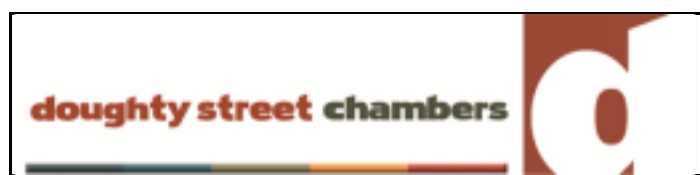


Submission to the International Development Committee: Inquiry on Sexual Exploitation and Abuse in the Aid Industry



Doughty Street Chambers
Jennifer Robinson, Barrister



Institute for Justice & Democracy in Haiti

Brian Concannon Jr., Executive Director

Sienna Merope-Synge, Staff Attorney
Nicole Phillips, Staff Attorney



The Disaster Law Project
Kathleen Bergin, Director

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Summary

1. The International Development Committee's (IDC) inquiry into sexual exploitation and abuse (SEA) and related misconduct in the humanitarian sector is welcomed. This submission addresses the IDC's examination of the measures necessary to establish effective safeguarding policies and processes. This submission also calls for deeper oversight, including a "next-level" review – an independent, external sector-wide inquiry – to be conducted outside of the auspices of the IDC and the Department for International Development ('DFID'), in order to analyze how safeguarding practices are carried out in crisis and emergency settings.
2. The present IDC's inquiry is an important first step towards improving the humanitarian sector's response to SEA and related misconduct. This submission draws attention to deficiencies in existing safeguarding policies, with particular focus on the adequacy of organisations' Codes of Conduct and grievance mechanisms. The IDC should make recommendations directed to:

- strengthen cooperation between humanitarian actors and local authorities in criminal and civil actions;
- compel organizations to clearly define and expressly prohibit SEA, violations of domestic law, staff misconduct, and other actionable program concerns in a Code of Conduct; and
- require grievance mechanisms that are transparent, accessible, secure, and capable of providing victims with an adequate remedy.

3. A “next level” review outside the IDC would address the effective application of policies and processes on the ground. This broader assessment is necessary to reveal the scope of the problem in the sector, ensure accountability, re-build public confidence, and lead to better safeguarding, vetting and whistleblowing practices beyond Oxfam. This submission:
 - articulates three guiding principles that should apply to both the IDC’s present inquiry, and any subsequent external review;
 - explains why a broader inquiry beyond the IDC is necessary in the absence of a consistent and mandatory verification system;
 - proposes models of independent inquiries which DFID could fund: a UK-specific independent inquiry investigating UK charities and non-governmental organizations working in the sector or a broader, multinational, multi-donor funded inquiry.
4. Existing standards and practices have clearly failed to protect so many vulnerable women and girls. Reports of sexual exploitation and abuse in Oxfam’s Haiti activities are the tip of the iceberg of misconduct by humanitarian actors in Haiti and countries like it. We believe the UK has the opportunity to lead the development of international best-practices in its response to the Oxfam scandal.

II. Guiding Principles

5. Three considerations should guide the IDC’s present inquiry and any future external review. First, these inquiries should address both internal interactions (between staff) and external interactions (between staff and aid beneficiaries).
6. Second, these inquiries should investigate prevention and accountability strategies related to SEA and other misconduct, including measures related to physical abuse, intimidation, and corruption. Harmful behavior never takes place in a vacuum, and [the risk of SEA\[1\]](#) increases in environments where other laws and internal rules are violated. Moreover, exploitation and abuse in any form is harmful to victims. We should not prioritize one form of harm over another, and must address the root cause of all forms of exploitation in the aid sector.
7. Finally, consultation with affected communities in countries where misconduct occurred is needed. The IDC should consider soliciting written testimony or other contributions from affected communities. A subsequent external review should carry out in-country work, including public hearings and formal accountability proceedings that encourage active participation. Consultation is essential to understand the effect of exploitation on local communities, and what remedies will work in the local context. Consultation is also a step towards empowering local populations to assert their own rights, which is the most effective and sustainable defense against exploitation.

