

# **Directives for Disciplinary Matters Involving Military Members of National Contingents**



## I. PURPOSE

1. The purpose of the present directives is to establish United Nations procedures to be followed for alleged breaches of conduct in the mission area by military members of national contingents assigned to United Nations peacekeeping and other field missions.

## II. SCOPE OF APPLICATION

2. These directives shall apply to cases of serious misconduct as defined in section III, committed by military members of national contingents. In addition, any act of misconduct that has a detrimental effect on the image, credibility, impartiality or integrity of the United Nations, the peacekeeping or other field operation or the national contingent concerned shall be regarded as an act of misconduct falling within the scope of these directives.

3. Cases of minor misconduct, as defined in section III, committed by military members of national contingents shall normally be dealt with by the national contingent commander, as provided for under the relevant national military laws and guidelines and in conformity with mission directives and standard operating and administrative procedures.

## III. DEFINITIONS

4. For the purpose of the present directives, the following definitions shall apply:

**Serious misconduct:** Any act, omission or negligence, including criminal acts, that is a violation of mission standard operating procedures, directives, or any other applicable rules, regulations or administrative instructions that results in or is likely to result in serious damage or injury<sup>1</sup> to an individual or to the mission. Serious misconduct includes, but is not limited to:

- Sexual abuse and exploitation of any individual, particularly children;
- Harassment, including sexual harassment<sup>2</sup>;
- Abuse of authority;
- Breach of confidentiality;
- Abuse of United Nations privileges and immunities;
- Use, possession or distribution of illegal narcotics;
- Embezzlement or other financial malfeasance;
- Wilful disobedience of a lawful order;
- Conduct prejudicial to good order and discipline;
- Driving while intoxicated or other grossly negligent driving;
- Intoxicated while on duty or in public on repeated occasions;

<sup>1</sup> The term "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

<sup>2</sup> Refer to *Directive on Sexual Harassment in United Nations Peacekeeping and Other Field Missions for Military Members of National Contingents, Military Observers and Civilian Police Officers* for a description of a formal complaint of sexual harassment.

- Repeatedly absent from duty without permission;
- Unlawful acts (e.g. theft, fraud, smuggling, bribery) on or off United Nations premises, with or without the involvement of United Nations vehicles, and whether or not the individual was officially on duty at the time of the offence.

**Minor misconduct:** Any act, omission or negligence that is a violation of mission standard operating procedures (SOPs), directives, or any other applicable rules, regulations or administrative instructions, but which does not result or is not likely to result in major damage or injury to an individual or the mission. Minor misconduct includes, but is not limited to:

- Improper uniform appearance;
- Neglect in performance of duty not amounting to a wilful or deliberate act;
- Intoxication while on duty or in public;
- Negligent driving.

#### IV. STANDARD OF CONDUCT

5. Military members of national contingents shall refrain from any action or activity incompatible with the impartial and independent nature of their duties and inconsistent with the letter or spirit of the authorized mandate of the operation, the status of forces agreement, and other applicable legal norms and standards. Military members of national contingents shall respect all local laws and regulations.

6. Military members of national contingents are required to abide by the highest standards of integrity while in service for the United Nations. They shall refrain from any conduct that would adversely reflect on the United Nations and shall not engage in any activity that is incompatible with the aims and objectives of the United Nations. They are also required to abide by mission standard operating procedures, directives, or any other applicable rules, regulations or administrative issuances.

7. Upon deployment to the field mission, all military personnel shall receive a briefing on these directives, the types of serious misconduct prohibited and the process that will ensue should an allegation of misconduct be made. In this briefing, particular attention shall be drawn to the standard of conduct expected of members of United Nations field missions and to local laws and customs and the need to respect them.

#### V. LEGAL STATUS

8. Military members of national contingents assigned to the military component of a United Nations peacekeeping or other field operation shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences that may be committed by them in the mission area. They shall be immune from legal process in respect of words spoken or

written and all acts performed by them in their official capacity. They are, however, subject to the jurisdiction of the host country/territory in respect of any disputes/claims of a civil nature not related to the performance of their official functions.

## **VI. NOTIFICATION**

9. In cases where military members of national contingents are believed to have been involved in an act of serious misconduct or an act that has the potential to damage the image, credibility or integrity of the United Nations, the Head of Mission shall be notified immediately. Any member of the field mission who becomes aware of such acts shall report them to the Head of Mission.

