

Lesson 3.2 – Incident Response and Investigation



The Lesson

Slide 1



For an interactive start to this Lesson, ask the trainees if they have had experience in investigations into misconduct.



Note to instructor – recommend that lesson 3.2 be presented by an instructor who has professional experience as an investigator. The instructor should also encourage questions from the trainees and aim for an interactive discussion. All trainees should be encouraged to contribute to the group discussions and learning activities.

Key Message: Following the investigatory framework provided in this lesson will increase the likelihood that relevant information is collected safely for the purposes of a misconduct investigation, and the potential that information collected will be useful as evidence for any potential future national or international accountability mechanism.

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Lesson 3.2 Content

- Reporting and investigation procedures
- Initial actions
- Investigation planning
- Conducting investigations

Here are the subject areas to be covered in this lesson:

- * Reporting and investigation procedures
- * Initial actions
- * Investigation planning
- * Conducting investigations

It is important to understand that NIO do not operate in total isolation but work in close coordination with their chain of command and other UN stakeholders.

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Lesson 3.2 Learning Outcomes

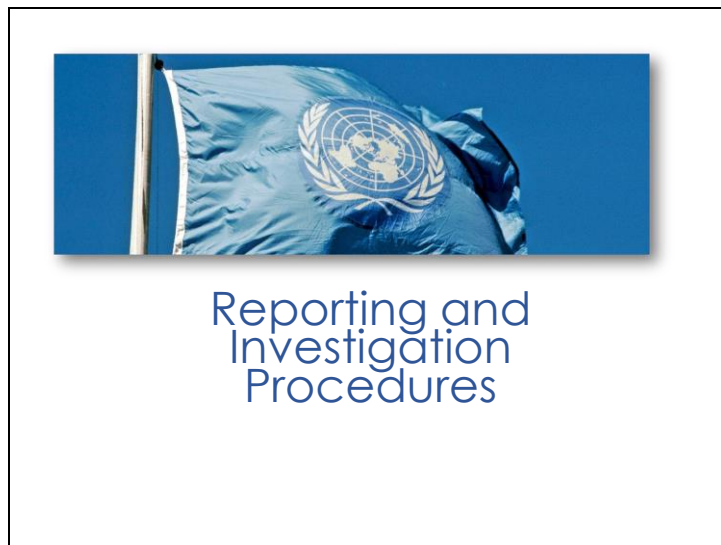
- Explain reporting and investigation procedures in the UN
- List the stages of an investigation
- Describe initial actions
- Describe investigation planning
- Describe how to conduct an investigation

As is good training practice, let's review the learning outcomes.

At the end of the lesson our aim is for you to be able to understand the relevant procedures and stages in undertaking NIO investigations. Please take a moment to read and understand the requirements:

- * Explain reporting and investigation procedures in the UN.
- * List the stages of an investigation.
- * Describe initial actions.
- * Describe investigation planning.
- * Describe how to conduct an investigation.

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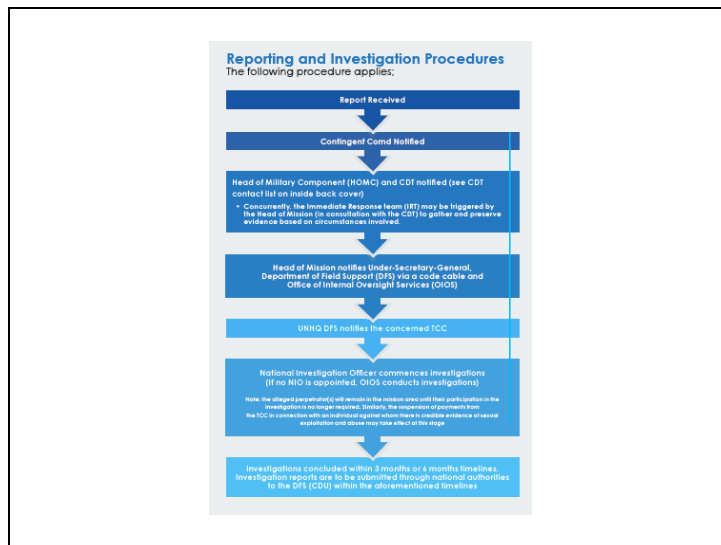


All complaints and allegations of misconduct are to be investigated. If a Commanding Officer receives a complaint or is aware of an allegation, he/she has an obligation to submit the complaint or a report to his/her superior and to the nearest UN MP.

Members of military troop contingents deployed in UN operations remain under the exclusive jurisdiction of their national government. The responsibility for investigating an allegation of misconduct and taking subsequent disciplinary action rests with the TCC, in accordance with the revised model memorandum of understanding (MOU), endorsed by the General Assembly in 2007. The NIO is the core investigatory function for member states to respond to an allegation of misconduct, and in particular to allegations of SEA.

When member states do not exercise this primary jurisdiction, or when so requested by member states, the UN Office of International Oversight Services (OIOS) or other qualified investigators shall conduct investigations involving this category of personnel. OIOS may undertake preliminary fact-finding in respect of allegations of misconduct against members of national contingents and/or assist NIOs appointed by member states to investigate allegations. OIOS is independent from any particular UN Mission and reports directly to UNHQ.

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When receiving information of possible misconduct involving members of contingents, the mission Conduct and Discipline Team (CDT) will determine if such information relates to a possible breach of the obligations and prohibitions contained in the UN Standards of Conduct and classify allegations as misconduct or serious misconduct in consultation with OIOS. For allegations of misconduct, the determination as to the existence of prima facie grounds will be made by the Heads of Mission, with the assistance of CDTs. For allegations of serious misconduct, including allegations of SEA, OIOS will make the determination as to whether prima facie grounds exist or whether additional information is needed to make such a determination.