III. An Independent Sector-Wide Review Is Essential

8. International accountability standards are well established, but ongoing revelations of abuse suggest that those standards are not being effectively implemented, and may be deficient on the surface. In March of 2018, a global alliance of humanitarian organizations acknowledged that “standards, policies, guidelines and tools, have been developed but their [application has not been systematic](#)[2] and fall short in providing sufficient safeguarding measures.” This followed a 2015 finding by the Inter-Agency Standing Committee (IASC) that adequate mechanisms “[are not universally implemented in practice](#).”[3]
9. The level of compliance with international accountability standards is presently unknown, however, because a mandatory sector-wide verification mechanism does not exist. Voluntary oversight mechanisms do exist, but they reference different accountability benchmarks and appear to be under-utilized. For example:
 - [Humanitarian Quality Assurance Initiative](#)[4] conducts an evaluation based on compliance with the [Core Humanitarian Standard](#),[5] but participating organizations choose between self-assessment, peer review, independent verification or certification. Officials representing both the HQAI and the CHS [acknowledge](#) that the less rigorous options may result in less trustworthy assessments.[6]
 - [Accountable Now](#)[7] bases its evaluation on 12 “Accountability Commitments” adopted by the group’s member organizations. An Independent Review Panel conducts the evaluation after receiving an organization’s self-assessment report. Membership presently consists of 27 civil society organizations, with only some humanitarian aid organizations.
 - [UN agencies](#)[8] publish self-assessment tools on the internet, but do not appear to require self-evaluations.
10. Without greater transparency is it difficult to know whether organizational policies and processes established to internalize standards are effective on the ground. Only consistent, mandatory assessment of current practices across the humanitarian sector will provide information necessary to improve and monitor protection of vulnerable populations from exploitation.
11. We commend DFID for introducing a safeguarding review and the Charities Commission for initiating an external review of Oxfam. We submit that these actions must go wider. Given the lack of capacity on the ground in donor recipient countries, reviews should be funded by DFID to create independent best practices and a model which could be replicated elsewhere in the world. An independent, sector-wide review (with similar powers and benefits of an inquiry under the Public Inquiries Act 2005 or adapted from that procedure) would ensure:
 - A more thorough understanding of the problem and its causes, creating uniform and sector-wide standards and solutions rather than organization-specific recommendations;
 - A more cost effective, credible approach: A large number of DFID funded organisations are conducting internal inquiries of their own at significant and duplicative cost. There are numerous problems with this approach: organizations own internal inquiries will not have the credibility or an external review, smaller and/or less well-funded organizations may not have the resources that Oxfam has to properly investigate the problem, these different internal inquiries will not result in the sector-wide solutions which will give greater confidence to DFID in its funding decisions; and
 - Greater credibility, transparency and accountability to the public in the UK (taxpayers and donors contributing to UK’s overseas aid program and the charity sector), as well as with donor recipient country governments and affected communities. An independent inquiry which conducts public hearings in both the UK and in affected communities will do more to restore public confidence and the reputation of UK overseas aid and UK-based charities operating abroad.

12. There are several possible models for such a review. One possible model is to create an independent, external party to lead a sector wide review focusing on UK-based organizations. Another model is a multinational and multi-donor funded inquiry. The UK is not the only state providing overseas development funding to organizations humanitarian and emergency response sector which have been implicated in SEA. Many other states and UN agencies have an interest in investigating the problem and establishing better international standards. The UK could drive a multinational and multi-donor funded initiative, which could be modelled on, for example, the Joint Evaluation of Emergency Assistance to Rwanda. This assessed emergency response to the genocide and internal displacement in 1994-1995 and the associated massive refugee displacements, and was funded by numerous governments and UN agencies (the Steering Committee was composed of representatives from 19 OECD-member bilateral donor agencies, the European Union and the Development Assistance Committee (DAC) secretariat of the OECD; 9 multilateral agencies and UN units; the two components of the International Red Cross and Red Crescent Movement (ICRC and IFRC) and five international NGO organizations).
13. The terms of reference would be established and agreed together with donor governments, recipient governments, NGOs and affected community representatives.