10. Notification may also be made to the Personnel Conduct Officer, who shall bring it to the attention of the Head of Mission.

## **VII. PRELIMINARY INVESTIGATION**

11. Upon receiving a report of any serious misconduct involving a military member of a national contingent, the Head of Mission shall immediately initiate a preliminary investigation. Mission officials may be assisted in this investigation by local police or military personnel. If required, the investigation team could include a civilian member of the field mission, such as United Nations civilian police, human rights monitor, United Nations security officer, or child protection adviser, to assist in carrying out the preliminary investigation.

12. The purpose of the preliminary investigation shall be to establish the facts of the case. The investigation shall be conducted in accordance with the *Guidelines for Preliminary Investigations* contained in Annex B.

13. To the extent possible, the preliminary investigation must be completed before the individuals(s) involved and any witnesses leave the mission area due to rotation or for any other reason. No repatriation of individual(s) involved must occur before the conclusion of the preliminary investigation and a determination of the necessary administrative action to be taken. However, in normal circumstances, individuals concerned shall be allowed to depart the mission area after they have provided statements and their role in the investigation is complete.

14. The results of the preliminary investigation shall be immediately reported to the Head of Mission. The report shall contain a full account of the facts, any documentary evidence, statements made, or other relevant records. If the preliminary investigation appears to indicate that the report of serious misconduct is well-founded, the Head of Mission shall immediately report this to United Nations Headquarters in New York, who shall inform the national authorities of the country concerned through their Permanent Mission. The Head of Mission shall also convene a Board of Inquiry.

## VIII. BOARD OF INQUIRY

15. Acts of serious misconduct or acts that have the potential to damage the image, credibility or integrity of the United Nations shall require the convening of a mission headquarters Board of Inquiry,<sup>3</sup> in accordance with the procedures set out in Annex A.

16. The purpose of the Board of Inquiry shall be to establish the facts of the case. The Board shall determine cause and responsibility in the incident under review. The Board of Inquiry may also make recommendations for appropriate administrative action, including repatriation. A Board of Inquiry shall not be a judicial body; it is a management tool to assist the Head of Mission in discharging his/her responsibilities. It may also assist the participating State concerned in its own investigation of the incident or act, for the purpose of appropriate national disciplinary proceedings. A Board of Inquiry shall not consider questions of compensation or legal liability.

17. The Board of Inquiry shall be convened within 48 to 72 hours after the findings of the preliminary investigation becoming available. The Board of Inquiry shall be convened by the Head of Mission, who shall issue its terms of reference. The Board shall be composed of at least three impartial, senior officials appointed by the Head of Mission. Due consideration shall be given to geographic and gender representation on the Board of Inquiry. All Board members shall serve in their individual capacity. In exceptional cases, the Secretary-General or the Under-Secretary-General for Peacekeeping Operations shall appoint Board members external to the mission.

18. The proceedings of the Board of Inquiry shall be conducted as speedily as possible. The members of the Board shall not proceed on other missions or on leave until the Board has completed its deliberations. (See Annex A on *Procedures for Board of Inquiry for Disciplinary Cases*.)

19. Board of Inquiry proceedings shall not preclude any interim measures that the national contingent commander may wish to take with regard to the individual(s) involved or the conduct of a national investigation, in accordance with national military rules and procedures.

20. The Head of Mission shall review the final report of the Board of Inquiry and its recommendations, if any, in consultation with the appropriate personnel (e.g. Legal Officer, Medical Adviser) before determining the action to be taken. The final report of the Board of Inquiry shall be transmitted to United Nations Headquarters in New York, along with the decision of the Head of Mission and the description of measures taken to implement that decision. Any comments that the Head of Mission may have on the recommendations of the Board or on the report in general shall also be transmitted along with the final report.

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<sup>3</sup> Other circumstances under which a mission headquarters Board of Inquiry should be instituted are described in the *Draft Field Administration Manual*.

21. Any recommendations submitted by the Board of Inquiry, together with any comments thereon by the Head of Mission and his/her final decision, shall also be communicated to the commanding officer concerned.

22. The Board of Inquiry file shall be closed after the Head of Mission has approved and forwarded copies of the Board's report to United Nations Headquarters in New York. The Board of Inquiry file and all relevant documentation shall be retained in the mission archives until the closure of the mission and thereafter shall be transferred to United Nations Headquarters in New York.