The UN is mandated to notify Member States, without delay, when prima facie grounds exist to indicate misconduct or serious misconduct by any member of a TCC. In the vast majority of cases, when the UN receives information about possible SEA involving one or more members of a TCC it will refer the matter to the Permanent Mission of the Member State in question and request the appointment an NIO. The UN may also request that the NIO investigation be conducted in cooperation with OIOS. This request shall be made without prejudice to the sovereign right of the TCC to investigate SEA allegations against its contingent members. Since July 2016, Member States are required to include NIO within their TCC to ensure that SEA investigations start in a timely manner. In matters involving misconduct (not amounting to serious misconduct), the matter would normally be referred to the Contingent Commander for investigation.

TCCs have undertaken to notify the UN, without delay, in the event that a TCC has prima facie grounds indicating that any member of its contingent has committed an act of serious misconduct (including SEA), and also to forward the case to the TCC’s appropriate national authorities for the purpose of an investigation. When such notification is exchanged between the Permanent Mission of the concerned Member State and UNHQ, the ASG/DFS will in turn, immediately inform in writing the concerned Head of Mission, OIOS and DPO. When such notification is exchanged between the Commander of a national contingent and the HOMC, this notification shall be communicated to the concerned CDT who shall immediately inform CDU/DFS, via Code Cable.

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TCC must report back to the UN on the outcome of SEA investigations and on any actions taken. UN investigative entities are required to complete SEA investigations within six months, subject to extenuating circumstances. TCC have also been requested to complete their SEA investigations within this time frame. In matters deemed particularly urgent, TCC are requested to complete SEA investigations within three months, which may also be done by UN investigative entities in similar circumstances.

UN investigation personnel are available to assist the NIO, as necessary, in the conduct of the SEA investigations; including the identification and interviewing of witnesses, the recording of witness statements, and the collection of documentary and forensic information. Other UN personnel may also be involved in the provision of administrative and logistical assistance. It is important that SEA investigations are thorough and conducted in a timely manner with sensitivity to any potential victims.

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The concept of fact-finding is to establish if there is sufficient information to form a complaint to commence an investigation. In this respect the following basic facts need to be established:

WHO: victim, witnesses and subject of the complaint.

WHAT: conduct, violations, breaches.

WHEN: date, time, year, period, duration.

WHERE: location, structure, environment, proximity.

Fact-finding needs to be done extremely carefully, following the same principles as an investigation. Fact-finding should be done in such a way that it does not jeopardise a subsequent investigation or present a protection risk to anyone.

Within the UN, OIOS has the primary responsibility to carry out the preliminary fact-finding inquiry. However, on referral from OIOS to the Head of Mission, the preliminary fact-finding inquiry may be carried out by appropriate personnel in the concerned mission, notably the FMP. The preliminary fact-finding inquiry shall include a representative of the concerned TCC, as designated by the Commander of the concerned national contingent.

Where OIOS carries out the preliminary fact-finding inquiry, it will forward its completed report to the USG/DFS, with copy to the concerned Head of Mission. Where the preliminary fact-finding inquiry is carried out by personnel in the concerned mission, the Head of Mission shall forward, by pouch, the original of the completed report to the CDU/DFS. CDU/DFS will then share this report with OIOS for their review, as required. The ASG/DFS will forward all reports of preliminary fact-finding inquiries to the Permanent Mission of the concerned TCC. A copy of all reports will also be entered in MTS, by CDTs or CDU/DFS, as appropriate.

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Stages of NIO Investigations

1. Initial actions for protection of individuals and information
2. Gather and study background material
3. Plan the investigation
4. Gather documentary information
5. Interview witnesses
6. Analyse the information
7. Write investigation report

This next part of this Lesson will focus on stage 1 of an investigation.

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The securing and management of an incident scene is a process that requires expertise. The instructor should ask trainees what experience they have in securing an incident scene.

An incident scene is an area that must be treated with the utmost care so that potential information is not contaminated, lost or destroyed. In the unlikely event that an NIO is required to secure an incident scene he/she needs to be confident in the procedures for how to do so.

Preservation of an incident scene involves the protection of both the scene and the physical evidence it contains. The primary purpose of this preservation is to limit or eliminate the potential for contamination, loss or destruction of evidence which may be essential to an investigation. Securing and protecting an incident scene will enable a more accurate reconstruction of the incident and assist in the subsequent investigation.

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Initial Actions

- Review the situation
- Evaluate the scene
- Assist victims and witnesses
- Control and preserve the scene
- Take notes and report the incident

A process to ensure that appropriate steps are taken to provide initial action at an incident scene and to ensure the preservation of the scene is known by the acronym, R E A C T, which stands for:

- * Review the situation.
- * Evaluate the scene.
- * Assist victims and witnesses.
- * Control and preserve the scene.
- * Take notes and report the incident.

As a general rule, the safety of the NIO or any other person found at the incident scene should always have priority over evidence gathering. First, make sure that the site is safe and free of any dangers, such as mines, unexploded devices, traps or other hidden perils. When assessing risks to the incident scene make initial observations (look, listen, smell) to assess the safety of the scene. Prioritise assisting any injured persons found at the scene through first aid, if need be.

Once the situation has been reviewed, the scene evaluated, and assistance given the next steps are to control and preserve the scene and take notes. This is done with a view to maintaining the integrity of a future investigation and ensuring that information is not interfered with. Controlling and preserving an incident scene includes the following:

- * Establish a perimeter to protect the scene. This allows all involved personnel to see the boundaries and act accordingly, as well as ensuring access to the scene is restricted to authorised persons only.
- * Establish an entry and exit corridor to the incident scene. A single access control point and defined corridor will reduce the potential for loss, destruction or contamination of evidence through the uncontrolled movement of authorised persons.
- * Monitoring access to the scene, including maintaining an accurate log of the names and times that anyone enters or leaves the scene.
- * The most important aspect to the preservation of the scene is the fundamental principle of 'Do not touch or move anything unless necessary'.

