

Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Working Group on discrimination against women and girls

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(Please use this reference in your reply)

14 March 2022

Dear Dr. Tedros Adhanom Ghebreyesus,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/17, 42/16 and 41/6.

In this connection, we would like to bring to your attention information we have received concerning the **inadequate response by the World Health Organization (WHO) to allegations of sexual exploitation and abuses during the 10th Ebola response in North Kivu and Ituri, the Democratic Republic of the Congo from August 2018 to June 2020 that may have prevented a fair and thorough investigation of crimes of sexual harassment, exploitation, and abuse, allegedly committed by persons who are WHO personnel and contractors and may have weakened the accountability for these crimes allowing perpetrators of these crimes to go unpunished.**

According to the information received:

On 20 September 2020, several news reports surfaced reporting alleged incidents of sexual abuse, reportedly committed by personnel and contractors working with the WHO, among other entities including other United Nations (UN) agencies, international non-governmental organisations (NGOs), and members of the DRC's Ministry of Health. According to these reports, women claimed that during that period, they were offered jobs with the Ebola operation in exchange for sex. There have been at least nine documented incidents of rape by the Commission that was established by WHO to look into the allegations of sexual exploitation and abuse (SEA). Some victims also claimed that they were subjected to forced abortions once they fell pregnant following the sexual rapport. Though accurate figures for these allegations are difficult to find, publicly the Commission's members have referred to at least 125 women who disclosed that they were sexually exploited or abused by WHO personnel or contractors that were part of the WHO-led international emergency Ebola operation.

Dr. Tedros Adhanom Ghebreyesus
Director- General
World Health Organisation

The Commission’s members have assessed that these acts committed amount to “sexual exploitation and abuse” which are prohibited by the UN¹ as well as broader human rights and humanitarian standards. The Commission members stated that these acts may constitute sexual offences perpetrated by its personnel against people outside of the Organization and that are benefiting from UN assistance or support, and irrespective of whether they qualify as crimes when committed in the different national jurisdictions. The UN categorizes all SEA as “serious misconduct” – conduct which is prohibited by the UN Staff Regulations and Rules and subject to disciplinary measures, including summary dismissal.

Following the revelations, WHO—which managed the emergency operation and oversaw most personnel—created an “Independent Commission on sexual misconduct during the Ebola response in North Kivu and Ituri, the Democratic Republic of the Congo” to examine the allegations of SEA. The creation of this Commission, together with its two co-chairs, was announced in October 2020 at a UN press conference. During that conference it was also indicated that the Commission’s work and communication would be facilitated by the WHO staff in Geneva and its final report would be delivered to the WHO Director General.

The Commission published its final report in September 2021- one year after the first news reports brought the scandal to light. According to the Commission report’s para. 121, the review team was able to obtain the identity of 83 alleged perpetrators. In 21 cases, the Commission was able to establish with certainty that the alleged perpetrators were WHO employees during the response. This was verified through human resources records, organisational charts, and emails. The alleged perpetrators include both Congolese nationals and foreigners. The Commission further received and reviewed hundreds of documents from WHO, which included also excerpts from 22 interviews conducted by the Office of Internal Oversight Services (OIOS) in Mangina, North Kivu in January 2021. Consequently, and in a press conference WHO held on the 28 September 2021, the Commission’s report was released, and the termination of the contracts of four personnel accused of being perpetrators who were still employed by WHO when it received the Commission’s final report was announced.

According to the report of the Independent Commission, the Commission was established by WHO with a view “to conduct an impartial, independent, and comprehensive review of the facts regarding the allegations of sexual exploitation and abuse during the 10th response; identify victims and any weaknesses in the current system within the organization and most importantly ensure that perpetrators of sexual exploitation and abuse are held accountable for their actions”.² However, we note that as of this date, no publicly available and stand-alone terms of reference (ToRs) for the Commission had been made available. It does not appear that the ToRs were published ahead of the selection of the Commission nor a description of how the selection process

¹ In its Article 1, the SG Bulletin ST/SGB/2013/13 defines sexual exploitation as “any actual or attempted abuse of a position of vulnerability, differentiated power or trust for sexual purposes including, but not limited to, profiting monetarily, socially or politically from the sexual abuse of another. The same article goes to define the term “sexual abuse” as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. (https://resourcecentre.savethechildren.net/pdf/COC%20layout_2nd%20lay.pdf).

