

**PREVENTING TRANSGRESSORS MOVING  
THROUGH THE HUMANITARIAN SYSTEM  
[Revision 1]**

**31 May 2018**

**1. INTRODUCTION**

At the 15 March 2018 IASC Principals' meeting on sexual exploitation and abuse (SEA) and sexual harassment and abuse (SHA), it was agreed that improvements to the referencing system were needed to ensure transgressors cannot freely move from one agency to another within the humanitarian system. To this end, a number of IASC organizations have taken steps to prevent transgressors moving through the system are listed below. For prospective employees these include: screening questions, self-declarations or self-certifications; declarations from referees; and, maintaining lists of certified organizational referees. In addition, different organizations have developed individual or joined collective SHA and SEA databases and some have decided to apply screening to their existing workforce. This paper provides examples of how these measures can be applied and provides recommendations for the consideration of IASC Principals.

**2. GENERAL**

**ICRC** puts the initial onus of disclosing relevant information on the candidates themselves. It requires applicants to self-declare prior issues of sexual or other misconduct and circumstances of termination of past employment; an affirmative response would result in the rejection of the application without further consideration. At the verification of reference stage, ICRC is rolling out an approach which asks for the applicant's consent to the disclosure of specific information about sexual or other misconduct and circumstances of termination of employment by the referenced human resources department. Failure to agree on the disclosure of information results in their withdrawal from the recruitment process. ICRC feels these measures strike an appropriate balance between the rights of each individual in terms of privacy and data protection and the legitimate interests of the organization in seeking sensitive information. The efficiency of this approach lies in its simplicity, which means that it can be implemented relatively rapidly across the humanitarian system. More detailed information on ICRC's approach is provided further down under self-declarations and verification of references.

**UNHCR** proposes that agencies consider consent provisions in their own recruitment forms which would then enable agencies to share information in accordance with ST/AI/2017/1 para 10.2, which is reproduced below. Currently this can be done between United Nations System Chief Executives Board (CEB) agencies but for non-UN agencies the consent of the staff member is needed.

*"In circumstances involving a staff member who has applied for a vacancy in, or is transferring to, another organization that is a member of CEB, the Assistant Secretary-General for Human Resources Management may, upon the request of the organization in question, provide information about any ongoing investigation and/or disciplinary processes concerning the staff member. Such information may also be provided to a non-United Nations system entity or prospective employer of a staff member, upon the request of such entity or prospective employer, provided the written consent of the staff member to the disclosure of such information has been obtained by the entity or prospective employer and a copy of such consent provided to the Organization."*

**Oxfam** notes that unless all organizations in the sector establish consistent approaches to referencing, such measures by individual organizations will not address the problem.

### 3. PRE-SCREENING, SELF DECLARATIONS AND CONSENT PROVISIONS

**ICRC:** The ICRC considers that the objective of any measure relating to vetting and referencing of candidates and employees should be to ensure that the ICRC hires and employs the right individuals and that it takes informed decisions in this regard. In order to gather the information needed to ensure that candidates meet the high integrity standards required of ICRC employees, each candidate must complete a self-declaration during the recruitment process that has been expanded and reinforced through the inclusion of a specific question about prior issues of sexual or other misconduct and circumstances of termination of past employment. Any false, inaccurate or incomplete information would lead to a termination of contract, if and when discovered. If the answer is yes to the following question, the application would be rejected without further consideration:

*“Have you ever (i) been criminally convicted or subject to any criminal or administrative penalty by any competent authority; or (ii) been dismissed or subject to any disciplinary measure or sanction by your employer or had your mission or service ended or curtailed for fraud, harassment, sexual harassment, sexual exploitation or sexual abuse?”*

**UNHCR:** In 2017, UNHCR expanded the scope of the self-declaration part of its application form to include information on investigations into allegations of misconduct and disciplinary proceedings or measures. When a candidate for UNHCR employment submits an application using the updated P11 form, the candidate is required to answer the following questions:

- *Have you ever been arrested, indicted or summoned in court as a defendant in a criminal proceeding, or convicted, fined or imprisoned for the violation of any law (excluding minor traffic violations)? If the answer is yes, please provide details below.*
- *Have you ever been the subject of an investigation into allegations of misconduct?*
- *Have you ever been subject to disciplinary proceedings or measures?*
- *State any other relevant facts. Include information regarding any residence outside the country of your nationality.*

A positive answer would not normally lead to an automatic denial of consideration for employment, but would lead UNHCR to conduct further inquiries, including with the prior employer and the candidate, within reasonable limits.

