

Independent Commission on Allegations of Sexual Exploitation and Abuse in the Democratic Republic of the Congo during the Response to the Tenth Ebola Outbreak

Terms of Reference

1. Appointment of an Independent Commission

An Independent Commission is appointed by the Director-General of the World Health Organization (WHO) to conduct a thorough review of allegations of sexual exploitation and abuse during the response to the tenth outbreak of Ebola disease in North Kivu and Ituri, Democratic Republic of Congo (DRC).

Terms of engagement of the Independent Commission are laid out in a Letter of Engagement signed by the members of the Independent Commission, including inter alia privileges, confidentiality and compensation.

The Independent Commission's objective is to deliver an impartial, independent and comprehensive review of the findings with regards to the allegations of sexual exploitation and abuse in DRC, supported by an external supplier (hereinafter referred to as "the Review Team"), with a view to identify victims in need of potential support, assess weaknesses in the current environment, develop action plans to put in place preventative measures to forestall such behaviours in future, and pursue allegations against individuals and in doing so to hold perpetrators accountable for their actions.

The Independent Commission shall be guided in its work by the principles of independence, integrity, objectivity and transparency. Those principles shall also govern the Review Team.

2. Composition and Structure of the Independent Commission

2.1 Composition of the Independent Commission

The Independent Commission will consist of two Co-Chairs and three (3) members.

The Co-Chairs of the Independent Commission are directly appointed by the Director-General of WHO.

The Co-Chairs shall select the other three (3) members of the Independent Commission.

The members of the Independent Commission shall have expertise in the areas of prevention of sexual exploitation and abuse and victim assistance, investigation of sexual misconduct, as well as humanitarian and emergency interventions. They shall be selected with particular attention to their independence and impartiality, and with due regard to gender balance and geographic diversity.

Members of the Independent Commission must be independent and be in a position to make unbiased judgements. A member shall disclose any circumstances that might be deemed to affect his/her impartiality or independence. A member who becomes aware during the course of the investigation of any circumstances which may disqualify him/her or expose him/her to a conflict of interest must immediately inform the Co-chairs and the Director General of WHO.

The Co-Chairs will be directly supported by Advisors and Administrative Assistants of their choice, with such support elements being part of the Secretariat of the Independent Commission.

The Independent Commission shall meet as often as its work requires. Meetings can be held via telephone, video conference or in person, as required. Members of the Independent Commission may also meet with the Review Team in the same manner, as appropriate.

The Independent Commission will agree on its own internal *modus operandi*, including method of decision-making and communications.

The Independent Commission shall, if it deems it appropriate, maintain close contact with organizations on the ground in the region concerned, including entities other than the Organization, as well as with local authorities and communities as appropriate, to ensure effective coordination of activities.

2.2. The Secretariat

A Secretariat will support the Independent Commission. The Secretariat is a hybrid team comprised of the Co-chairs' Advisors, Administrative Assistants, the Communication Officer, the Coordinator and a Support Team from the WHO. The Support Team will facilitate and support the work of the Independent Commission and will source external expertise, as needed. The Coordinator will oversee the work and activities of the Review Team. The Review Team is accountable to the Independent Commission and will report to the Independent Commission through the Coordinator.

2.3. The Review Team

The Independent Commission will be further supported by a Review Team recruited through a competitive bidding process for external suppliers. The Review Team shall be composed of the operational team of local and international fact-finding experts and professional investigators, with experience and expertise required to conduct investigations or analysis relating to sexual misconduct. The Review Team shall carry out its work within the framework of the Independent Commission's mandate. The Independent Commission will approve the mandate and fact-finding plan of the Review Team.

Through the Support Team from the WHO, the Organization will assist in the facilitation of information to the Review Team, including responding to questions from the Review Team regarding availability of evidence, and assist in the provision of information as required. It will provide all relevant and requested material to enable the Review Team to perform its fact-finding mission.

The Review Team will be provided full and unfettered access to all WHO documents and staff in relation to the investigation.

The Review Team is accountable to the Independent Commission. It will remit its findings and conclusions directly to the Independent Commission, which will have to approve them. The findings and conclusions of the Review Team will inform the Independent Commission's final report and recommendations to the Director General of the WHO, for action.