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- * Photograph or film the scene, if possible.
- * Ensure everyone refrains from contaminating the crime scene. This can be done by avoiding the use of any facilities available at the scene (such as telephones and bathrooms); not eating, drinking or smoking within the scene; not moving anything/anybody (except for situations where it is absolutely necessary); not touching or handling objects found in the crime scene; and not littering or spitting.
- * If the scene is outdoors, promptly photographing and sheltering it from the weather.
- * A search of the immediate area around the incident scene may reveal further injured persons, potential witnesses, secondary incident scenes or establish the requirement for a wider boundary of the incident, and potential items that may have been moved from the incident scene.
- * Establish crowd control. There will be a requirement to control the movement of persons near an incident scene. The boundaries of the scene will require identification through some physical and easily recognisable means. A physical barrier may not always be available.

After the scene is controlled and preserved, the NIO should record what they observe in as much detail as possible in their notebooks. The purpose of this is to have an accurate and reliable account of the original state of the scene. In detailing the scene, NIO should:

- * Accurately recording the location of the scene.
- * Sketch the scene, including the location of potential evidence.
- * Record facts regarding the scene, not personal opinions.
- * Ensure that the notes are correct, detailed and professionally kept.
- * Note the date/time of the incident and also the date/time that they arrived at and left the scene.
- * Note the location and size of the scene through GPS coordinates and by hand on a map. The map should be signed, dated and preserved.
- * How the scene looked when they arrived.
- * Whether anything has been moved within or removed from the scene.
- * The location, description and measurements of any potentially valuable evidence that is found.
- * Who was present at or leaving the scene and their activities. The names and identifying details (full names, dates of birth, sex, gender, age, ID details, places of residence, contact information, etc.) of potential witnesses.
- * Description of any vehicles that are seen, including colour, year, make, body and licence plate number.
- * Description of any individuals using the 'head to toe' method, i.e., his/her race, sex, age, height and weight, followed by a description of the individual from head (hair) to toes (or shoes).
- * Supplement or substitute the written record with voice recordings, photos and videos, in case it is more practical than writing down observations.
- * Prepare a detailed bird's eye sketch of the scene (including an indication of the scale used in drawing, signed/dated and stored) which indicates:
 - * The direction of north.
 - * The central point of the scene.

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- * The location of identified information or objects, which should be labelled and described.
- * Any landmarks, roads or buildings with a label and description.
- * Any measurement of pertinent objects and spaces between them.

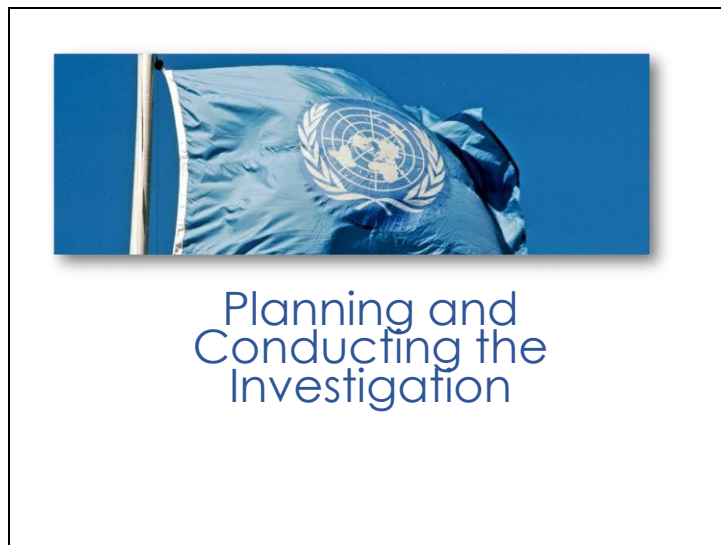
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Stages of NIO Investigations

1. Initial actions for protection of individuals and information
2. Gather and study background material
3. Plan the investigation
4. Gather documentary information
5. Interview witnesses
6. Analyse the information
7. Write investigation report


In the vast majority of cases, NIO investigations commence after the completion of an OIOS led preliminary fact-finding inquiry establishing the prima facie grounds for an SEA allegation. In these circumstances the gathering and study of background material and planning is the first start point for NIO investigations. This next part of the Lesson will focus on these stages of an investigation.

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Each investigation should commence with an overall planning process and where possible result in a written investigation plan. Circumstances which require the commencement of investigations in urgent circumstances may do so without a written plan, however planning considerations during the course of the investigation should be appropriately recorded.

While it is important to start with a plan, investigations rarely proceed as originally predicted. Therefore, the plan should be continually reviewed and revised as new information emerges during the course of an investigation. Always follow the facts, rather than trying to make the facts fit into the plan.

 This component of this Lesson focuses on the importance of careful planning for the success of any NIO investigation. The instructor should encourage as much discussion as possible and encourage trainees to share their experiences of planning obstacles, planning successes and the consequences of not having a proper plan in place. The instructor should also emphasise the most important questions for any planning exercise: Why gather information and evidence? How to gather evidence? To what end?

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Why Plan?

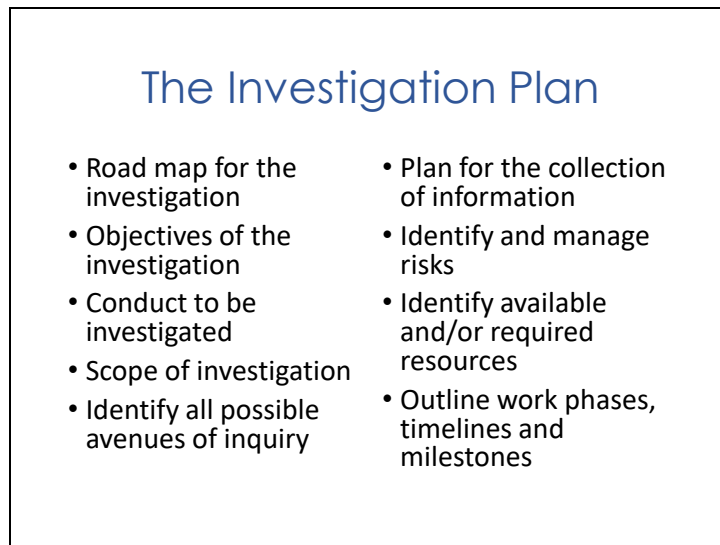
- Ensure accountability and transparency in the investigation
- Resources are used to best effect
- Additional resources can be made available if required
- Sources of information are not overlooked and opportunities for people to remove, destroy or alter information are minimised
- Avoid unnecessary risks
- Know what to do with the information gathered
- The investigation can continue as planned, in the event the primary investigator is unavailable