Candidates are also required to self-certify the content of the application, which includes the following specific consents:

- *Accuracy of content: The content of this application is accurate and contains no false information;*
- *Work experience: You are aware UNHCR will contact former and current employers, if applicable, regarding work experience, as well as check your three professional references.*
- *Finally, you understand that submission of false information or misrepresentation and/or submission of falsified documentation constitutes serious misconduct for which severe disciplinary sanctions can be imposed.*

UNHCR is currently broadening the scope of the above section related to consent ('work experience'); the revised text will request for the consent of the applicant to the disclosure of any information held by current or past employers on sexual or other misconduct.

**UNICEF:** Relevant pre-screening questions include:

- *Other than for a minor traffic violation, have you ever been convicted or punished in any country for violating any law?*
- *Are you currently under investigation or prosecution in any country for violating any law?*
- *Have you ever been disciplined for misconduct by an employer or professional association to which you belonged?*
- *Have you ever left an employer or professional association while it was investigating or examining misconduct allegations against you. Please exclude situations where your name was fully cleared.*
- *Are you currently being examined or investigated by an employer or professional association for misconduct?*
- *Are you now, or have you ever been a permanent civil servant in your government's employ?*
- *Have you ever been formally identified as a risk to children by a government agency?*

#### **4. VERIFICATION OF REFERENCES**

**ICRC:** When providing references from former employers, candidates are asked to expressly agree on the disclosure of specific information about issues of sexual or other misconduct and circumstances of termination of employment by the referenced human resources department. Failure to agree on the disclosure of information leads in principle to withdrawal from the recruitment process.

The following text is used by the ICRC when requesting candidates to provide references. This request is made by email as the final step of the recruitment process.

*"We are happy to inform you that you have successfully passed the selection process. Before we can proceed further, we need to go through the additional step of verification of employment history. Please indicate by return of email names and professional contact details of HR representatives of all your employers during the last five years, or at your last two employers if you have been with your most recent organization for five years. Please also provide details of any organization within the International Red Cross Red Crescent Movement for which you have worked at any point in your career. By providing these references, you agree that the ICRC contacts the persons named and that the referenced employers provide to the ICRC all the information requested in the attached questionnaire to the best of their knowledge."*

ICRC is rolling out this approach among headquarters and "mobile staff" before extending it to "resident staff". The information requested from previous employers goes beyond what is usually covered by the standard reference letter (*certificat de travail*) under Swiss employment law (which applies to ICRC's Geneva based and mobile staff), which is why the candidate's agreement is necessary for this information to be provided. From a data protection perspective, the request and obtaining of information relies on the legitimate interest of the employer which should be an overriding consideration. Elements of public interest (that of hiring and employing humanitarians who meet high integrity requirements) and other overriding private interests (those of the potential victims) also come into play.

Although the notion of a "waiver" has been used to describe this approach, it actually does not require a proper, formal "waiver". The ICRC asks for information that it considers to be legitimate for recruitment purposes, and it does so in a way that should allow the candidate and the referee organizations to rely on the same basis for releasing information.

The most salient benefit of this approach is that the candidate's consent should provide the referenced employers with the assurance that they can disclose to the ICRC information that they would otherwise not be allowed to provide, due to the limits imposed by most legal regimes, including Swiss law, on the disclosure of information about current or former employees. By putting the initial onus of disclosing relevant information on the candidates themselves, the ICRC feels these measures strike an appropriate balance between the rights of each individual in terms of privacy and data protection and the legitimate interests of the organization in seeking information of a very sensitive nature. The possible intrusiveness of this approach is outweighed by the necessity to ensure that only individuals who meet strict integrity requirements are employed.