23. Board of Inquiry reports shall be confidential, internal documents of the United Nations and, as a rule, shall not be made available to outside entities. The release of a Board of Inquiry report to a Government to be used for its official purposes shall be approved by United Nations Headquarters in New York.

#### **IX. REPATRIATION**

24. The decision to repatriate a military member of a national contingent, in all cases, shall be made by United Nations Headquarters in New York, based on the recommendation of the Head of Mission. Once decided, repatriation shall be immediate and the national authorities concerned shall be contacted at once through the Permanent Mission concerned in New York. The expenses connected with the repatriation and replacement action shall be borne by the Member State involved.

25. If the continued presence in the mission area of individual(s) to be repatriated on disciplinary grounds is detrimental to the morale of the staff, the image of the mission or has other negative effects, the objective of the Organization shall be to repatriate as soon as appropriate. In certain cases, the Head of Mission may decide to await the completion of the report of the Board of Inquiry if (s)he is of the opinion that the preliminary investigation report is inadequate to support an immediate repatriation decision. The Head of Mission shall inform Headquarters in New York of such a course of action and provide it with a copy of the preliminary investigation report and a statement as to why (s)he considers the report to be inadequate for the purposes of a decision on repatriation. In such situations, the Board of Inquiry shall be required to complete its work on a priority basis and as speedily as possible.

#### **X. ASSISTANCE TO VICTIMS**

26. Once the final report of the Board of Inquiry along with the comments and/or decision of the Head of Mission have been reviewed by United Nations Headquarters in New York, the final decision, action or guidance shall be conveyed immediately back to the Head of Mission. If necessary, this information shall be used by the Head of Mission to appropriately inform the victims/individuals concerned of the action taken.

27. The Head of Mission shall consider taking appropriate measures to assist victims of acts of serious misconduct, including directing them to relevant organizations/support groups that could provide assistance.

#### **XI. FOLLOW-UP**

28. Although the responsibility to discipline military members of national contingents remains a national responsibility, the United Nations does have an interest in ensuring that justice is carried out. Following repatriation, the United Nations shall request information about the action taken with regard to repatriated military members of national contingents. If no response is received, periodic reminders will be sent to the concerned Permanent Mission from the Military Division of the Department of Peacekeeping Operations. If still no response is forthcoming, appropriate steps shall be taken to bring the matter to the attention of the Government concerned at the highest possible levels, to underscore the seriousness of the matter and to pursue it with a view to seeing that appropriate disciplinary steps are taken.

#### **XII. FINAL PROVISION**

29. These Directives supersede *DPKO Administrative Procedure on Discipline for Military and Civilian Police Personnel in Mission Areas, directive MPS/651*, and any other procedures and guidelines on this subject to the extent that they are inconsistent with these Directives.

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## **ANNEX A**

### **PROCEDURES FOR BOARD OF INQUIRY FOR DISCIPLINARY CASES**

1. The Chairman of the Board of Inquiry, upon receipt of the convening order, shall immediately contact the Legal Officer, who shall provide an initial briefing and subsequently review the draft of the Board's report prior to its submission to the Head of Mission for decision and/or comments. The Chairman shall advise the Legal Officer of the Board's progress and submit the draft report of the Board for his/her review one week prior to the designated deadline. (See Attachment 1 for the format of a convening order and Attachment 2 for the format of a final report.)
2. A Board of Inquiry constituted to deal with an incident involving technical or other specialized matters may seek, if necessary, the written opinion of mission or outside experts in those matters.
3. Members of the field mission may be ordered to appear and testify as witnesses before a Board of Inquiry. Any other person, including local citizens and local police or military officers, may be requested to make a statement to the Board or answer its questions but is under no obligation to do so.
4. If possible, a majority of Board members shall be present when victims, witnesses or the subjects are being interviewed.
5. Witnesses shall be questioned individually by the Board and in the absence of other witnesses, so that information received from one may be compared with that received from others. If necessary, witnesses who have provided statements shall be questioned by the Board to clarify any ambiguities in their statements and to indicate to what extent, if any, they have knowledge of relevant facts not mentioned in their statements.
6. In the event of a witness or victim being under the age of 18, the Board of Inquiry shall question the minor in the presence of a guardian or an adult of the minor's choosing.
7. If a witness refuses to make a statement to the Board, the Board shall record that fact. If appropriate, it shall also state the reason(s) why certain persons were not called as witnesses before it.
8. If feasible and useful, the Chairman and members of the Board shall visit the scene of the incident and note any important features that could have a bearing on the case.
9. A Board must reach its findings only after it has considered all the evidence; they must be based upon and supported by the evidence contained in



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its report. The Board must give the matter the attention it deserves; i.e. conduct a proper investigation, including sound analysis, supporting rationale, and substantiated conclusions.