Detailed planning is essential so that the investigation is carried out methodically and professionally, to ensure:

- * Accountability and transparency in the investigation.
- * Resources are used to best effect.
- * Additional resources can be made available if required.
- * Sources of information are not overlooked and opportunities for people to remove, destroy or alter information are minimised.
- * Avoid unnecessary risks.
- * Investigators will know what to do with the information gathered during the course of the investigation.
- * The investigation can continue as planned, in the event the primary investigator is unavailable.

It is important to construct a plan before the commencement of an investigation. Careful planning from the outset will help to avoid difficulties later in an investigation and assists in establishing a record keeping process.

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An investigation plan is a systematic or sequenced set of clearly defined and governed tasks, derived as the result of conducting analysis of information and then deciding upon what course of action is required through a planning process in order to progress the investigation forward. The planning process will clarify each approach to be taken and will become a road map for the investigation. It allows the investigator to stay focused on the job and alerts them to any potential problems before they are encountered.

The planning process should (where appropriate):

- * Be the road map for the investigation.
- * Outline objectives of the investigation.
- * Identify potential contraventions or conduct to be investigated.
- * Detail the scope of investigation and possible outcomes from investigation.
- * Identify all possible avenues of inquiry and sources and methods to be utilised to obtain relevant information.
- * Plan for the collection of information (to be covered in detail in Lessons 3.3 - 3.5, 4.1 - 4.2).
- * Identify and manage risks, including protection, health and safety.
- * Identify available and/or required resources.
- * Outline work phases, timelines and milestones.

A clear understanding of your capacity to conduct an investigation will shape the scope and methodology of the investigation plan. The Investigation Plan must be fluid and open to amendments as the investigation proceeds and should adapt to the different stages of the investigation and any new information that is found. It is important to keep in mind that the discovery of new information may necessitate a re-writing of the plan or may lead to a whole new line of inquiry that needs to be explored.

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Elements of a Plan

- Preliminary research and identification of allegations and objectives
- Potential misconduct and information required
- Potential subjects to be investigated
- Resources required
- Plan of investigative activities
- Review of the Plan

The Investigation Plan should contain the following elements:

- * Preliminary research and identification of allegations and objectives.
- * Potential misconduct and information required.
- * Potential subjects to be investigated.
- * Resources required.
- * Plan of investigative activities.

Preliminary Research and Identification of Allegations and Objectives. Prior to drafting the Investigation Plan, the NIO should undertake preliminary research on the following issues:

- * What misconduct has allegedly been committed?
- * What information may have already been documented through the initial report/allegation/complaint and during preliminary fact-finding?

Based on the findings of the preliminary research, a clear statement of the allegations and how the information was received should be included in the investigation plan. It may be possible to make a preliminary assessment of the credibility of the allegation and any information available at this stage of the investigation. It is important at this stage to let the investigation be led by the evidence and refrain from premature assumptions, as to do so would be detrimental to the impartiality and overall accuracy of the investigation.

Prior to the commencement of investigative activities, practitioners should try to form a preliminary view of the violations that may have been committed. First, consider the information indicating that the alleged misconduct has been committed. Second, assess the evidential links between the alleged misconduct and the persons allegedly responsible for committing the misconduct. Consider which individuals conduct should be investigated. Let the investigation be led by the evidence.

Consider administrative details, such as how many personnel are required to conduct the investigation (including interpreters, investigators, intermediaries and technical experts, such as child protection specialists). In addition, consider the location of the offices, storage systems

needed, and any other additional resources needed for the investigation. Make sure you know the appropriate procedures to request those, including any possible support from the UN mission.

Considering the potential misconduct and the elements required to be established to uphold an allegation of misconduct will help inform the planning of investigative activities. The investigation plan should consider what sorts of information may be sought, where it is likely to be located, and how it can be obtained (including which individuals can be information sources).

An information matrix should be created, where the elements of alleged misconduct are listed alongside the possible types of information that could establish facts. The investigations plan should include how evidence can be obtained and the identification and prioritisation of all potential sources and leads that will be followed during the investigation. In broad terms, this section should identify:

- * The steps that might be taken to generate further leads and ensure a sufficiently broad evidence gathering.
- * All the locations where evidence may be found (including where the incident may have taken place, where the victims were immediately before, during or after the incident and any place the possible subjects were before, during or after an incident).
- * Any prioritisation of scenes or locations to visit.
- * The steps that need to be taken for retrieving and finding evidence at each scene or location.
- * Potential witnesses who might provide relevant and probative investigative leads or information about the incident.
- * Potential documentary evidence that must be preserved.

It should be remembered that the role of the NIO is to gather all relevant evidence, and this planning exercise is not designed to restrict the information that is gathered or constrain the scope of the investigation. NIO should be prepared to change the investigations plan in accordance with the evidence gathered. The investigation plan should allow for continuous reassessment as new evidence is received. It is recommended that the investigation plan identifies specific times (i.e., at specific phases of the investigation or at regular intervals) for the investigation findings to be reviewed and incorporated into the plan. The plan must be realistic, achievable and most importantly flexible. At the planning stage it is impossible to foresee the end state or outcome of any investigation. The plan will reflect the initial information available at the time, which is subject to change over time.

