

Lesson 3.1 – Principles of Investigation



The Lesson

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Lesson 3.1 Principles of Investigation



For an interactive start to this Lesson, ask the trainees if they have had experience in investigations. Ask them to tell the group about their specific challenges associated with investigations into misconduct or SEA. Also, have them tell the group about the characteristics of the current complex and challenging UN peacekeeping environment.



Note to instructor – recommend that lesson 3.1 be presented by an instructor who has professional experience as an investigator and who has a good knowledge of investigating SEA or SGBV. 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: As an NIO you are a special asset responsible for investigating allegations of misconduct within your contingent, including serious misconduct in the form of SEA. SEA is unacceptable and your work in this area supports the Secretary-General's zero-tolerance policy. Moreover, SEA undermines the legitimacy and *raison d'être* for UN Peace Operations and UN efforts to ensure peace and security, to provide POC, and to advance human rights and gender equality. This Module will give an overview of the principles of investigation in a UN peacekeeping environment. This means from this point forward you should try to be in the mind-set of being an NIO within a troop contingent deployed to a complex peacekeeping environment as part of the UN.

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Lesson 3.1 Content

- What is an investigation?
- What are the principles of investigations?
- What are the responsibilities of investigators?
- What is a victim centred approach?

As an NIO you are a special asset responsible for initially investigating allegations of misconduct within your contingent, including serious misconduct constituting SEA, supporting your member state and contingent commander to ensure probity, transparency, good practice and accountability and making sure that any cases where reasonable grounds exist to conclude that crimes are committed by members of the contingent are referred to by your state's competent (military) law enforcement and justice authorities. Any form of SEA is unacceptable and your work in this area supports the Secretary-General's zero-tolerance policy on SEA. Moreover, SEA undermines the legitimacy and *raison d'être* for UN Peace Operations and UN efforts to ensure peace and security, provide protection to civilians, and advance human rights and gender equality.

Here are the subject areas we will be covering:

- * What is an investigation?
- * What are the principles of investigations?
- * What are the responsibilities of investigators?
- * What is a victim centred approach?

It is important to understand up front that, NIO do not operate in total isolation but work in close coordination with their chain of command and other UN stakeholders. That said, they are required to undertake impartial investigations to ensure probity, transparency, good practice and accountability for misconduct. It is important that investigations into allegations of possible misconduct are thorough and conducted in a timely manner with sensitivity to any potential victims.

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Lesson 3.1 Learning Outcomes

- Explain what an investigation is
- List the principles of investigation
- Explain the responsibilities of investigators
- Describe a victim centred approach

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

At the end of the lesson the aim is for NIO to be able to assimilate the principles of investigation. Please take a moment to read and understand the requirements:

- * Explain what an investigation is.
- * List the principles of investigation.
- * Explain the responsibilities of investigators.
- * Explain investigative approaches.
- * Describe a human rights based, victim centred approach.

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Ask the class what they think an investigation is? Record between 5-10 answers on butcher chart or white board so the class can view the progress. If this goes well: ask them to give a mission example for the example they provide, e.g. if a student states that an investigation is designed to gather evidence or to determine the facts of a circumstance then ask them for an example of an instance where investigations into SEA have occurred within a UN mission area.

If the students are quiet, prompt them by asking what current missions they know of, what is the mandate of these missions and whether they are aware of any historical allegations of misconduct within these missions.

This discussion should take no more than 5-10 minutes.

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Defining an Investigation

- A legally based and analytical process
- Designed to gather evidence
- To determine whether wrongdoing occurred
- To determine the persons or entities responsible

An investigation is defined as a legally based and analytical process designed to gather evidence in order to determine whether wrongdoing occurred and, if so, the persons or entities responsible.

Breaking this definition down into sections, let us review the key aspects of this definition.

- * A legally based and analytical process is one that ensures probity, transparency, good practice and accountability for misconduct whilst adhering to core investigation principles, rules, procedural fairness and ethical conduct.
- * Designed to gather evidence. The role of the NIO is to focus on gathering evidence for the purposes of determining whether there has been misconduct. Allegations of SEA will always be investigated, irrespective of whether they constitute illegal acts or not and if substantiated they will always constitute serious misconduct.
- * To determine whether wrongdoing occurred. The evidence gathered in an investigation is designed to uncover if wrongdoing has occurred, based on the relevant standard of evidence, and if so to classify this wrongdoing into code of conduct violations, military discipline violations or in the most extreme of circumstances as criminal acts that require further criminal investigation.
- * To determine the persons or entities responsible. Linking the evidence gathered against wrongdoing is then taken a step further by connecting the wrongdoing to individual/s.