10. A Board of Inquiry shall make at least the following findings relating to the incident under investigation:

- i. Cause of incident;
- ii. Whether any person was responsible for the incident;
- iii. Whether any court action (prosecution or law suit) has been initiated;
- iv. Whether individual(s) concerned were on United Nations duty at the time of the incident;
- v. Extent of injuries, if sustained, substantiated by medical documentation;
- vi. Whether any mission regulations, rules, orders or instructions were contravened.

11. The Board shall make recommendations concerning decisions/measures to be taken by the United Nations, for example, any measure that could help avoid the recurrence of an incident, such as specific additional safety precautions; or legislative or administrative action, such as repatriation of the subject(s), amending regulations, rules or instructions, or other administrative issuances.

12. The report of the Board of Inquiry shall be written in a simple and plain language. The Chairman must submit the draft report, together with all necessary documents and attachments, for review by the Legal Officer. Board of Inquiry reports that lack the necessary details in their consideration and merely refer to the preliminary investigation report shall be returned by the Legal Officer, or the Head of Mission, to the Board for reconsideration.

13. The Head of Mission shall review the final report of the Board of Inquiry and its recommendations, if any, in consultation with the appropriate personnel (e.g. Legal Officer, Medical Adviser) before determining the action to be taken.

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## ATTACHMENT 1

### FORMAT FOR MISSION HEADQUARTERS BOARD OF INQUIRY CONVENING ORDER

[*Name of mission*]

Date: \_\_\_\_\_

To: [distribution]  
 From: [name and title of Head of Mission]  
 Subject: Convening Order: Mission Headquarters Board of Inquiry

1. In accordance with the Directives for Disciplinary Matters Involving Military Members of National Contingents (MD/ ), a mission headquarters Board of Inquiry is hereby convened to investigate and report on the accident/incident which occurred on the day of [date] at [time] hours at [place].

2. The Board is to submit the final report and 10 copies by [date].

3. Composition:

Name

Title

Chairman:

Member:

Member:

Secretary:

Distribution:

[Chairman;

Members and Secretary of Board;

Legal Officer;

CMPO/CCPO or appropriate official of the related component;

Any other relevant official.]

## ATTACHMENT 2

### FORMAT FOR MISSION HEADQUARTERS BOARD OF INQUIRY REPORT

A mission headquarters Board of Inquiry report should be structured along the following lines:

- a. Constitution: Cite the convening order; the time, date and place of the incident; and the period during which the Board conducted its proceedings;
- b. Description of the incident: Present the objective facts of the incident obtained from the available evidence, with full reference to the sources used, including details of duty being performed at the time;
- c. Deliberations: Present the main issues to be addressed when assessing the incident and reaching substantiated conclusions;
- d. Findings and conclusions: Address the issues raised by presenting the Board's findings and conclusions based on the available evidence and relevant mission headquarters/unit orders, directives, regulations or SOPs.
- e. Recommendations: Recommend any remedial or preventive measures to avoid a similar incident;
- f. Signatures: Affix the signatures of the Chairman and members of the Board.
- g. Annexes: Attach as annexes the following:
  - i. Convening order;
  - ii. MP/UN civilian security or other police or investigating authority's report, with original photographs;
  - iii. List of persons present at or involved in the incident, giving name, rank, unit and ID number for United Nations personnel and distinguishing them from other persons, whose full name, occupation and address must be listed;
  - iv. Statements and reports of witnesses;

- v.** Any additional relevant documents or statements, including all medical reports and technical inspection reports (e.g. weapon inspection reports, vehicle inspection reports);
- vi.** Any maps or sketches of the scene of the incident;
- vii.** Any claims, local police reports, pending proceedings or actual decisions of local courts;
- viii.** Detailed description of property destroyed or damaged, attaching any available damage/discrepancy reports;
- ix.** Relevant copies of mission headquarters/unit orders, directives, regulations, SOPs, etc.