The work of the Review Team shall support the Independent Commission as follows:

⇒ **Workstream 1 - Strategic analysis to identify lessons learned and areas for improvement**

- *Outreach and Fact-finding:*

Establish the facts and underlying circumstances related to allegations of sexual exploitation and abuse by agents of the Organization concerned and/or its partners or subcontractors during the response to the tenth outbreak of Ebola disease in North Kivu and Ituri (DRC), including proactively making contacts within the Organization and with local communities and others. Taking into consideration the findings of the Inter-Agency Standing Committee (IASC) mission carried out in DRC in October/ November 2020, this should include the following elements:

1. Gather sufficient information about survivors to be able to ensure their access to discreet psychosocial support services in coordination with local structures and in a safe environment (that is to say, in a manner that takes into account security concerns and the consent of victims to an investigation);
2. Ensure that exploitation and abuse have ceased and, if that is not the case, make recommendations for immediate action to stop it; and
3. Identify relevant information regarding specific allegations of sexual exploitation and/or abuse involving an agent of the organization concerned (staff member or subcontractor).

- *Measures to Prevent Sexual Exploitation and Abuse:*

1. Identify systemic problems and other factors that negatively impact or impede the prevention of sexual exploitation and abuse by agents of the Organization and its partners or subcontractors in the context of its emergency response in the DRC.
2. Formulate comprehensive recommendations for effective measures to prevent and combat sexual exploitation and abuse in emergency response situations in the DRC, taking into consideration the local context, including:
 - (a) promoting awareness raising and outreach activities.
 - (b) preventing sexual exploitation and abuse.
 - (c) identifying victims and providing them with support/access to support; and
 - (d) taking action against perpetrators.

⇒ **Workstream 2 - Analysis and investigation of individual cases for the purpose of establishing the facts**

Conduct the coordinated investigation of specific allegations of sexual exploitation and/or abuse against agents of the Organization and its partners or subcontractors during the response to the tenth outbreak of Ebola disease in North Kivu and Ituri (DRC), including the following:

1. Prioritize relevant credible information and communicate evidence to the independent external investigators to enable factual and legal conclusions to be drawn in accordance with the practices of the Organization.
2. Establish a confidential and secure method for providing input to the investigation.
3. For the purpose of supporting the independent external investigators, liaise with organizations active in the field in the concerned region, including entities other than WHO, as well as with local authorities. Coordinate advice provided by WHO to ensure that the outcomes and legal findings can be used for follow-up action,

including disciplinary measures, as appropriate, in accordance with the rules and procedures of WHO.

Investigations into specific allegations under the second workstream of the mission shall be conducted in accordance with the rules and procedures of WHO and the concerned UN organizations, so as to facilitate subsequent action against the perpetrators. The findings of each specific investigation are communicated to the respective organization for appropriate action.

The reports of the investigations concerning specific allegations under the second workstream of the mission shall be communicated by the Independent Commission, on a confidential basis, to the executive head of the Organization. In addition, the Independent Commission shall report promptly to the executive head of the Organization any action that it deems should be taken immediately or that falls outside its competence.

3. Tasks and Deliverables

The factual report of the investigation shall be submitted to the Independent Commission, by the Review Team, for their evaluation and assessment of the facts, as presented, to inform the Independent Commission's final report and recommendations to the Director General of WHO.

The final report of the Independent Commission will be made public, subject to any legal restrictions prohibiting publication of particular material. Ahead of its publication, the Independent Commission will communicate its report to the WHO Director for information.

All comments made by the Director General of WHO will be recorded in a separate document which will be published with the final report of the Independent Commission.

4. Deadlines

The Independent Commission shall submit progress reports to the Director General of WHO on January 30, April 30 and June 30 2021 respectively. Further reports, particularly with regard to each of the analyses or inquiries, will be drawn up if necessary. The Independent Commission will publish its final report by August 31, 2021.

Lusenge Julienne
Co-chair

Aïchatou Mindaoudou
Co-Chair

Malick Coulibaly
Member

Marie Christine Bocoum
Member

Carole Doucet
Member