Investigations are thus a process of gathering evidence to establish facts in order to allow for a determination as to whether an individual engaged in suspected misconduct. Investigations are administrative in nature in accordance with the definition in SOP for Reporting of Allegations of Misconduct, including Sexual Exploitation and Abuse published by Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA). Ref. MINUSCA 2018.2.

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Purpose of Investigation

- A tool for collecting facts
- To maintain conduct and discipline, and reinforce command and control
- Provides for accountability
- Protects victims by deterring against possible impropriety
- Ensures legitimacy and basis for operations is not undermined

The purpose of an investigation is to collect the facts surrounding a particular allegation of misconduct. In executing this function properly, however, the investigation can achieve purposes beyond simply collecting facts. Professional and thorough investigations in cases of SEA are a clear commitment to protect the rights of men, women, girls and boys, and to prevent and respond to serious misconduct.

An investigation thus has clear protocols and procedures in order to provide the basis for accountability and to maintain conduct and discipline and reinforce command and control. In this respect misconduct investigations discourage others who may intend to commit prohibited acts and ensure accountability for those who have an allegation of misconduct or serious misconduct against them substantiated.

The process of investigating matters of misconduct is a function of the internal accountability system in the UN. It is important for individuals to see that there are consequences for misconduct. This requires a robust capacity to establish facts so that there will be consequences for this misconduct which is critical for achieving accountability. Individuals who may be inclined to act improperly are deterred by the fact that such conduct will be subject to effective investigation.

SEA constitutes a form of SGBV and predatory behaviour, can amount to a violation of fundamental human rights, has devastating consequences for victims and undermines the legitimacy and credibility of UN efforts towards peace and security, gender equality and protection. Conversely, responding to allegations through robust investigations that promote probity, transparency, best practice and accountability assists to reinforce the legitimacy and basis for UN operations.

NIO investigations into alleged misconduct are defined as administrative investigations, the purpose of which is to gather evidence in order to determine whether there are reasonable grounds to conclude that misconduct has occurred and hence a full criminal investigation is warranted. The standard by which the sum of the evidence gathered to uphold a misconduct

allegation is that of ‘on the balance of probability’, and not the criminal standard for bringing indictments or the even higher standard of ‘beyond reasonable doubt’.

That said, an NIO should seek to adhere to the same standards as a criminal investigation in terms of investigation planning, core principles, evidence gathering, interviewing and reporting in order to ensure the probative value of the evidence gathered does not impact the ability of any subsequent follow-on criminal investigation as a result of the misconduct investigation.

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Stages of NIO Investigations

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

It is important for NIO to understand the stages of an investigation. NIO must have to have a good understanding of the investigation work flow – from the initial actions, evidence preservation, planning and preparation, the execution of individual investigative processes, methods, procedures, analysis and research, evidence identification and collection, scene examination, canvassing, interviewing, photo arrays, forensic, etc., and their purpose and sequence in the investigation process – and that sometimes due to changing circumstances they have to be flexible and adaptable during an investigation.

An investigation can be broken down into seven broad stages:

- * Initial actions for protection of individuals and evidence
- * Gather and study background material
- * Plan the investigation
- * Gather documentary evidence
- * Interview witnesses
- * Analyse the evidence and clarify missing information – note that in addition to this phase analysis of evidence occurs throughout the course of an investigation
- * Write investigation report

Lessons 3.2 to 4.2 will discuss the substantive components of these broad stages, with the aim of giving the NIO the tools to undertake investigations. The purpose of breaking down investigations into these stages is to provide a consistent means of investigating misconduct.

Key Message: SEA represents serious misconduct and will always be investigated, irrespective of whether an allegation constitutes an illegal act or not. It should be noted that SEA disproportionately and profoundly impacts women and girls although men and boys can also be victims of SEA, with profound impacts around their masculinity. In all stages of an investigation, and particularly with allegations of SEA, the personal safety of the victim, witnesses and the subject of a complaint is paramount.