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## ANNEX B

### GUIDELINES FOR PRELIMINARY INVESTIGATIONS

#### **Investigating Allegations of Serious Misconduct Involving Military Members of National Contingents, Military Observers and Civilian Police Officers Serving in United Nations Field Missions**

#### **I. INTRODUCTION**

1. These guidelines are intended to serve as a guide for the conduct of preliminary investigations into acts, omissions and negligence amounting to serious misconduct involving military members of national contingents, military observers, and civilian police officers serving in United Nations field missions, and as referred to in the *Directives for Disciplinary Matters Involving Military Members of National Contingents* and *Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers*.

2. To the extent possible, preliminary investigations shall be conducted by appropriate authorities with the relevant expertise in the category of misconduct being investigated. Preliminary investigations shall be conducted in accordance with internationally recognized principles of due process and fairness.

#### **II. PURPOSE**

3. The purpose of the preliminary investigation is to establish the facts of the case.

#### **III. PLANNING OF AN INVESTIGATION**

##### **Step One**

4. Define an investigation work plan, listing the steps necessary for conducting the investigation, such as:

- Witness list;
- Document list and/or “other evidence” list;
- The means to be used to collect the evidence;
- Locations to be investigated;
- Possible travel arrangements;
- Local authorities to be consulted;
- Technical expertise/opinion needed;
- Estimated time frame;
- Cost of investigation; etc.

##### **Step Two**

5. Discuss the investigation work plan among the investigating team to obtain a common understanding on how to proceed. Go over the procedures outlined below to ensure that there is a consensus on the methodology.

6. Clearly identify responsibilities of each team member and division of tasks.

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**Step Three**

7. Identify any mission regulations, rules, orders or instructions that may have been contravened, as well as any applicable laws.

**IV. CONFIDENTIALITY**

8. The investigation shall be conducted with the greatest regard to confidentiality. Authorized disclosure, only under certain circumstances, shall be permitted. Unauthorized disclosure constitutes misconduct for which disciplinary measures may be imposed.

9. Provisions of confidentiality shall apply to the following:

- (i) The initial complaint or report (hereinafter complaint);
- (ii) The identity of the person who has made the complaint;
- (iii) The identity of the subject;
- (iv) The identity of witnesses;
- (v) The victim.

10. The investigators shall be responsible for ensuring that the information provided in the complaint, the identity of the complainant and the subject, and witnesses and their statements are not accidentally, negligently or wilfully disclosed. The investigator(s) will be obliged to take all appropriate measures for the protection of this information.

11. Authorization for disclosure will be given by the Head of Mission.

**Confidentiality of Complaint**

12. Although the information provided in the complaint should be confidential, it will be used for the conduct of the investigation and for the conduct of administrative, disciplinary or judicial proceedings.

**Confidentiality of Complainant/Victim**

13. Circumstances under which authorized disclosure of the identity of the complainant/victim can be made are as follows:

- (i) The complainant/victim has consented to the disclosure;
- (ii) Such disclosure is necessary for administrative, disciplinary and judicial proceedings;
- (iii) Authorized disclosure can also be made when a false complaint or report is made. Making a willfully false allegation constitutes misconduct and, therefore, disciplinary measures may be imposed against the complainant. Consequently, for the subsequent administrative and disciplinary proceedings the identity of the person who has, with bad intent, made a false complaint may be disclosed.

**Confidentiality of Subject**

14. Identity of the subject may be disclosed for the purposes of furthering the investigation and for the imposition of administrative, disciplinary or judicial proceedings.

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**Confidentiality of Witnesses**

15. Witnesses shall be provided confidentiality, if they request, to the extent possible.

**V. INTERVIEWING COMPLAINANTS, SUBJECT(S) AND WITNESSES****Sequence of Interviews**

16. The sequence of interviews should be at the discretion of the investigator(s). Normally, the sequence is as follows:

- (i) Complainant(s) and/or victim(s);
- (ii) Subject (the person in question);
- (iii) Witnesses;
- (iv) Follow-up interviews with complainant/victim and the subject, if necessary.

17. Sometimes it may be appropriate to interview some or all of the witnesses before interviewing the subject (and reviewing other evidence, such as documentary or physical evidence) in order to give him/her an effective opportunity to respond to all the allegations.