² WHO, Final Report of the Independent Commission, 28 September 2021, paragraph 3, p. 2.

of the Commission's members would take place. We are also concerned by the report that the Director-General had directly appointed the two co-chairs of the Commission. Procedural fairness requires not only that decision makers act objectively and in good faith but are also perceived to do so. Proceeding to appoint the members of the Commission without any ToRs for its work; a description of the appointment process; or an explanation of modalities of work publicly available, does not appear to meet the standards of procedural guarantees, particularly given that it was set up to look into reported misconduct and human rights violations committed by staff and others affiliated with WHO.

UN agencies have an obligation to investigate allegations of SEA. Like other UN agencies, WHO, has investigative units dedicated to investigating misconduct by staff and partners. These units also investigate, in principle, allegations of SEA. Since 2017,³ investigations conducted in relation to SEA should follow the recommendations of the UN Secretary-General and be victim-centered, i.e. taking place in a way that respects the needs of the victims and witnesses and that preserves evidence for a subsequent judicial process. Furthermore, these investigations are administrative in nature, as the UN does not have the authority to hold a perpetrator of crime accountable.

The Commission's report states that it was tasked with carrying out a fact-finding prima facie investigation, i.e. on the basis of first impression. The report cites paragraph 36 of the 2017 WHO Policy on Preventing and Combating Sexual Exploitation and Abuse that requests WHO to initiate its own fact-finding investigation into reports of SEA as a priority. It is clear from the terminology used that this was not meant to be a criminal investigation, as the report clarifies that based on the gravity of the situation and evidence, WHO would refer the matter to national authorities for criminal proceedings as appropriate. Despite the clear nature of the exercise entrusted to the Commission, we note that the report uses the words "investigation" and "review" interchangeably to refer to its activities. The use of such terminology is confusing and does not reflect the fact that this was not part of the Commission's TORs and that WHO does not have the authority to investigate, press, or prosecute criminal charges, nor to collect criminal evidence, interrogate suspects, render judgements, or order criminal penalties.

Rather, and as mentioned, WHO has a responsibility to investigate thoroughly reports of SEA brought to its attention when it involves its staff, and partners. If, in addition, WHO considers that there may be criminal responsibilities involved, it has the duty to report it to national authorities for criminal prosecution, confirming that no functional UN immunity applies and for the authorities concerned to pursue legal processes.

Given the scale of the abuse and the alleged implication of members of WHO senior management and given what may seem to be failure to prevent these acts and to immediately and thoroughly take action once they became known and prior to them being reported by the media, it is our view that a criminal investigation of the acts would have been more appropriate and necessary and should have as a minimum taken place simultaneously. In this specific case, the DRC has the primary jurisdiction for carrying out a full-fledged investigation as it is the place where a) the acts and omissions were

³ UN General Assembly, Report of the Secretary-General: Special measures for protection from sexual exploitation and abuse: a new approach, 2017, <http://undocs.org/A/71/818>.

carried out; b) where the victims are citizens; c) of which some of the alleged perpetrators are citizens; d) where most of the evidence and witnesses are located; and e) under whose authority the international organizations, including WHO, operated within its territories. Given ‘host country agreements’ that UN entities have with host governments, including the government of the DRC, which require full compliance with the law of the land by all agents, representatives, employees, contractors, consultants, interns, volunteers, experts and other personnel deployed by the organization, WHO should have reported the alleged criminal conduct to the appropriate authorities in the DRC in accordance with the law of the land and host country agreements. The report of the Commission, appointed by WHO, does not state that it has done so or is planning to do so, or whether it has handed over the information that it has collected through the work of the Commission that it has appointed to the DRC authorities.

Furthermore, on 21 October 2021, WHO published a “management response plan” outlining the steps that it planned to take to institute reforms in response to the report of the Commission. The management response did not detail how WHO would address criminal accountability for any sexual abuse committed by WHO personnel, beyond stating its existing policy of “referring cases that constitute a crime to national authorities for criminal investigation” and committing to providing “support for legal action through the UN and national stakeholders”. No additional information was provided as to whether victims received legal support and if so what legal support was provided.