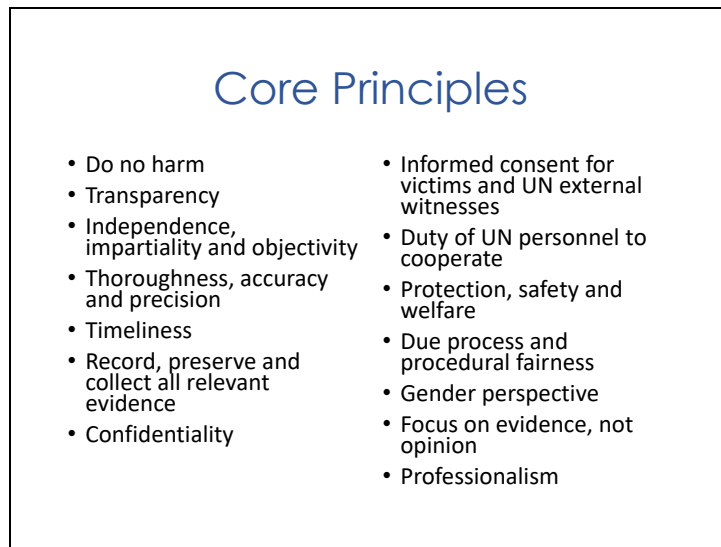
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Ask the class what they think investigation principles are? Record between 5-10 answers on butcher chart or white board so the class can view the progress. If this goes well: ask them to give a mission example for the example they provide, e.g. if a student states that an investigation principle is confidentiality ask them to provide an example of how confidentiality is maintained in a field environment.

This discussion should take 5-10 minutes.

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The main goal of the investigation is to gather evidence that proves or disproves the allegation on the balance of probabilities. NIO are not prosecutors. The role of NIO is to gather all relevant evidence so as to enable an authority to determine objectively whether an allegation of misconduct is substantiated.

Any investigation of misconduct should be conducted with due regard to a number of key principles:

- * Do no harm.
- * Transparency.
- * Independence, impartiality and objectivity.
- * Thoroughness, accuracy and precision.
- * Timeliness.
- * Record, preserve and collect all relevant evidence.
- * Confidentiality.
- * Informed consent for victims and UN external witnesses.
- * Duty of UN personnel to cooperate.
- * Protection, safety and welfare.
- * Due process and procedural fairness.
- * Gender perspective.
- * Focus on evidence, not opinion.
- * Professionalism.

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Do No Harm

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| <ul style="list-style-type: none"> • (Health)care as the first priority • Risk assessment • Appropriate preparation and training • Informed consent • Protection | <ul style="list-style-type: none"> • Respect, professionalism and empathy • Watch for signs of emotional distress • Special precautions • Prevent harm • Plan and prepare |
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The most important principle when collecting evidence is to do no harm. This includes doing no harm to victims, witnesses, intermediaries, local communities, colleagues, any other person involved in the collection of evidence on misconduct. It also includes doing no harm to any of the evidence encountered, whether it be physical, testimonial, or forensic, and keeping in mind the imperative to always perform a balancing act between the need to preserve evidence and the risks of tampering with or deteriorating that same evidence through improper actions. This is an overarching principle to all NIO activity and must be abided to at all times.

At a minimum, the principle of do no harm involves being aware of the security, privacy, health and other similar concerns of victims and witnesses, as well as taking measures to prevent and mitigate any potential harm that they may suffer. Particular attention must be paid to civilians and those who are particularly vulnerable, including children, people living with disabilities, the elderly and victims of SEA. Importantly, if you cannot guarantee that no harm will be done to a victim or a witness by a particular activity, you must not attempt to undertake that activity until the risk of harm has been removed or managed. If harm arises during the course of an investigative activity you must seek to remediate the harm done immediately.

Do no harm means preventing and minimising any unintended negative effects of activities that can increase people's vulnerability to physical and psychosocial risks. To this end, NIO should at a minimum:

1. Assess all situations for signs of physical or physiological harm and offer or arrange for immediate professionally trained health care as the first priority.
2. Conduct a risk assessment, focusing on safety and security of victims, witnesses and communities and listening to and taking into consideration safety and security concerns from victims and witnesses, before undertaking any evidence-gathering exercise.
3. Ensure team members are appropriately prepared and trained before engaging in collection activities, to the best extent possible.
4. Obtain informed consent from civilian victims and witnesses who agree to speak with the NIO to use and/or share the information provided, specifying to what ends. This must be done prior to any evidence-gathering exercise, ensuring that consent is also obtained for any specific

activity such as audio/visual recordings or photographs. Note, photographs of SEA victims or children are never taken during NIO investigations.

5. Protect the identity and safety of victims, witnesses and the subject(s) of the complaint as well as the evidence documented. It is incumbent upon the NIO, in cooperation with relevant agencies or local institutions, to do all in their power to protect witnesses, victims and subjects of a complaint and to promote their safety and welfare.

6. Act with respect, professionalism and empathy towards others, always with their safety and security in mind. All individuals concerned, including the subject of the complaint, have the right to be treated with respect and dignity.