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Planning SEA Investigations

- Integration of a gender perspective
 - Selection of the investigative team
 - Gender dynamics of the mission
 - Gender-sensitive methodology
- Availability of support services
- Mitigating risk specific to SEA investigations

In planning SEA investigations NIO must integrate a gender perspective and gendered data points during background study, including:

- * The selection of the investigation team.
- * The gender dynamics in the area (such as sexual orientation and traditional and cultural beliefs in the community related to gender roles).
- * The nature and scope of acts of SEA.
- * Whether any crimes have been officially reported?
- * Community attitudes towards and understanding of different forms of sexual violence?
- * The security situation and obstacles for victims seeking support?
- * The political and security situation and whether there is a history of gender-based persecution.
- * The targets of the violence, particularly whether any specific groups have been targeted?
- * Whether other acts of misconduct may have been committed in addition to SEA?

Selection of the investigation team:

Gender balance and expertise on gender issues must be among the several criteria taken into account for the selection of investigation team members. In addition to the selection of staff, the composition of (smaller) teams deployed to the field for investigative missions should include, to the extent possible, both female and male team members.

Moreover, when deciding on who will conduct which interview(s) it is important to understand the possible different impact on the victim or witness if interviewed by a man or a woman. Gender dynamics and cultural sensitivities should be taken into account when making such decisions. Working with men and women interpreters is also critical to ensure that victims and witnesses will feel comfortable to disclose information. Interpreters can play a key role in the evidence gathering phase and supporting the development of gender-sensitive glossary of terminology that would help during interviews. The need to brief them on substantive aspects, including in relation to gender-based violence, should not be overlooked.

Gender-dynamics of the mission:

Prior to establishing an appropriate gender-sensitive methodology, the investigation team should discuss and take note of the gender dynamics in the context in which they operate and how it may impact the investigation work; as well as what the impact will be of each of the team's activities conducted on gender dynamics in such context. The team should aim at avoiding the perpetuation of gender stereotypes with their actions. Attention should be paid to pre-existing human rights landscape of marginalised people in the society, including women and girls and those marginalised on the basis of sexual orientation, religious, ethnic, racial, and gender identities, class, national origin, disability, and status, such as refugees or IDPs.

Gender-sensitive methodology:

An effective gender-sensitive methodology and investigation plan will take into account the need to assess how – in the country or situation concerned – legal, civil, economic, political, cultural and social issues affect women and men differently, resulting in different experiences. Gender-based discrimination and violence should be seen within the larger context of any pre-existing inequalities. A gender-sensitive methodology includes:

- * Mapping the differentiated impact of the alleged type of misconduct under investigation on of women, men, girls and boys in the country.
- * Paying attention to intersecting forms of discrimination based on ethnicity, national origin, sexual orientation, gender identity, class and other status.
- * Mapping the relevant perpetrators and their roles, power/influence, needs and interests.
- * Identifying protection gaps and any risks or barriers that can be different for women, men, children or LGBTI persons.
- * Identifying the key gender-related issues to be investigated and the methodology for gathering such information.
- * Preparing briefing notes with the objective of assisting all members of the team in successfully integrating gender throughout the investigation, highlighting possible issues to be investigated. Parts of the briefing notes and the abovementioned background material could be used in the report at a later stage.
- * Conducting a training session on gender-sensitive investigations is provided to all team members, including on identification and documentation of the gendered impact of the allegation, if proven, on conducting interviews with survivors of GBV, use of referral pathways.

In addition, practitioners should consider the availability of support services:

- * What medical, psychological, legal and economic assistance is available for victims and witnesses, and how can they be referred?
- * What medical, psychological or other support do victims and witnesses require?
- * What medical, psychological and other support services have survivors/victims already received?
- * Which actors are providing these services at the local, regional and national level?
- * What obstacles do survivors/victims or witnesses face in accessing these services?

The Investigation Plan should include specific protective measures to mitigate risks associated with investigating SEA, in particular:

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- * Contact victims and witnesses for an emotional check after interviewing them and, if possible, at regular intervals after that.
- * Keep victim's personal information separate from the interview notes and use a coding system.
- * Provide assistance specifically tailored to the individual safety and security risks of victims to avoid giving them the impression that the testimony is rewarded.

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Needs of the Victim

- Being treated with dignity and respect
- Access to a safe, supportive, non-judgmental environment.
- Access to appropriate information
- Confidentiality and informed consent

Needs and priorities of victims often include:

- * Being treated with dignity and respect. Examples:
 - * Listening to the victim.
 - * Having private spaces to undertake interviews/give statements.
 - * Forensic practice that explains the process and asks permission for each step.
 - * Ensuring that services can respond appropriately to people with disabilities, mental health problems or other special needs.
- * Access to a safe, supportive, non-judgmental environment. Examples:
 - * Giving consideration to the gender balance within an investigatory team.
 - * Ensuring all professionals know how to reinforce the basic message that violence is not the victim's fault.
- * Access to appropriate information. Examples:
 - * Providing verbal and/or written information about legal and human rights.
 - * Giving explanations of what services can and cannot do and what options are available to victims.
- * Confidentiality and informed consent.
- * Economic resources for basic subsistence: housing, food and drink, clothes, and menstrual items for girls and women.

It is also important to remember that some of those participating in the investigation may have been victims themselves at one point. This makes upholding the core principles of a victim-centred approach even more vital so that practices within the investigation do not lead at any point to people being made to feel stigmatised, silenced or exploited.

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Substantive Questions for Investigations

- What substantive rules have allegedly been breached?
- What are the elements of each rule?
- What information/evidence is relevant to that breach?

To conduct the investigation itself, investigators need to be absolutely clear about the substantive rules have been allegedly breached and the composite elements of those rules. They then need to identify the information that is relevant to the elements and to consider how they can gather that evidence safely and efficiently.

What substantive rules have allegedly been breached?

Substantive rules are rules are standards of conduct and are found in the UN Code of Conduct. For example, if a complaint was made that a member of a TCC engaged in sexual activity with a 17-year-old, the allegation is: the subject of complaint engaged in sexual activity with a child; a violation of the Secretary-General's Bulletin on Special measures for protection from SEA ST/SGB/2003/13, section 3.2(b).