The efficiency of this approach lies in its simplicity, which means that it can be implemented relatively rapidly and has the potential for rapid application across the humanitarian sector. The ICRC has introduced these measures as of 1 May 2018 and is therefore testing their effectiveness and efficiency, notably in light of the various legal regimes that referees are subject to with respect to releasing information. At the moment, it is the ICRC that asks the referee to complete the questionnaire, after having obtained the candidate's agreement that the questionnaire can be submitted to the referee provided by the candidate. Depending on the results obtained through this process, the ICRC might consider changing this practice and have the candidate him/herself submit these questions to their referee. Getting candidates to ask former or current employers for information themselves, rather than have the recruiter ask could increase the comfort that referees would have in providing the requested information, since they would be acting upon a request from the (former/current) employees themselves rather than from a third party. It would also increase the candidate's awareness of the fact that s/he is disclosing (or allowing the disclosure of) very sensitive personal information. The ICRC's responsibility in this case will be to ensure that this is being done properly, i.e. that the referee is verified by the organization; that no forgery has occurred; etc.

**UN Global Centre for Human Resources Services:** The UN System Chief Executives Board for Coordination (CEB) commissioned the establishment of a joint UN facility to "promote harmonization of business practices across the UN System, including general management issues, ensuring management coherence from global to country level." In this regard, the UN Global Centre for Human Resources Services is being established in Bonn, Germany, in UNV headquarters premises. UNDP has taken the lead in the development of the centre in cooperation with the Government of Germany. The initial services provided by the centre include job classification and reference checks. UNDP, UNHCR, UNFPA, UN/DFS, UNRWA and UNESCO are participating, while other UN organizations are in the process of joining. The reference checking system will interface with the SEA and SH screening tools (see point 5 below), as well as Interpol records including UN Sanctions and criminal checks completed by any UN agency previously.

**UNFPA** uses the UNDP-run Centre in Bonn. The reference check for new employees requires referees to answer a mandatory question on PSEA, a first step to prevent people from being 'recycled' in the UN system. The question is as follows:

*"To the best of your knowledge, has the candidate, whether as an employee, (international) civil servant, individual independent contractor or otherwise, ever been subject to any disciplinary measure, contract termination, contract non-renewal or non-extension, or has he/she resigned while under investigation or during disciplinary proceedings, for or in connection with (allegations of) fraudulent, collusive, coercive, obstructive or unethical practices, misconduct, harassment, sexual harassment, abuse of authority, sexual exploitation or sexual abuse, retaliation, or poor or inadequate performance?"*

This statement applies to a wide range of contract types including civil servants, employees and individual independent contractors. A "yes" answer would not normally lead to an automatic denial of consideration for employment, but would lead UNFPA to conduct further inquiries, including with the prior employer and the candidate, within reasonable limits. Currently, reference checks are undertaken when new staff members join UNFPA, not for internal moves.

**UNHCR:** The process of verification is based on the self-declared application which includes questions about allegations of misconduct and disciplinary proceedings (see point 3). At the final step of the recruitment process, the candidates receive a 'pre-offer notification' as an advance information that recruitment is subject to satisfactory reference checks, both academic and professional. In order to receive at least three professional qualitative reference checks, UNHCR sends a reference request to all supervisors in the past six years who have supervised the candidate for at least six months as well as the three professional references. The following questions, among others used, are directly relevant to SEA and SH:

- Please indicate the reasons why he/she left, or wishes to leave, your company. Would you be ready to re-employ him/her? If no, please explain?
- What is your opinion about his/her temperament, dependability and discretion/sensitivity, as well as his/her attitude to his/ her associates and/or supervisors?
- United Nations comprises numerous races and nationalities with different religious/political beliefs. Do you consider he/she is able to fit into this kind of environment?

**UNHCR:** In a specific operation in response to allegations of SEA and fraud, UNHCR is conducting a pilot process to enable the operation and partners to conduct a check during a recruitment exercise to identify any individual in UNHCR or a partner's workforce (including individual contractors, members of the affiliate workforce and incentive workers) who is suspected of having, or is known to have, engaged in improper or unethical conduct. A network of human resource focal points has been established amongst partners to collectively strengthen due diligence in recruitment processes and reduce the risk of an individual applicant misleading a potential employer about the applicant's employment history. The process helps human resources officers verify the correctness of information that applicants include in their application forms. The pilot could be expanded to other operations once assessed. This would complement reference checking and vetting systems in place for international recruitment, and cover a broader range of the workforce, including partners and nationally recruited staff.

