII below shall apply.

Protocol VII: Situations where an agency may receive a complaint against another

7.1. An organization may receive a complaint against another in the circumstances foreseen in paragraph 6.1.2 above. In other cases, an agency may, even without receiving a formal complaint, become aware of an apparent case of sexual exploitation or abuse allegedly perpetrated by staff of another agency. What should happen in such cases? What are the obligations owed to the complainant/survivor in situations when the organisation the subject of the complaint fails to investigate it or to take appropriate care of the complainant/survivor?

7.2. The following procedures shall be adhered to in dealing with these situations:

7.2.1. It shall be the prerogative of the agency receiving the complaint to seek the permission of the person reporting it to draw his or her report to the Head of the agency concerned by the complaint. If the complainant agrees, then the agency receiving the complaint will be at liberty to share that complaint accordingly. This report shall be made in writing.

7.2.2. The agency the subject of the complaint shall receive such report in good faith, and carry out investigations and the relevant administrative and disciplinary measures likewise in good faith, properly and with the urgency, seriousness and fullness underscored in the preceding Protocols.

7.2.3. It shall also share information with the reporting agency in good faith either directly with that agency or as among the issues for discussion and information sharing in the meetings of the PSEA Executive Board⁶.

PART THREE: IMPLEMENTAION AND ADHERENCE

(a) These Protocols are signed for and on behalf of the parties by their respective Heads of Agency appearing below. By so signing the Protocols, they hereby undertake:

(a.i) That they have read, understood and are in full agreement with the content of the Protocols.

(a.ii) To disseminate the contents of the Protocols comprehensively within their respective agencies, and take all necessary steps to ensure their implementation and adherence by all their respective workers.

(a.iii) To make every effort to work together in collaboration and create an environment whereby the spirit of the Protocols is fully enforced.

(a.iv) To disseminate the Protocols publicly and in the local languages understood by the respective target audiences, above all the beneficiaries.

(a.iv) To ensure that any and all breaches of the Inter-Agency Code of Conduct for Humanitarian Workers in the Kenya Refugee Program are dealt with in accordance with these Protocols or otherwise as provided for in the respective agency investigative, administrative and disciplinary procedures, decisively and without delay.

(b) A PSEA Executive Board is hereby established. The Board shall be comprised of all the Heads of Agency signatory to the Inter-Agency Code of Conduct for Humanitarian Workers in the Kenya Refugees Program and/or these Protocols or their designated representatives.

(c) The role and functions of the Board shall be to address issues and concerns relevant to the full and effective implementation of the Inter-Agency Code of Conduct and these Protocols by all the signatory agencies. The Board shall be concerned particularly by the cases, complaints and allegations of sexual exploitation and abuse which will have arisen and how they would have been addressed by the agencies concerned.

(d) At its meetings, the Board shall receive information and updates on the actions that have been taken to address those complaints accordingly and discuss relevant issues arising. It shall review the lessons learned from the activities of the agencies so far under these Protocols, and agree on ways for better and more effective implementation.

(e) The board shall meet at least once in each quarter. The quorum for the meetings of the board shall be five members.

⁶ Please see paragraphs (b) to (d) of Part Three of the Protocols.

(f) At its first meeting, the Board shall elect a Chairperson and Secretary from among its members, who shall hold office for one year. The Board shall agree on its own rules and regulations for the conduct of its meetings and other business.

(g) These Protocols are considered as a living document which shall continue to be developed for greater effectiveness. They shall be open for signature by humanitarian agencies not signing them on the date below and which may subsequently wish to do so. Such agencies will signify their interest to the depository of these Protocols, namely the International Rescue Committee (IRC), which shall then present the same to the next meeting of the PSEA Board. Once the Board agrees to the accession, it shall be effected by the agency concerned signing a formal instrument of accession. This shall be reflected and disseminated in the next re-publication of the Protocols.

WHEREFORE, the Heads of Agency of the parties hereof, have on this the 13th of March 2006, in Nairobi, Kenya, appended their respective signatures to 14 original copies of the Inter-Agency Protocols for the Prevention of Exploitation and Abuse in the Kenya Refugee Program in the English language, one original copy for each signatory agency.

Name: Yacob Yoseph
Title: Director
Agency: African Refugee Training and Employment Service (ARTES)
Signature: _____

Name: Bud Crandall
Title: Country Director
Agency: CARE International in Kenya
Signature: _____

Name: Natalia Tapies
Title: Director of Programs
Agency: FilmAid
Signature: _____

Name: Joseph Shihemi
Title: Program Manager
Agency: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)
Signature: _____

Name: Carol Brunt
Title: Program Director
Agency: Handicap International
Signature: _____

Name: Estelle F Strizhak
Title: Country Director
Agency: HIAS Refugee Trust of Kenya
Signature: _____

Name: Jenny Fletcher
Title: Country Director
Agency: International Rescue Committee (IRC)
Signature: _____

Name: Richard Muko
Title: Country Director
Agency: Jesuit Refugee Services (JRS)
Signature: _____

Name: Bobby Waddell
Title: Country Representative
Agency: Lutheran World Federation (LWF)
Signature: _____