18. The investigator(s) shall conduct as many interviews or make as many contacts with witnesses and/or subject(s) in order to support a rational finding of facts.

**Interview Site**

19. It is preferable to conduct interviews in a place where other employees will not be able to see who is being interviewed and how long the interview takes.

20. This may require that the interview be conducted away from the job site, such as at a hotel conference room, or perhaps at the home of the interviewee.

21. In-person interviews are preferable to telephone interviews, which are not optimal because investigators need to be able to see the person to make an assessment of credibility. Telephone interviews may be appropriate for non-crucial witnesses, when an in-person interview would be too difficult or expensive.

**Language of Interview**

22. All interviews shall be in the preferred language of the interviewee. If an interpreter is necessary, one shall be provided. The interpreter shall remain impartial and objective in the conduct of the interview.

**Interviewing Minors**

23. When a minor is to be interviewed, an appropriate adult must be notified as soon as possible. Minors must be interviewed in the presence of an adult of

the minor's choosing.<sup>4</sup>

### **Third Parties**

24. A third party whose presence is deemed necessary by the investigator(s) (interpreters, adults accompanying minors, etc.) shall be obliged to maintain full confidentiality, and shall sign a certification to that effect, with respect to the matter discussed and to all the information gathered during the interview. The role of a third party in an interview is solely to facilitate the interview.

### **Interviewing Victims**

25. Interviewing a victim of an act of serious misconduct shall be done with sensitivity and understanding.

### **Interviewing Subjects**

26. The subject of an investigation should be advised about the matter under investigation and any specific allegation made against him/her.

27. The subject has an obligation to cooperate with the investigation and to answer questions truthfully and honestly. The subject should be given the opportunity to speak and to provide information in his/her own words without unnecessary interruptions by the investigator(s). The subject may offer such information, documents or other materials as (s)he wishes to assist in the inquiry. The subject may name witnesses on his/her behalf and in favour of his/her contentions.

28. The interviewing investigator(s) can question the subject on all the aspects deemed relevant for the conduct of the investigation, in any rhetorical manner, in a free conversation or in a strict question-and-answer format.

### **Interviewing Witnesses**

29. Witnesses who are members of the field mission are obliged to cooperate with the investigation and must reply honestly and truthfully to questions. A witness acknowledgement form shall be completed and signed. Witness acknowledgement forms should be made available in local languages when dealing with local witnesses.

### **How to Interview**

30. Prepare an outline of topics to be covered during the interview, e.g. What is the complaint? What is in dispute? What relevant information does the interviewee possess? As a general rule, investigators should address non-threatening topics first and hard topics last.

### **Structure of the Interview**

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<sup>4</sup> A minor is defined according to the applicable local laws. However, the international legal standard, as defined by Article 1 of the Convention of the Rights of the Child, is that a minor is "a person under 18 years of age".



### **Introductory questions**

31. These are examples of introductory questions:

- The investigators should introduce themselves;
- Inform interviewees of the purpose of the interview;
- Stress that no conclusions have been reached (the goal is to hear all sides of the story);
- Put the interviewee at ease by first establishing a rapport with him/her by asking general questions on non-threatening topics, such as general background, age, employment history, address, etc.

### **Questions about the matter under investigation**

32. Investigators should not be afraid to ask the tough questions. If the interviewee is not cooperating fully, investigators should politely but persistently seek an answer to their questions.

33. It is important to ask the interviewee if they know of any documents related to the matter. The investigators should always define what they mean by “documents”, which could include memos, letters, notes, calendars, e-mails, computer files, voice mails, tape recordings, diary notes, etc.

- Use the “Funnel Method” for questioning:
  - Open-ended questions
    - Who? What? Where? When? Why? How? Describe. Explain. Tell me.
    - First ask broad, open-ended questions designed to elicit an expansive, narrative response.
    - Seldom interrupt a witness. As they talk, investigator(s) should take notes on areas that they may want to explore in further detail later. If they learn of a new topic, they should make a note of it and come back to it later.
  - Follow-up
    - Once the interviewee has answered the open-ended question, follow-up by asking about each incident/conversation/issue separately. Ask for details.
  - Follow-up on non-responsive answers

### **Closing questions**

34. These are examples of closing questions:

- Is there anything else that we have not discussed that you think is relevant to this matter? (Interviewee should be able to contact the investigators later if they think of or have additional information or documents related to the matter.)
- Who else should we interview?
- Are there any documents relating to this issue? (Documents may include e-mails, personal letters, faxes, medical records, etc.)
- Remind subjects and witnesses that retaliation against victims and complainants constitutes serious misconduct.