The report of the Independent Commission clearly states that, in January 2021, the WHO Director-General had given instructions to the Director of the WHO Office of Internal Oversight Services (OIC), relating to an incident involving one alleged perpetrator that was a staff member of WHO, to “defer any internal investigation until the publication of the conclusions of the Independent Commission and to transmit to the Independent Commission all of the information at his disposal”. These decisions, it could be argued, constitute a failure to take immediate action in the face of the seriousness of the allegations and may have resulted in a negative consequence for the victims.

Furthermore, it is not clear from the available information whether victims were informed of their right to approach the national authorities of the DRC to launch a criminal and official investigation into the alleged crimes that were committed against them, and if so, whether WHO has cooperated with the national authorities by handing over any of the evidence or information to the national authorities of the DRC or other national authorities that are investigating the matter and that have national competence. Available information indicates that WHO has dismissed four of the alleged perpetrators, which is an internal disciplinary process. Furthermore, available information does not indicate whether their immunity was lifted. Functional immunity for acts of SEA do not normally apply unless the staff concerned has a specific seniority.

The reported sexual abuse and exploitation of at least 125 women, girls and young men in the cities of Beni and Butembo (within the conflict-affected region of North Kivu), during a health crisis and emergency international intervention by staff and affiliated workforce belonging to WHO and other organizations and which left the local population doubly vulnerable, amounts to serious violations of their human rights

and could constitute crimes that fall within the purview of international criminal law. The number of detected incidents of sexual abuse and exploitation; the patterns of conduct by the alleged perpetrators raise the question as to the whether it was a network of several persons that facilitated the commission of these crimes i.e. co-perpetrators acting through the aid and abetment of supporting individuals.

We are deeply concerned by the fact that WHO did not have effective complaint and reporting mechanisms in place, as hotlines were not working and reports went otherwise unanswered. This reality was acknowledged by the report of the Independent Commission which noted that even in cases where a woman reported allegations against a senior WHO staff member, no investigation was opened. According to the report of the Independent Commission, it was explained to the Commission members that the reason why the investigation was not opened is because the woman who reported the incidents of abuse was not a beneficiary. As the Independent Commission's report acknowledges, the SEA policy does not make the opening of a preliminary investigation into suspected SEA dependent on whether the potential victim is a beneficiary. In this case and given that a number of women victims had been given service contracts with other service providers engaged by WHO, victims consisted of both collaborators within the WHO definition of that term and beneficiaries within the meaning of the WHO's SEA policy.

Moreover, it is of utmost concern that the report of the commission did not seem to have paid sufficient attention to ensuring confidentiality to the victims. The report includes several details which can give away the identity of a number of victims, and therefore may have led to victims being re-traumatized, re-victimized, or subjected to revenge or retaliation by the perpetrators or persons associated with them. As a result, some of them may become easily identifiable by their families and community members which may lead them to be ostracized and rejected.

The Commission noted that the information it obtained suggests that some acts of SEA were organized within a network of staff operating through the local recruitment arm of the Ebola response coordination center. It can be argued that the scale of the abuses committed as well as the apparent number of staff, partners and contractors that were involved in committing the reported abuses points to a systematic failure at various levels within WHO at field and HQ level. These failures to prevent and respond to cases of gender-based violence (GBV) permeated all aspects of the Ebola response: In addition to the mishandling of the follow-up on the reported incidents, the Independent Commission's report mentions the absence of checking the existence of criminal records, including crimes of sexual or gender based violence nature, for those that were hired or contracted by WHO; the holding of a training on GBV only as late as five months into the Ebola response; as well as the lack of initiatives by WHO to inform the wider population about the steps they could take if they wished to report incidents of SEA. The implications of these important omissions are magnified by the fact that the Commission's report alludes to the fact that WHO had knowledge of and received previous reports of sexual exploitation and abuse during the 9th Ebola response. Yet, despite this knowledge, insufficient safeguards were made to prevent SEA during the 10th Ebola response.

Moreover, we are disturbed that, despite the gravity and scale of these reported incidents, we have not seen a sincere assuming of responsibility by WHO senior

leadership directed to the victims, or an expression of public apology or remorse for the actions that took place by WHO during the press conference of the 28 September 2021 or since then.