IV. Referral to National Authorities

14. The IDC's inquiry should recommend reforms in standards, policies and practices to strengthen organizations' cooperation with local authorities. Oxfam's failure to timely refer sexual abuse and misconduct allegations to Haitian authorities shielded those responsible from judicial consequences and undermined Haiti's sovereign interest in delivering justice to victims. But, the failure followed prevailing practice. Current standards do not adequately address when complaints should be referred to national authorities for criminal or civil enforcement, and humanitarian actors rarely take the initiative to report. The IASC acknowledges the need for clarity, conceding that the issue will be addressed on an "ad hoc" basis "until global guidance is provided.
15. The IASC's [Minimum Operating Standards](#)[9] for protection from SEA, for example, states only that a substantiated complaint can result in "disciplinary and contractual consequences." It does not address referring criminal conduct to outside authorities. Criminal referrals are addressed in an IASC [Best Practices Guide](#);[\[10\]](#) but states that "it is the decision of the investigating agency" to refer cases "in conformity" with internal procedures "when an incident of SEA constitutes a criminal offense." This language is ambiguous on whether a referral should be made in response to alleged criminal conduct, or only after a post-investigation finding that criminal conduct occurred. It also suggests that the organization can decide not to report, or adopt internal procedures that discourage reporting for any reason, including a potential impact on donors.
16. The Best Practices Guide acknowledges a victim's right to civil remedies, but should also affirmatively require a referral to the country's civil enforcement department. The Guide states that the decision to involve outside authorities "should take into account the consent of the survivor/complainant," but suggests that "national laws" and "the policies of all concerned parties" might take precedence over a victim's wishes. The victim's wishes should be paramount.
17. When asked why it did not refer initially, Oxfam cited the risk of retaliation, coupled with concerns that [Haitian authorities might not have prosecuted](#)[\[11\]](#) the case. Oxfam did not explain how it came to these conclusions – whether, for example, the victims and whistleblowers were consulted. The expressed interest of victims and witnesses is a good reason for deciding against alerting local authorities. But absent safety concerns, the fear that the local authorities may be ineffective is self-serving. By deciding that local authorities are ineffective, the organization prevents embarrassing exposure of its staff's misdeeds, limits the incentives for individual accountability as well as internal accountability, and deprives the host country's law enforcement of the opportunity to rise to the occasion on high profile issues. We make recommendations below at paragraph [34] about the need for instances of SEA to be reported to national authorities to allow for criminal and civil

remedies.

V. Codes of Conduct

18. The IDC should assess whether existing Codes of Conduct are effective in prohibiting and responding to SEA and other forms of misconduct, and recommend improvements.
19. A Code of Conduct establishes minimum standards of behavior for humanitarian personnel when discharging the organization's mission and in relation to other individuals. It promotes good practices and establishes grounds for discipline or termination in the event of a violation.
20. A breach of the Code of Conduct also provides the basis for filing a complaint through the organization's grievance mechanism. To promote the greatest degree of accountability, therefore, the Code of Conduct must address both SEA allegations and other forms of misconduct. The Code of Conduct must also be effectively communicated to staff, beneficiaries and other stakeholders.
21. Below are key points for the IDC to consider:
22. **What is the Scope of the Code of Conduct?**
 - Does it clearly define and expressly prohibit SEA, staff misconduct, and other actionable program concerns?
 - Does it comply with laws in the host country, except as necessary to avoid exploitation or discrimination? Prostitution with aid beneficiaries, or discrimination against LGBTQ individuals, for example, should be prohibited, even if legal in the host country.
 - Are penalties clearly outlined?
 - How does the organization monitor compliance, and address unforeseen circumstances that reflect changes in local conditions?
 - Is the Code of Conduct incorporated into all Cooperative Agreements with implementing partners, and how is it then monitored and enforced against third parties?
23. **How is the Code of Conduct Communicated?**
 - To executives, managers and staff at all levels of the organization?
 - To implementing partners and their staff?
 - With the participation of senior executives to reinforce the importance of the subject?
 - At periodic intervals, including orientation, annual training and other scheduled events?
 - In multiple languages that different members of the local community will understand?
 - In a manner likely to reach isolated or disabled individuals?
 - On display at headquarters, field offices, and aid distribution sites?