- Request that the interviewee keep the matter confidential in order to protect the integrity of the investigation.
- Thank the person for his/her cooperation.

### **What not to ask**

35. Investigators should avoid aggressive, leading questions especially at the beginning of the interview. For example, a friendly, conversational approach works better than an aggressive, cross-examination. The aim is to get the interviewee to talk as much as possible in order to obtain as much information as possible, look for inconsistencies in the interviewees' stories and make credibility determinations.

36. Avoid leading or close-ended questions (especially at the beginning of an interview and at the beginning of a category of questions). For example, "Did you see John drinking at the Post Office?"

37. Avoid compound questions that would allow the interviewee to truthfully answer only part of the question. For example, "Was he drunk when you saw him at the Post Office?" Answer: "I did not see him at the Post Office."

38. Avoid legalese; use simple language.

39. Avoid questions that allow the interviewee to define a term in his or her own way, e.g. "Was he just having a good time?"

### **Taping of Interviews**

40. Normally, it is not obligatory to conduct tape recordings of interviews. However, interviews could be taped by investigator(s) for their own convenience. It allows the investigator(s) to focus more on listening to the interviewees' answers, rather than taking copious notes. All tape recordings must be transcribed and summarized into a formal record of the interview, which will require a signature by the interviewee attesting to its accuracy, as mentioned in paragraph 39 below.

41. However, transcribing the tapes of interviews could be time-consuming. Quality of the tape could be poor, which could be a critical problem if the investigators are relying on the tape and have not taken notes. Also, taping of an interview could potentially inhibit the interviewee and have a "chilling effect". The investigators should make every effort to put the interviewee at ease so that they feel at ease to speak candidly.

### **Written Statements**

42. The investigator may request an interviewee to furnish a written statement, or an interviewee may choose to make a written statement. The interviewee may provide this written statement in addition to an interview.

43. The statement shall be written in simple and plain language. The statement should be written in the first person (singular or plural, depending on how many persons are involved).
44. The language of the written statement shall be determined according to its likely use. For administrative action or disciplinary measures to be taken by the United Nations, the language of the statement shall be the working language of the mission. If a criminal prosecution seems probable, it may be considered to translate the statement into the working language of the court that will be in charge of conducting the trial. If possible, the language of the statement should be in the interviewee's preferred language.
45. The interviewee shall acknowledge the accuracy of the written statement by initialling it at the bottom of every page and signing at the end of the statement. If the interviewee decides to amend any part of the statement, (s)he shall initial the amendment as well.
46. The person shall sign and date the statement in the investigator's presence.
47. No threats or coercion of any kind may be used to obtain a written statement.

## **VI. COLLECTION OF EVIDENCE**

### **Forms of Evidence**

48. Forms of evidence include but are not limited to:
- Documentary evidence
  - Demonstrative/physical evidence
  - Statements by complainants, subjects and witnesses
  - Experts' opinion

### **Means of Obtaining Evidence**

49. Means of obtaining evidence include but are not limited to:
- Observation
  - Forensic research and analysis
  - Interviews
50. When attending the scene/location of an incident, the investigator shall document what he/she sees, not what he/she thinks and take all necessary steps to protect the scene. The notes and reports shall be done in a chronological order and shall include no opinions, no analysis, or no conclusions; just the facts.
51. The evidence observed, its location, condition, or anything remarkable about the evidence shall be included in the investigation report. If necessary, photographs shall be taken or a sketch/diagram made.

**Safeguarding Evidence**

52. Evidence should be duly logged and secured. The log should indicate where and how each piece of evidence was obtained.

53. When an act of serious misconduct that may amount to a criminal offence has occurred, investigator(s) should pay particular attention to the collection and safeguarding of evidence, as it may serve as a basis for a subsequent judicial process.

**Validating Information**

54. The goal of the preliminary investigation is to find one or more facts to establish the existence or non-existence of a key element of proof of the allegation. Furthermore, a determination needs to be made if any relevant rules, directives or standard administrative or operating procedures were contravened.