## **5. DATABASES ON TRANSGRESSORS**

### **5.1. Collective databases**

In his annual report<sup>1</sup> the UN Secretary-General emphasized the importance of screening applicants for positions in the United Nations and undertook to "adopt measures to ensure that individuals terminated from service in one part of the United Nations system owing to substantiated allegations of sexual exploitation and abuse will not be rehired in any other part." Further, he noted that the UN also should keep a record where staff members are "the subject of pending allegations or disciplinary measures at the time of separation".

The UN Department of Field Support and the Office of the Special Coordinator on Improving the United Nations Response to Sexual Exploitation and Abuse jointly proposed the establishment of a screening tool, which was approved for use in substantiated cases of SEA by the CEB in 2016. Guidelines developed in 2017 under the leadership of the Office of Human

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<sup>1</sup> Published in February 2017

Resources Management (OHRM/DM) outline procedures and standards governing the establishment, maintenance and use of a system-wide database, referred to as the “SEA Tracker” that will ensure that individuals with a record of sexual exploitation and abuse are not hired or re-hired by UN organizations. The Guidelines govern the collection, maintenance, confidentiality, security, use, access and disclosure of information relating to final determinations and pending allegations of SEA. The development of the tool has been done under the umbrella of the work of the Special Coordinator in close coordination with members of the SEA working group. The tool is now in the final testing phase and is expected to go live this summer for use in vetting UN personnel with substantiated allegations of SEA.

At the CEB meeting in May 2018, members of the CEB agreed to the establishment of a similar system-wide database (SHA Tracker), building on the SEA Tracker, to avoid rehiring individuals who have perpetrated sexual harassment. This will be a centralized, system-wide system for the collection, maintenance, use and access of information relating to cases where a final determination of sexual harassment has been made, providing for the necessary safeguards for data privacy, and with built-in search tools for reference checks, as well as procedures for results validation and corresponding actions.

The technical establishment of the sexual harassment database is ongoing. The first phase will incorporate cases featuring individuals whose working relationship with an organization of the system ended because of a determination that the individual perpetrated sexual harassment.

The second phase will consider the expansion of the screening system to include individuals with pending allegations of sexual harassment for which an investigation and/or disciplinary process has begun, and the subject of the allegation ends his/her working relationship with the entity before the investigation and/or disciplinary process is completed.

The databases (trackers) currently involve many UN organizations that are part of the IASC.

## **5.2. Individual databases**

In addition to these collective databases, many IASC organizations maintain their own (internal) databases of disciplinary measures imposed on all personnel, including dismissals. Most have a rule that if a staff member or a member of their affiliate workforce resigns, retires or is separated for other reasons before the conclusion of an investigation or a disciplinary process, this is noted in their records, and that person will not be rehired.

## **6. ACCREDITED REFEREES**

**Oxfam** has established a system of accredited referees and has communicated this to managers and staff. It has also strengthened its system of seeking references for potential new staff that requires references from accredited referees from previous employers.

## **7. SCREENING OF EXISTING WORKFORCE**

**IFRC:** One of the priority actions in the IFRC Child Protection Action Plan (2015-2020) is to ensure that IFRC personnel who interact with children, including in emergencies, undergo appropriate and effective screening. IFRC is on track in screening 100% of its staff on child protection issues in accordance to its PSEA Child Protection Action Plan by 2020.

## **8. RECOMMENDATIONS FOR IASC PRINCIPALS**

- 8.1. IASC Principals commit to testing and applying in their recruitment processes measures outlined under section 3 (pre-screening, self-declaration and consent provisions) and 4 (verification of references).
- 8.2. IASC Principals commit to nominating technical experts who will take part in working level discussions to identify solutions to possible legal and other obstacles in their respective environments.
- 8.3. IASC Principals consider joining efforts related to collective databases, whenever their judicial and governance frameworks allow.