Finally, the inalienable right to reparations by victims was recognized in principle by the Independent Commission. It noted that the victims had not received any assistance and were left to deal with the consequences of the abuse they suffered. It further recommended setting up a working group to reflect on the modalities of support and psychological assistance for the victims from the first investigation. To our knowledge, WHO has not addressed the issue of reparations nor have victims so far had access to any route for reparation. Not only does the recommendation by the Independent Commission fall short of international standards but, in addition, we note that the issue of reparations to the victims is missing from the WHO management response. Such reparations should go beyond financial compensation and should fully involve the victims and their communities in moving towards integral reparations and rebuilding their lives. On the basis of international legal standards, such integral and transformative reparations should include compensation, satisfaction, rehabilitation and guarantees of non-repetition, and address the gendered nature of the harm produced.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the process for selecting the members of the Independent Commission and its investigators, including the criteria or credentials required for undertaking the work that was entrusted to the Commission as well the ToRs that may have been drawn up and published ahead of the selection of the Commission members.
3. Please clarify whether any criminal investigations have taken place and whether WHO has shared the results of its own internal “investigation” with the authorities of the DRC.
4. Please clarify the situation of the other alleged perpetrators beyond those whose termination was announced following the receipt of the final report.
5. Please explain what steps WHO has taken in order to inform victims of their right to pursue criminal avenues for investigation and justice in the Democratic Republic of the Congo or other countries that may have jurisdiction.

6. Please elaborate on measures that WHO has undertaken to hold all those responsible for the systematic institutional failures that resulted in creating an enabling environment for the alleged SEA by WHO staff and contractors against beneficiaries accountable.
7. Please explain what measures WHO is taking to ensure the right of victims of SEA to integral reparations and to fully involve them in their implementation.
8. Please describe the measures that WHO is taking to rectify the institutional failures to prevent alleged SEA by WHO staff and contractors, as well as any organizational cultural reform initiatives implemented.

We would appreciate receiving a response within 60 days. Past this period of 60 days, this communication and any response received will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We also express our **request for meeting** with you to enter dialogue, with a view to addressing the situation with a human rights and victim-centered perspective and to hear more about WHO's efforts to address this matter. It would be preferable to hold this meeting within the 60 days so as to inform the response of WHO.

Please accept, Dr. Ghebreyesus, the assurances of our highest consideration.

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Special Rapporteur on violence against women, its causes and consequences

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Melissa Upreti

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer you to three sets of law: a) relevant international human rights standards; b) relevant laws of the DRC; and c) relevant WHO administrative law.

International human rights law

The Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly, states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law; (e) the right to be free from all forms of discrimination; (f) the right to the highest standard attainable of physical and mental health; (g) the right to just and favourable conditions of work; and (h) the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment (article 3).

Moreover, article 6 specifies that the organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the Declaration. They should, inter alia: (a) foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women; (b) promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women; (c) foster coordination and exchange within the United Nations system between human rights treaty bodies to address the issue of violence against women effectively; (d) include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women; (e) encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence; (f) promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration; (g) consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments; and (h) cooperate with non-governmental organizations in addressing the issue of violence against women.

Furthermore, the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms and constituting discrimination within the meaning of article 1 of the

Convention on the Elimination of All forms of Discrimination Against Women, whether perpetrated by a State official or a private citizen, in public or in private.

The Secretary-General's Bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) stresses, in section 3, that sexual exploitation and sexual abuse violate universally recognized international legal norms and standards and have always been unacceptable behaviour and prohibited conduct for United Nations staff. Such conduct is prohibited by the United Nations Staff Regulations and Rules, and it constitutes acts of serious misconduct and therefore grounds for disciplinary measures, including summary dismissal. Moreover, the Bulletin specifies that exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance. In section 5 of the Bulletin, the Secretary-General clarifies that if, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution.