VI. Effective Grievance Mechanisms

24. Effective grievance mechanisms are essential to ensuring accountability within the humanitarian sector. The IDC inquiry should assess the effectiveness of grievance procedures that allow staff and beneficiaries to report SEA and other misconduct. In-depth assessment of grievance mechanisms and sector-wide standard setting should also be taken up by any subsequent review.
25. Grievance mechanisms should be viewed as both a response to, and prevention of, SEA and other forms of misconduct. An effective grievance mechanism will encourage victims to come forward, and will protect those who make a report from retaliation. Victim-centered grievance strategies also promote a culture of respect and accountability within the organization.

1. The Scope of an Effective Grievance Mechanism

26. Organizations should establish a single process for reporting violations of the Code of Conduct, including SEA allegations, staff misconduct complaints, violations of the host country's laws, and program-related concerns such as negligence, deficiencies or discrimination in aid distribution. In addition to complaints from victims of SEA, it is important that beneficiaries of humanitarian aid who become aware of programmatic concerns also have access to a complaint mechanism to ensure accountability under a rights-based approach.[\[12\]](#)
27. A single reporting system reduces the stigma and risk of retaliation associated with an SEA-specific mechanism that would otherwise reveal the nature of a complaint to anyone who knows it was made. Because SEA often occurs alongside other forms of misconduct, a single reporting system can trigger a more thorough investigation, resulting in greater accountability than a mechanism solely focused on a particular type of harm.
28. The grievance procedure should have one point of contact and intake procedure, coupled with investigators who are trained to identify the risk of SEA from complaints addressed to other issues.

2. Transparent, Accessible and Secure Reporting Requirements

29. Reporting mechanisms must be designed with input from affected communities in order to reach the greatest number of people and reduce the risk of retaliation and other harms. The reporting process should be simple, protect confidentiality, and help organizations meet the social and emotional needs of victims throughout the investigative process.
30. **Grievance procedures must be secure, confidential and transparent**
 - Provide a variety of reporting methods, including face-to-face intake, a physical and secure drop-box, telephone hotlines, internet links, and other means that promote access, in the local languages.
 - Advertise and actively promote the mechanisms in a manner that is culturally appropriate and targeted to reach likely complainants.
 - Every effort should be made to maintain confidentiality to the extent possible, but the general risk of disclosure should be made known to complainants.
 - Require staff members who suspect misconduct by a fellow worker to report such concerns through the reporting mechanism.
 - Implement adequate and confidential whistle-blowing structures to encourage complaints.
31. **Local community involvement is imperative**
 - Draft the organization's code of conduct and grievance mechanism with input from local communities.
 - Establish feedback mechanisms for suggestions on improvement.
 - Collaborate with other aid agencies and experts in the host country on best practices.
 - Consider a community-based reporting structure with an inclusive network of local organizations that can refer complaints to the organization involved in the grievance for follow up.
 - Consider supporting local organizations to receive and investigate complaints where the complainant fears the consequences of filing a complaint with the organization. The local organizations could also be supported to issue periodic reports on the humanitarian sectors' progress in establishing accountability.
32. **Investigations should support and empower claimants**
 - **Independent.** If the investigation is handled internally in the organization, the individual(s) who receive and investigate complaints should have fluent language capacity and cultural knowledge, as well as independence in the investigation.

- **Thorough and Expedient.** Every complaint should be investigated, whether it involves someone currently or formerly under the organization's control. When the alleged perpetrator is not under the organization's control, the complainant should be referred to the appropriate organization or official. No complaint should be rejected as untimely. Complaints should be immediately investigated and resolved expediently and within an indicative time frame.
- **Empowerment.** Claimants and perpetrators should receive regular accessible updates throughout the investigation. Protective measures should be adopted to guard against the risk of re-victimization, such as prohibiting one-on-one closed-door interviews and, when appropriate, requiring a mixed-gender team of investigators to conduct interviews.
- **Redress and Security.** Complainants should have access to medical and psychological services, emergency shelters, legal assistance (e.g., to file paternity claims), and urgent material needs. If a complainant receives threats or fears retaliation from the perpetrator, the organization should make every effort to protect her or his safety and prevent re-victimization. Organizations could create a trust fund to provide complainants with these types of redress and compensation.

33. **Grievance procedures must ensure non-discrimination**

- Complaint procedures and investigations should not directly or indirectly discriminate against vulnerable populations, such as aid beneficiaries, women, children, the elderly or LGBTQ individuals, or those without legal status in the host country. Complaints should be treated the same regardless of whether the complainant or the alleged perpetrator is a local or foreign national.