What are the elements of each rule?

The elements of each rule are the individual facts that must be proved to show that there was a breach of the Code of Conduct. If we continue with the example in point above, the elements of the Secretary-General's Bulletin on Special measures for protection from SEA ST/SGB/2003/13, section 3.2 (b) are:

- * The Subject of Complaint is member of TCC.
- * Actual or threatened sexual activity occurred.
- * With a person under 18 years of age.

What information/evidence is relevant to that breach?

Information that is relevant to deciding if an allegation is true or not i.e. evidence that makes an element more or less likely comes in a number of forms, the most common being:

- * Victim and/or witness testimonies (e.g. statement about what someone saw, heard, smelt, etc.).
- * Documentary evidence (e.g. forms, photographs, videotapes, computer files).
- * Physical evidence (e.g. items located during searches). Physical evidence can also be provided by a medical doctor that has examined the victim.

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Investigation Practices

- Activity recording
- Situation reporting
- File and information management
- Critical decisions
- Investigation closure

During the investigation it is necessary to ensure that all work is conducted in accordance with the investigations plan, which, as mentioned earlier, can be modified and adapted to evolving circumstances and new information. The following practices should be employed during an investigation and in accordance with the investigation plan:

- * Activity recording. It is essential that the recording of activity in relation to an investigation (interviews, contact with witnesses, meetings, preparation of briefing papers, obtaining documents, decisions, etc.) occurs during the investigation. Activity during investigations should be recorded electronically or in written form on a suitable investigations management system using notes, chronologies or running sheets.
- * Situation reporting. The reporting process should be considered and defined at the investigation planning phase. Progress reports should include progress achieved, deviations from initial plans, problems/risks and future actions.
- * File and information management. All documents and information must be kept and filed according to good practice procedures. This will be covered in detail in Lesson 3.5.
- * Critical decisions. Critical decisions are those decisions made during the course of an investigation that lead to significant changes of direction in the investigation, resources involved or that may impact the outcomes of the investigation. These decisions can arise as a result of external developments, evidence that has or has not been obtained or change of strategy. All critical decisions made during an investigation should be documented on the investigation file. This documentation should include the decision itself including the reason for the decision, person making the decision, the date of the decision, information relied on to make the decision, and any expected or potentially significant impact of the decision.
- * Investigation closure. Investigations can recommend a number of outcomes that are recommended through the investigation report. This will be covered in detail in Lesson 3.6.

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What Order to Interview Witnesses?

1. Complainant or original victim
2. Other potential victims
3. Witnesses with indirect knowledge of the misconduct
4. Witnesses with direct knowledge of the misconduct
5. Subject of the complaint

Once the investigators know whom to interview, they should consider the order of the interviews. The general principles are to interview the complainant first and the subject of the complaint last. This means that the general order of witnesses is:

1. Complainant or original victim.
2. Other potential victims.
3. Witnesses with indirect knowledge of the misconduct.
4. Witnesses with direct knowledge of the misconduct.
5. Subject of the complaint.

If the complainant and victim of the alleged abuse are different, the complainant should be interviewed first. The order may change depending upon the availability of individuals to be interviewed for the investigation. The subject(s) of the complaint is interviewed last so that as much evidence as possible can be gathered to inform the questions put to them, enabling them to provide a more complete response.

It is strongly recommended that the subject of complaint is not informed of the interviews taking place until as near a time as possible to their own interview. As this is an information gathering exercise, the subject of complaint does not usually have a right to know what is taking place. The reason for this is primarily to prevent the subject of the complaint from tampering with evidence or intimidating witnesses – there is a duty of care to try and mitigate any protection threats to witnesses. The subject of the complaint does however have a right to know the allegations made against them should the investigation lead to a conduct or disciplinary hearing.

The general principle is to avoid re-interviewing victims and witnesses whenever possible. However, if interviewees provide conflicting information or the NIO uncovers new information relevant to a victim or witnesses prior testimony, it may be appropriate to seek a second interview if this does not compromise the witness' health or wellbeing.

Interviewing will be covered in further detail in Module 4.

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For an interactive start to this section, ask the trainees the following questions on risks to victims and witnesses:

- * Will they be at risk of intimidation or further attacks (including retaliation)? If so, what strategies can be put in place to overcome these obstacles?
- * Does the information from a victim or witness place them at risk if it were to be traced back to them? If so, what mechanisms can be employed to protect them from risk?
- * Will going to particular locations/scenes place the individuals that provided information on those locations, in danger? If so, are there other ways (such as via an intermediary) to gather information about these locations/events?

Protecting victims and witnesses entails the following:

- * Do No Harm. This includes not raising expectations: do not make promises that you cannot keep. Furthermore victims and witnesses must be informed of the limitations to guarantee their protection.
- * Only interview victims if strictly necessary and limit the number of interviews.
- * Inform victims and witnesses about possible risks and measures that may be adopted prior to conducting interviews.
- * Protect the identity of victims and witnesses and ensure the interview location is safe, private, neutral, comfortable, easily accessible and culturally appropriate.
- * Do not discuss sensitive issues in public.
- * Discuss with victims and witnesses the safest way to contact them.
- * Ensure victims and witnesses understand the non-disclosure of the investigative details.
- * Do not provide victims and witnesses with information about the investigation that they do not need to know.
- * Never share information about victims or witnesses with other witnesses.
- * Be supportive, sensitive and caring when interacting with victims and witnesses.
- * Avoid patronising attitudes towards victims, witnesses and do not make assumptions about their feelings, views and needs.

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- * When necessary, refer victims or witnesses to relevant support services. Tailor support to individual safety and security needs.