In addition, the UN comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by UN and related personnel, adopted by the UN General Assembly in 2007 (A/RES/62/214, Annex), states that alleged victims should receive basic assistance and support in accordance with their individual needs directly arising from the alleged sexual exploitation and abuse. This assistance and support will comprise medical care, legal services, support to deal with the psychological and social effects of the experience and immediate material care, such as food, clothing, emergency and safe shelter, as necessary. Where a victim's claims have been established through a United Nations administrative process or Member States' processes, the victim should receive additional assistance and support in accordance with their individual needs directly arising from sexual exploitation and abuse. This assistance and support will comprise medical care, legal services, support to deal with the psychological and social effects of the experience and immediate material care, as necessary. Moreover, children born as a result of sexual exploitation and abuse should receive, in accordance with their individual needs, assistance and support addressing the medical, legal, psychological and social consequences directly arising from sexual exploitation and abuse, in the best interests of the child. The United Nations should also work with Member States to facilitate, within their competence, the pursuit of claims related to paternity and child support.

Furthermore, the United Nations Protocol on the Provision of Assistance to victims of sexual exploitation and abuse of 12 December 2019 prioritizes the rights and dignity of victims, regardless of the affiliation of the alleged perpetrator. It reiterates the responsibility of United Nations entities to provide assistance and support, which begins as soon as information indicating that an individual may be a victim of sexual exploitation or abuse is received in any way or form. This does not require the receipt of a credible allegation of sexual exploitation or abuse by a United Nations staff member or related personnel or a member of non-United Nations forces acting under a Security Council mandate. The Protocol also stipulates that victims, if so desired, should be referred to providers of legal assistance.

The Special Rapporteur on violence against women, in her report on rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention (A/HRC/47/26), specifies that the international human rights framework and jurisprudence recognizes rape as a human rights violation and a manifestation of gender-based violence against women and girls that could amount to torture. Moreover, under international humanitarian law and international criminal law, rape can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide when the other elements of the crimes are present.

In its 2016 thematic report (A/HRC/32/44), the Working Group on Discrimination against Women states that WHO defines health as not merely the absence of disease or infirmity, but as a state of complete physical, mental and social well-being. The Working Group notes that Women's exposure to gender-based violence in both the public and private spheres, including in conflict situations, is a major component of women's physical and mental ill health and the destruction of their well-being, and constitutes a violation of their human rights.

Applicable national laws in the DRC

Furthermore, a review of the laws of the DRC show that that these reported crimes would be *prima facie* sanctioned under Congolese law. Article 14 of the 2006 Constitution of the DRC commits the government to eliminate all forms of violence against women and to combat all forms of violence against women in public and private sphere. As per the 2006 amendments to the DRC Penal Code, rape, sexual assault, sexual harassment, sexual slavery, forced pregnancy, sexual relations with minors, *inter alia*, are outlawed and requires the State to secure the privacy and dignity as well as the well-being of the victims during proceedings (Law No. 06/019 of 20 July 2006). Sex with a child, i.e., person below the age of 18, is regarded as statutory rape. Rape is punishable with a sentence between five and 20 years of imprisonment and a fine of not less than 100,000 Congolese francs. Sexual harassment is also penalized with imprisonment for up to five years in prison and can be as high as 10 years for egregious cases.⁴

Furthermore, the DRC Constitution prohibits bribery and corruption by all citizens, including public officials. Enforcement of these provisions remain low despite the appointment of an anti-corruption office in 2015. Both seeking and paying bribes, as monetary or other incentives in any form, to a public official to obtain a service, favor is punishable under Congolese law with both imprisonment and fine.

Moreover, and while prostitution is *per se* legal in the DRC, all other activities surrounding it are illegal and punishable criminal offences. Law No. 06/108 of July 2006 and the DRC Penal Code specifically criminalizes the acts of promoting prostitution, exploitative prostitution, and forcing somebody into prostitution. These offences are punishable with imprisonment between three months and five years. Child prostitution is specifically criminalized with up to five years imprisonment under Law No. 09/001 on Protection of Children.⁵

⁴ <https://2009-2017.state.gov/j/drl/rls/hrrpt/2006/78729.htm>.

⁵ <https://assets.publishing.service.gov.uk/media/57a08964e5274a31e0000062/SLRC-Report-10-Congo-TransactionalSex-LowRes.pdf>.