3. Substantiated Complaints Lead to Accountability

34. **Legal accountability that reinforces victims' right to legal action and host state sovereignty**

- Grievance procedures must reinforce victims' right to legal action for criminal and tortious conduct. As explained above in Section III, Referral to National Authorities, if an investigation reveals evidence of criminal conduct, the case should be referred to national authorities in the host country, and other countries where jurisdiction might be established, assuming the complainant's informed consent.
- Agencies should cooperate with outside investigations (civil and criminal) by sharing internal investigation findings and providing access to documents, work-sites and staff. Cooperation with local authorities and investigations will often be a necessary but insufficient consequence given weaknesses in host state legal systems. However, disclosure and cooperation with local authorities preserve and strengthen the host government's sovereignty, provides an opportunity for improvement and ensure aid personnel to not operate above the law.

35. **Ensuring Remedies for Victims**

- Aid agencies must adopt an effective and comprehensive approach to remedies that is transparent, culturally appropriate, tailored to the harm that has been suffered, and meets the needs of individual victims and communities under different circumstances. Remedies may include, but are not limited to, protection, internal discipline or termination of employment of the perpetrator, compensation, judicial accountability, arbitration, and reconciliation. Complainants impregnated by the perpetrator should have legal support to obtain child support orders. Feedback mechanisms should be designed to respond to complaints of failures in aid delivery that do not rise to the level of tortious conduct.

KEY DOCUMENTS

- [Best Practices Guide, Inter-Agency Community-Based Complaint Mechanisms \(2016\)](#)
- [Statement of Commitment on Eliminating SEA by UN and Non-UN Personnel \(2015\)](#)
- [The Core Humanitarian Standard on Quality and Accountability \(2014\)](#)
- [IASC Guidelines to Implement the Minimum Operating Standards for PSEA \(2013\)](#)
- [IASC Minimum Operating Standards for PSEA \(2012\)](#)
- [UN Secretary General's Special Bulletin on Measures for Protection from SEA \(2003\)](#)

[1] "Investigation of cases of sexual exploitation and abuse by aid workers: challenges and recommendations", *CHS Alliance*, accessed Apr. 5, 2018, <https://goo.gl/oDrhpr>.

[2] Judith F Greenwood & Pierre Hauselmann, "Open letter: Using the CHS to strengthen safeguarding mechanisms", *CHS Alliance*, Mar. 6, 2018, accessed Apr. 5, 2018, <https://goo.gl/ddBNys>.

[3] "Protection from Sexual Exploitation and Abuse Statement by the Inter-Agency Standing Committee", *Inter-Agency Standing Committee*, Dec. 11, 2015, accessed Apr. 5, 2018, <https://goo.gl/LtCFkT>.

[4] "Creation of the Humanitarian Quality Assurance Initiative", *Humanitarian Quality Assurance Initiative*, Jul. 13, 2015, accessed Apr. 5, 2018, <https://goo.gl/SwdZXU>.

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[7] "About Accountable Now", *Accountable Now*, accessed Apr. 5, 2018, <https://goo.gl/YbRUAP>.

[8] United Nations High Commissioner for Refugees, "PSEA self-audit checklist 2015", *Operational Portal Refugee Situations*, Apr. 11, 2016, accessed Apr. 5, 2018, <https://goo.gl/B71Hup>.

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[10] Astrid de Valon, "Best Practice Guide Inter Agency Community Based Complaint Mechanisms", *Inter-Agency Standing Committee*, Sep. 30, 2016, accessed Apr. 5, 2018, <https://goo.gl/WBiiY9>.

[11] Rachel Martin & Bocchit Edmond, "Oxfam Workers Accused Of Sexually Exploiting Haiti Quake Survivors", *National Public Radio*, Feb. 13, 2018, accessed Apr. 5, 2018, <https://goo.gl/DNh3u1>.

[12] Brian Concannon Jr. & Beatrice Lindstrom, "Cheaper, Better, Longer-Lasting: A Rights Based Approach to Disaster Response in Haiti", 25 EMORY INT'L L. REV. 1146, 1159-60 (2011), http://law.emory.edu/eilr/_documents/volumes/25/3/symposium/concannon-lindstrom.pdf.