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Identifying Risk

- Identifying risks means thinking broadly about what has happened and could happen to everyone involved in the investigation
- Particular risk areas relating to investigations involve decisions to:
 - Victims
 - Other witnesses
 - The subject of a complaint
 - The local community
 - Investigator
 - The parameters of the investigation
 - Evidence collection/presentation
 - Individuals or groups of individuals

Risk assessments must be undertaken at the planning stage, as well as throughout an investigation. The results of those assessments—including the risks that have been identified and the measures planned to mitigate or respond to them— should be included in the investigation plan. NIO should ensure risk management is incorporated into decision making throughout an investigation. This is particularly important in the following areas:

- * Initial evaluation.
- * Investigation planning.
- * Critical decisions.
- * Assessing the needs of victims, witnesses and the subject of the complaint.

When assessing threats and risks at the planning stage, NIO should consider risks not only to victims, witnesses and the subject of the complaint, but also to the information and to themselves. Identifying risks means thinking broadly about what has happened or what could happen to everyone involved in the investigation. Some risks are physical and may be obvious (e.g. pregnancy, sexual diseases, physical injuries etc.). Other risks may not be so obvious (e.g. psychological trauma and economic loss). The subject of a complaint might also be at risk during an investigation – if the allegations become known, they might be under threat of retaliation as a result of the circumstances under investigation. All of these are harmful and reduce a person’s quality of life and may inhibit their ability (or desire) to contribute to the investigation.

Particular risk areas relating to investigations involve decisions to:

- * Victims.
- * Other witnesses.
- * The subject of the complaint.
- * The local community.
- * Investigator.
- * The parameters of the investigation (e.g. failing to keep the big picture in mind and taking too narrow a focus, or failing to assign sufficient time or resources).

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- * Evidence collection/presentation (e.g. accepting information at face value, allowing evidence to be compromised, weaknesses in taking statements or verifying particulars).
- * Individuals or groups of individuals (e.g. exposing them to harm through not providing them with timely advice or information).

NIO constantly make decisions about situations, based on incomplete information and in uncertain conditions. All areas of investigations are susceptible to the risk. There is an obligation on the NIO to identify, assess and manage risk to prevent or reduce the likelihood and impact of harm and to protect people's rights and dignity. Using risk assessment tools, e.g., impact versus likelihood, assists the investigator to assess the level of risk, thereby potentially reducing the amount of harm caused. Risk management is to be incorporated in decision making throughout an investigation.

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Risk Assessment

- **Step One: list the threats:**
 - What are the threats?
 - Who or what is threatened?
 - Who or what has made the threat?
- **Step Two: Assess the risk:**
 - How likely is it that the threat will become a reality?
 - How severe would the impact be—on individuals, infrastructure, or the information?
- **Step Three: Mitigate or manage the risk:**
 - What measures can be put in place to reduce or counter those risks?

Assessing Risks involves first identifying potential threats, assessing what risk factors contribute to the likelihood that a threat will materialise, and finally putting in place measures to counter those potential risks. When planning for investigations NIO must assess threats, real, imagined, or perceived, as well as the risk that these threats will be carried out.

Threats refer to any factors (actions, contexts or events) that could cause harm to any individual or damage or destroy evidence or the investigation. Vulnerabilities are weaknesses or gaps that can be exploited by threats to cause actual harm. Risk refers to the likelihood that a threat will actually be carried out in addition to the impact it would cause if it did. Assessing Risks involves first identifying potential threats, assessing what risk factors contribute to the likelihood that threat will materialise, estimating the impact that will have, and finally putting in place measures to counter those potential risks.

Carrying out a thorough risk assessment is the first and most important step towards putting in place measures that can mitigate harm, both in terms of prevention, and in offering an adequate response to harm. Risk assessments should be carried out repeatedly throughout the investigation to take into account changing realities and stages in the investigation. Continuous risk assessment informs the direction an investigation should take.

The most important assessment to be carried out is one that takes into account the potential threat to all the individuals potentially impacted by the investigation. Threats of retaliation by family members who feel 'dishonoured', coercive pressure on victims to marry or lie about what happened, informal settlements (monetary or other), reprisals or loss of opportunities (including jobs), and even punishment or arrest of victims in situations where sexual conduct outside marriage, or homosexual relations, are stigmatised or criminalised, are often particular to investigations of SEA.

How to carry out a threat and risk assessment:

- * Step One: list the threats:
 - * What are the threats?

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- * Who or what is threatened?
- * Who or what has made the threat?
- * Step Two: Assess the risk:
 - * How likely is it that the threat will become a reality?
 - * How severe would the impact be—on individuals, infrastructure, or the information?
- * Step Three: Mitigate or manage the risk:
 - * What measures can be put in place to reduce or counter those risks?

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Risk Assessment

- Prioritise the risks – which are most urgent?
- Minimise risks – how to respond?
- Ongoing support to victims

Assessing risks to victims, witnesses and the subject of the complaint are essential elements to the principle of “do no harm” covered in Lesson 3.1. The NIO must make an assessment of any individual who is at immediate risk, and prioritise those risks and refer any security concerns to the appropriate authorities.

Prioritise the risks – which are most urgent?

After the NIO has identified the risks, they need to rank them by person, type of danger and likelihood of those risks occurring (i.e.: which risks are most pressing for each person and, between people, whose needs are most urgent?) Generally, the alleged victim needs come first because they are likely to be the most vulnerable.

Minimise risks – how to respond?

Finally, the NIO has a responsibility to reduce the likelihood that anyone involved in the investigation will suffer harm. Mostly this means referring people at risk to specialists who have the expertise to help (e.g. doctors, trauma counsellors, housing organisations or security specialists). Do not underestimate the complexities of ensuring people’s safety. Covering the immediate safety needs of survivors/victims, other witnesses and the subject of a complaint can be difficult and costly and will require working in partnership with other organisations within the UN Mission. Once the NIO has formulated a response to all the risks, they should design a protection plan.

Support to victims.

In allegations of SEA survivors/victims will be provided immediate support, irrespective of whether an allegation has been substantiated or is still under investigation. Note that the UN [Protocol on the Provision of Assistance to Victims of SEA](#) provides guidance on this.