Name: Mutava Musyimi
Title: General Secretary
Agency: National Council of Churches of Kenya (NCCCK)
Signature: _____

Name: Judy Wakahiu
Title: Executive Director
Agency: Refugee Consortium of Kenya (RCK)
Signature: _____

Name: George Okoth-Obbo
Title: Representative
Agency: United Nations High Commissioner for Refugees (UNHCR)
Signature: _____

Name: Heimon Laakkonen
Title: Representative
Agency: United Nations Children's Fund (UNICEF)
Signature: _____

Name: Marangu Njogu
Title: Executive Director
Agency: Windle Trust
Signature: _____

Name: Edwin P. McClain
Title: Regional Representative
Agency: International Organization for Migration (IOM)
Signature: _____

Annex A

SEXUAL EXPLOITATION AND ABUSE COMPLAINTS FORM

**ALL INFORMATION MUST BE HELD SECURELY AND HANDLED
STRICTLY IN LINE WITH APPLICABLE REPORTING AND
INVESTIGATION PROCEDURES. CONFIDENTIALITY MUST BE
MAINTAINED AT ALL TIMES**

IC File Number

1. Camp/Location/Estate_____Block/Plot_____
2. Name of survivor_____Sex _____Age_____
3. Ration card Number/Other identification number (specify_____
4. Date of incident_____Time of incident_____
- Place of incident_____
5. Date of reporting_____Time of reporting_____
- Date of Examination_____

B – Brief Description of the incident

C-Name of Witnesses (if any)

D-Describe action taken, provide detailed information regarding what medical assistance has been provided, what psychosocial care has been provided and whether a report has been made to the Police.

Case to be referred to an PSEA focal point immediately Yes No

If No, why not?_____

E- Case profile by (Name)_____Signature_____

Case received by (Name of Trained agency: _____
Staff with skills in case intake) _____ Signature _____

**Annex B - KENYA REFUGEE PROGRAM MODEL COMPLAINTS REFERRAL
FORM FOR SEXUAL EXPLOITATION AND ABUSE**

Name of Complainant: _____ Ethnic origin/Nationality _____

Address/Contact details: _____ Identity no: _____

Age: _____ Sex: _____

Name of Victim (if different from Complainant): _____ Ethnic origin/Nationality: _____

Address/Contact details: _____ Identity no: _____

Age: _____ Sex: _____

Name(s) and address of Parents, if under 18: _____

Has the Victim given consent to the completion of this form? ☐ YES ☐ NO

Date of Incident(s): _____ Time of Incident(s): _____ Location of Incident(s): _____

Physical & Emotional State of Victim (Describe any cuts, bruises, lacerations, behaviour, and mood): _____

Witnesses' Names and Contact Information: _____

Brief Description of Incident(s) (Attach extra pages if necessary): _____

Name of Accused person (s): _____ Job Title of Accused person(s): _____

Organization Accused person(s) Works For: _____

Address of Accused person(s) (if known): _____

Age: _____ Sex: _____

Physical Description of Accused person(s): _____

Have the police been contacted by the victim? ☐ YES ☐ NO If yes, what happened?

If no, does the victim want police assistance, and if not, why? _____

Has the victim been informed about available medical treatment? ☐ YES ☐ NO

If Yes, has the victim sought Medical Treatment for the incident? ☐ YES ☐ NO

If Yes, who provided treatment? What is the diagnosis and prognosis? _____

What Advice did you provide the victim? what action did you take? _____

What immediate security measures have been undertaken for victim? _____

Who is responsible for ensuring safety plan (Name, Title, Organization): _____

Any other pertinent information provided in interview (including contact made with other Organizations, if any): _____

Details of referrals and advice on health, psychosocial, legal needs of victim made by person completing report: _____

Report completed by: _____

Name _____ Position/Organization _____ Date/Time/Location _____

Has the Complainant been informed about the Organization's procedures for dealing with complaints? ☐ YES ☐ NO

Signature/thumb print of Complainant signaling consent for form to be shared with relevant mgt structure* and SRSG/RC/HC:

Complainant's consent for data to be shared with other entities (check any that apply):

Police ☐ Camp leader (name) ☐ _____ Community Services agency ☐

Health Centre (name) ☐ _____ Other (Specify) ☐ _____

Date Report forwarded relevant management structure*: _____

Received by relevant management structure*: _____
Name Position Signature

(*Relevant management structure is the official(s) responsible for sexual exploitation and abuse issues in the Headquarters of the Organization where the Accused person works)

**ALL INFORMATION MUST BE HELD SECURELY AND HANDLED STRICTLY IN
LINE WITH
APPLICABLE REPORTING AND INVESTIGATION PROCEDURES**

Annex C

Services Provided to Refugee in Kakuma, Dadaab and Nairobi

SERVICES PROVIDED	ORGANISATION PROVIDING THE SERVICE		
	Kakuma Refugee Camp	Dadaab Refugee Camp	Nairobi
HEALTH	IRC	GTZ	GTZ
PSYCHOSOCIAL	LWF/JRS/Windle Trust/NCKK	CARE	GTZ
PROTECTION	UNHCR	UNHCR	UNHCR
POLICE	GOK	GOK	GOK
LOCAL SECURITY	LWF		GOK