Given allegations that some of the victims of rape were forced to abort their pregnancies, it would be equally important to review the Congolese legislation that applies to forced abortions. Although performing abortions for any reason, barring medical necessity, rape or incest, is prohibited in the DRC, the country is a signatory to the ‘Protocol to the African on Human and People’s Rights on the Rights of Women in Africa (known as “Maputo Protocol”)’ which seeks to legalize the right to safe and timely medical termination of unwanted pregnancies. As a strictly monist country, the provisions of the Maputo Protocol are directly adopted into domestic law as of its ratification in March 2018. Consequently, Congolese women can access abortion care through medical clinics and hospitals up to 14 weeks of pregnancy.⁶ Crucially, women no longer have to prove rape before seeking abortion for a pregnancy resulting from rape. Oral abortion pills are widely available from medical clinics and commonly used. However, administering oral abortion pills without medical supervision and without the full, informed consent of the woman is illegal.⁷ Forcing a woman to undergo an abortion is specially a punishable crime in the DRC.

Finally, and concerning the lack of respect to the privacy and confidentiality of the victims and their data by the commission, it is worth mentioning that the right to privacy in life and correspondence are enshrined in the DRC’s 2006 Constitution, article 31. The misuse of personal information, telecommunications, and medical data is not specifically addressed but regarded as protected information. In the absence of a comprehensive data protection law, different kinds of information are covered by an insufficient web of sector-specific laws.⁸ There is no data protection authority or regulator in the DRC. However, medical data and information is protected by law and misuse of personal information and medical data are sanctioned through fine.

Relevant WHO Administrative Law

Like the vast majority of UN agencies, the WHO prohibits all forms of harassment, sexual harassment, discrimination, abuse of authority and retaliation through a body of internal rules, regulations, policies, and codes. The core principle guiding personnel behavior is espoused in the Staff Regulations and Staff Rules (“SRSR”). It is important to understand the application of these personnel policies in the context of the TNH stories and the ICI Report, both of which identified that a number of the targeted women were in fact employed by the WHO in one capacity or another during its Ebola response. These women, accordingly, had the rights of employees which included legal protections under the WHO employment and labor laws. These rights flow from an interconnected set of rules and policies, that together promise a safe, healthy, and respectful workplace for all personnel at the WHO.

The very first Staff Regulation, article 1, states that by accepting employment, all staff undertake “to regulate their conduct” with the interests of WHO in view. Similarly, the opening section of the Staff Rules speak to duties, obligations and privileges of staff and section 110.08 defines “Misconduct” as “*any improper action by a staff member in his official capacity; any conduct by a staff member, unconnected with his official duties, tending to bring the Organization into public discredit; any*

⁶ <https://www.howtouseabortionpill.org/abortion-laws-by-country/democratic-republic-of-the-congo>.

⁷ https://www.guttmacher.org/sites/default/files/report_pdf/unintended-pregnancy-abortion-in-kinshasa-drc.pdf.

⁸ <https://www.dataguidance.com/notes/democratic-republic-congo-data-protection-overview>.

improper use or attempt to make use of his position as an official for his personal advantage; any conduct contrary to the terms of his oath or declaration.” Section 120 requires staff to “*exercise reasonable care in any matter affecting the financial interests of the Organization, its physical and human resources, property and assets*”.

Article X of the Staff Regulation outlines the disciplinary procedure to be followed and sanctions to be applied where staff is found to have engaged in misconduct. It identified the very highest disciplinary sanction to be termination of service through summary dismissal for serious misconduct.

The Information Note no. 28/2010, titled “Policy on the Prevention of Harassment at the WHO” (“Policy”) states its policy purpose as (a) seeks to promote a work environment free from harassment, in which staff members at all levels avoid behaviors that may create an atmosphere of hostility or intimidation; (b) provides a process for the consideration of claims of harassment; and (c) provides for due process for all concerned. The Harassment Policy specifically covers all current and former staff who allege their separation was due to harassment. Non-staff members are meant to conduct themselves in accordance with this policy and could have their contracts terminated should they fail to comply with it, in addition to facing any other action that the WHO deems appropriate. The Policy addresses harassment, sexual harassment, retaliation, and managerial duties. It mandates timely intervention to prevent, respond, and redress conduct that is reported as harassment, sexual harassment or retaliation.

The Policy clearly requires the Organization, through the leadership of the Director General and Regional Directors, to act as role models in preventing and addressing harassment at the WHO workplace. They are required to ensure appropriate training is provided to managers to act in accordance with their duties and for staff to be made aware of their rights. Ultimately, the leadership is responsible for investigating, correcting, and punishing errant behavior.