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Essential Elements to Conducting Investigations

- Ethical conduct
- Investigating the allegations, not an individual
- Presumption of innocence
- The investigator is not the decision-maker
- The investigator does not make moral judgments relating to any aspects of the investigation



Note to instructor – This slide from Lesson 3.1 should be revised again in order to reinforce to trainees the essential elements to conducting investigations:

- * NIO are expected to display ethical conduct. Ethical conduct represents values such as honesty, trustworthiness, integrity, and respect for the dignity of persons. This means principles of fairness, good faith and respect consistent with national and international laws and regulations.
- * NIO investigate the allegations, not the individual.
- * The presumption of innocence is a key aspect of due process and must be maintained during investigations.
- * The NIO is not the decision maker, they are the investigator. Their role is to establish the facts of an incident and to report these to the appropriate authority for a decision.
- * The NIO does not pass moral judgements on either the victims or the subject of the complaint.

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Responsibilities of Investigators

- Developing a written plan of the investigation
- Conducting the investigation, including gathering information, reporting and making recommendations
- Assessing/reviewing and advising on matters pertaining to the needs of the victim and other witnesses
- Assessing/reviewing and advising on matters pertaining to the subject of the complaint
- Establishing a multi-disciplinary team



Note to instructor – This slide from Lesson 3.1 should be revised again in order to reinforce to trainees the essential elements to conducting investigations:

- * Developing a written plan of the investigation.
- * Conducting the investigation according to the agreed protocol, including gathering evidence, reporting and making recommendations (Lessons 3.2-3.5).
- * Assessing/reviewing and advising on matters pertaining to the needs of the victim and other witnesses.
- * Assessing/reviewing and advising on matters pertaining to the subject of the complaint.

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Stages of NIO Investigations

1. Initial actions for protection of individuals and information
2. Gather and study background material
3. Plan the investigation
4. Gather documentary information
5. Interview witnesses
6. Analyse the information
7. Write investigation report

Investigation stages 4-7 will be covered in subsequent Lessons in Module 3 and Module 4.

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Lesson Takeaway

- The responsibility for investigating an allegation of misconduct rests with the TCC
- The NIO is the core investigatory function for member states to respond to an allegation of misconduct, and in particular to allegations of SEA.
- Initial actions protect individuals and information
- Investigation Plans are crucial to successful investigations
- The planning and conduct of investigations is focused on the impartial collection and analysis of information and protection through the mantra of 'do no harm'

Key Message: As an NIO you are a special asset responsible for investigating allegations of misconduct within your contingent, supporting your member state and contingent commander to ensure probity, transparency, best practice and accountability.

To this end, NIO should be aware of the following:

- * The responsibility for investigating an allegation of misconduct rests with the TCC.
- * The NIO is the core investigatory function for Member States to respond to an allegation of SEA.
- * Investigation plans are crucial to successful investigations.


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Encourage questions and open debate of the issues amongst trainees. Allow 10-15 minutes.

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 **Purpose:** The following TTX is a learning activity designed to enable NIO trainees to consider an SEA scenario and work through various commonly encountered issues in SEA investigations. TTX are built into the end of all Lessons in Modules 3 and 4 to consolidate and reinforce NIO learning through explanation, demonstration, imitation and practice.

 **Definition:** TTXs are set in an informal setting designed for trainees to discuss the principles and concepts of undertaking NIO investigations in a UN mission, using hypothetical but realistic scenarios. Importantly, this TTX helps trainees to better understand the challenges they will encounter as an NIO. The effectiveness of this TTX will be derived from the enthusiastic and active involvement of trainees.

 **Methodology:** NIO trainees are encouraged to discuss issues in depth, using a problem-solving methodology. NIO instructors are encouraged to act as a guide and oversee knowledge sharing, encouraging contributions from all trainees to generate solutions.



Divide the trainees up into groups of 2-3 individuals for the TTX.

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Scenario

Stella, a farmer struggles to support her family. She sends Bella, her 10-year old daughter to sell bananas at the peacekeepers' camp. One day Stella finds Bella lying in bed, crying and looking sick. Suspecting malaria, Stella takes Bella to the hospital, where Bella complains of pain in her stomach and legs. During the medical examination it is discovered that Bella has a vaginal infection and there are signs of recent sexual intercourse. Bella then tells her mother that, a few days ago, she was selling bananas around the camp. There is a peacekeeper, Steve, who always buys bananas from her. Steve asked Bella to follow him to an abandoned house behind the camp, promising to give her some food. Once inside the house, Steve took off her clothes, "did things to her", gave her some bread and told her to go home. Bella also said that many of the girls selling around the camp go to the abandoned house with the peacekeepers. When rumors of the sex between the peacekeepers and the local girls start spreading in the community, the community demands that the peacekeepers leave the town. Bella's uncle, a local militia leader, demands the peacekeepers be handed over to him for questioning about their relationships with the local girls.



Allow the trainees 5 minutes to read the scenario and record the salient facts of the case in their notebook. This has the dual purpose of training the NIO to become competent in notetaking and identifying key facts under simulated pressure.

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Discussion Points

- As your contingents NIO you have been assigned to investigate this incident
- Based on the information in the scenario:
 - Identify the SEA related misconduct
 - Identify the key elements to address during your investigation
 - Identify the lines of enquiry and sources of evidence
 - Identify specific challenges you may encounter during your investigation
 - Identify any other forms of possible misconduct



Allow trainees 10-15 minutes to discuss the following questions in their small groups of 2-3. Once trainees have had the opportunity to discuss these issues in their small groups the instructor should aim to facilitate a class discussion on the questions raised for between 15-20 minutes.



Instructors should circulate themselves around the classroom during the small group discussions. Instructors should also establish the following code of conduct for group discussions:

- * Be good listeners, do not interrupt others.
- * Be enthusiastic and actively involved.
- * Maintain mutual respect.
- * Apply your knowledge as an investigator to the issues raised.