55. Once the initial fact-finding has been conducted, there is a need to establish the accuracy and authenticity of the evidence such as testimony, observations, records, and other documentary and physical evidence. Throughout the investigation, evidence obtained shall be checked against the investigative plan by verifying its accuracy. Initial evidence shall be checked against new evidence obtained. Conflicting testimony, information or material matters will be resolved by collecting additional evidence from other competent witnesses and sources.

56. In determining credibility of witnesses, account shall be taken of their interest, bias, integrity, reputation, the manner in which they gained their information, and any possible motive. The demeanor of the witness/subject being interviewed should also be taken into account when determining credibility.

57. Through this continuous process of the validation of evidence obtained, the investigator(s) shall ensure that the findings and conclusions of the investigation are fully supported by evidence. If any piece of evidence is ambiguous, it needs to be weighed. This means that the investigator(s) needs to reflect on the evidence with regard to the following factors: credibility; logic; plausibility; completeness; and persuasiveness. The standard of proof used by the investigator(s) is the preponderance of the evidence (50 plus 1).

58. Acting neutral and impartial in the process of weighing the evidence is crucial for the persuasiveness of the investigation's findings.

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## **VII. REPORT OF PRELIMINARY INVESTIGATION**

59. The Investigation Report is the summary of the work that has preceded it and its findings and conclusions are based on the evidence obtained. Each fact expressed in the Investigation Report will be fully and substantially supported by evidence. No evidence shall be included in the report that has not undergone extensive review and testing.

The investigator(s) shall ensure that facts are backed by evidence and supporting rationale.

### **Format and Content of Preliminary Investigation Reports**

60. The report of the preliminary investigation generally shall contain the following major sections:

- (a) Title Page
- (b) Executive Summary
- (c) Methodology
- (d) Background Information
- (e) Investigative Details
- (f) Issues
- (g) Finding of Facts
- (h) Annexes

#### **(a) Title Page**

61. The title page contains the official title of the case. It shall contain a warning that the report is the property of the United Nations field mission and is not to be reproduced or disclosed to unauthorized persons. The details of the reporting investigator(s) (name, rank and title), the date and the distribution shall be shown on the title page.

#### **(b) Executive Summary**

62. The Executive Summary shall specify the nature of the allegation(s); the methodology used for the investigation; the violation (if any) of mission regulations, rules, orders or instructions, as well as any applicable laws; and the results of the fact-finding.

63. The Executive Summary should also include the date, time, place and other specifics of the incident, including who committed what, when and where. The Executive Summary is intended to give the reader a quick overview of the case from its inception to the writing of the report. Every statement in the summary must be fully substantiated in the body of the report. It must not include any opinions or conclusions of the investigator(s); only facts or statements substantiated in the body of the report will be presented in the Executive Summary.

#### **(c) Methodology**

64. This section shall contain a brief description of the methodology used to conduct the investigation, including locations that were investigated; witnesses

interviewed; local authorities that were consulted; technical expertise/opinion sought; documents analysed; etc.

**(d) Background Information**

65. This shall provide details of the allegation(s) and who made them; a narrative of the context in which the incident occurred, without mentioning evidence at this stage; and any other necessary background information.

**(e) Investigative Details**

66. This section shall provide a detailed account of the conduct of the investigation and the evidence collected. This should be presented in a logical form, with supporting information provided in annexes to the report. A chronology of the investigation should be part of this section.

**(f) Issues**

67. A discussion of any issues that may have come up during the investigation.

**(g) Findings of Fact**

68. This section shall provide an analysis of the facts as established by the corroborating evidence obtained in the course of the investigation. This section must contain the supporting rationale for the findings of the investigators. If the evidence is ambiguous, the investigator(s) should explain what criteria were used to weigh the evidence and why a specific conclusion was drawn.

**(g) Annexes**

69. The report can contain as many annexes as necessary. Normally these would contain interview lists; statements of the subject and the witnesses; list of evidence; etc.

**VIII. SUBMISSION OF REPORT**

70. The report of the preliminary investigation shall be submitted to the Head of Mission as soon as it has been completed. The distribution of the report, as indicated on the Title Page, will also be done concurrently. Normally, the report will be submitted only to the Head of Mission or his/her designee.

71. On the basis of the findings of the preliminary investigation, the Head of Mission may either convene a mission headquarters Board of Inquiry, or (s)he may conclude that no act of serious misconduct occurred.