In cases of serious misconduct, the Policy requires the Director General to determine that the conduct is not appropriate for informal resolution or conciliation. A formal investigation by the Internal Oversight Services (“IOS”), beyond the normal 180 days’ time-limit, can be ordered by the Director General even in the absence of a formal complaint or without other technical requirements being met. The outcome of the investigative process is presented to the Director General or Regional Director, as the case maybe, who is empowered to decide on the appropriate disciplinary sanction. The decision of the directors can be appealed through the internal board of appeal and ultimately before the designated international administrative tribunal of the UN, i.e., the International Labor Organization Administrative Tribunal (“ILOAT”).

The WHO Policy on Whistleblowing and Protection Against Retaliation (“Whistleblowing Policy”) of 2015 aims to encourage the reporting of wrongdoing that “implies significant corporate risk” and specifically identifies fraud, corruption, waste of resources, substantial danger to public health or safety, and sexual exploitation and abuse. It also defined retaliation for the purposes of clarifying protection afforded by the Organization for persons who report serious wrongdoing. The Whistleblowing Policy envisions confidential and anonymous reporting and considers putting in place a range of protective, interim measures where necessary. However, it is noteworthy that

this policy only applies to WHO staff members and maybe applied on a case-by-case basis to non-staff members.

Furthermore, many of the women who were victims of this reported sexual violence are beneficiaries that fall within the definition of the 2017 WHO Policy on Sexual Exploitation and Abuse Prevention and Response (hereafter “SEA policy”) and which is based on the UN Secretary General’s Bulletin ST/SGB/2003/13, titled “Special Measures for Protection from Sexual Exploitation and Sexual Abuse”. “Beneficiaries”, as defined in the SEA Policy, are essentially persons external to the Organization, who belong to the population that the WHO serves, assists, and works with, typically in situations of vulnerability and dependence and who receive direct or indirect humanitarian aid from the WHO. The SEA Policy strictly prohibits sexual assault, rape, demanding sex in any context, particularly in exchange for or as a condition to anything, forcing prostitution or pornography, refusing to use safe-sex practices, blackmailing or emotional coercion, among others. The policy acknowledges the context of SEA as being a power differential between those in a position of vulnerability and others in position of trust and authority. Essentially, it covers every emergency or humanitarian situation in which international actors intervene with aid or assistance. These measures and policies acknowledge at the outset that women and children are particularly vulnerable to SEA, which is categorized as “serious misconduct” that *may* lead to summary dismissal and criminal proceedings.

The SEA Policy requires the WHO to conduct pre-recruitment background checks on potential staff and non-staff personnel, including by seeking SEA specific information from referees. The policy applies to staff and secondees, and in principle also to non-staff personnel (labelled as “collaborators”) and partners. The policy, however, only clearly mandates all WHO staff to refrain from sexually exploitative behavior and to report suspected SEA. With respect to collaborators and partners, the WHO SEA Policy gravely falls short of any real commitment to preventing or punishing this form of harm.

Failure to report separately constitutes misconduct meriting disciplinary sanctions. To facilitate reporting, the SEA policy requires WHO to create and make available channels of reporting and to publicize such channels. WHO is also required to ensure onboarding includes SEA prevention, identification, and reporting training, particularly for emergency deployment. Simply setting up helplines without adequately engaging with local communities on how to report would be considered woefully short of the reporting encouragement envisioned by the SEA Policy.

Upon receiving a report of SEA, the WHO is required to initiate an investigation on a priority basis. WHO is also required to refer the matter to national authorities for criminal proceedings, to cooperate and collaborate with the national authorities, including by waiving the immunity of individual staff and experts. Any other internal disciplinary sanctions at the WHO is exclusive of, and without prejudice, to criminal proceedings before national authorities. Disciplinary sanctions must be applied not just to those who engaged in SEA but also against those who failed to report it or encouraged or condoned it. Once again, the WHO policy is unclear on when it is mandated to report collaborators accused of SEA to national authorities for potential criminal proceedings. With respect to sanctions, the policy limits itself to termination of service with the right

to maintain records and share information of such misconduct when required, particularly with future employers and national authorities.