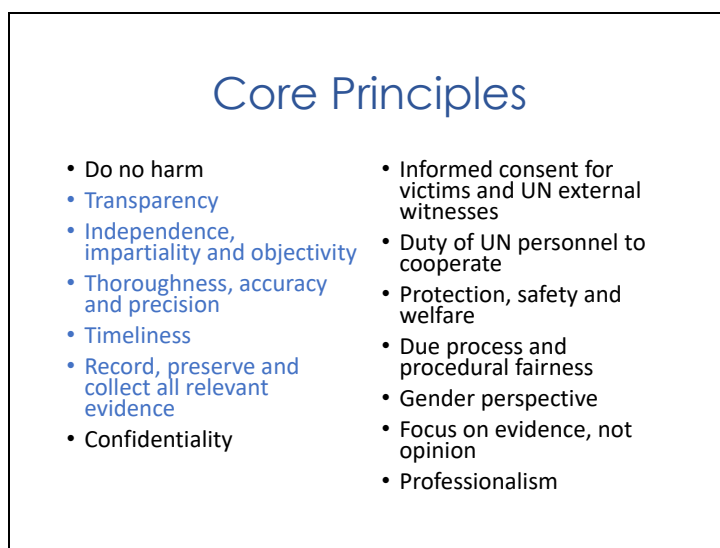
7. Watch for signs of emotional distress or re-traumatisation and stop, pause or postpone the interviews as required /needed by the interviewee.

8. Take special precautions when working with victims or witnesses of SEA.

9. Prevent harm to themselves and others by securing any scene from potential hazards before entering.

10. Plan and prepare adequately to ensure that investigations are logical, systematic and completed according to agreed timeframes.

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Transparency ensures that any investigation is fair, rigorous and reliable. Independence, impartiality and objectivity means that investigations must be conducted in a fair and equitable way. Evidence must be gathered and reported in an unbiased and independent manner to determine the validity of an allegation independent from individual subjectivity (bias caused by one's perception, emotions, or imagination). Investigators must be free, both in fact and in appearance, from any influence that could impair their judgment. Thus, NIO must be free of any influence that could impair their judgment and have no material, personal or professional interest in the outcome of the investigation and no personal or professional connection with any witnesses (especially a complainant or the subject of a complaint).

In acting objectively, NIO must maintain an open mind, considering the facts rather than personal feelings. NIO must not allow speculation, bias or discrimination to affect their investigations. Evidence to support and refute an allegation must be gathered and reported in an unbiased and independent manner. NIO must be able to:

- * Separate opinion from where the evidence leads.
- * Be objective and maintain healthy scepticism about any evidence received.
- * Never assume particular pieces of evidence are accurate without verification.
- * Always question their own assumptions.

For criminal investigations, human rights law requires that the investigators are not in the same chain of command as any of the subjects of the investigations, including those with command responsibility. In this regard, the NIO must also not be subject to the chain of command regarding his/her decision on what cases are to be referred to the criminal justice authorities for independent investigations.

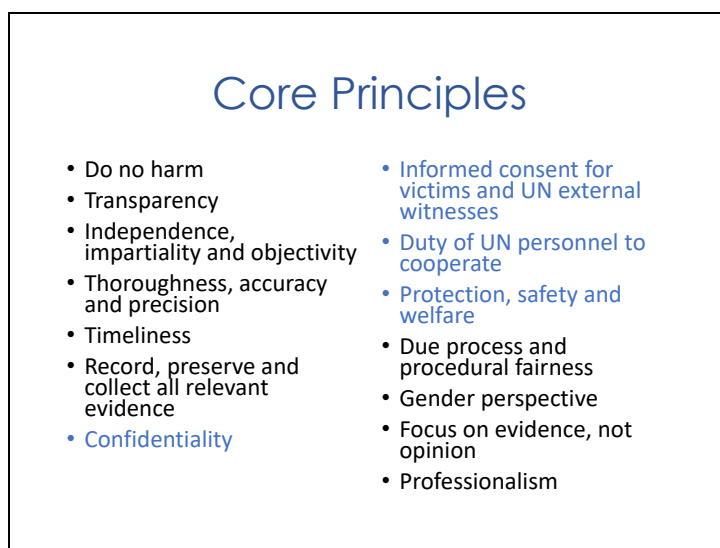
Thoroughness, accuracy and precision means that investigations must be conducted in a diligent and rigorous manner to ensure that all relevant evidence is obtained and evaluated, including evidence which might both support or refute an allegation of misconduct. An organised system and recording investigative steps and the results assists greatly in a thorough investigation. This includes systems that ensure evidence is handled, stored and recorded in

accordance with minimum standards. Any obvious departures from the basic principles concerning evidence collection, handling and preservation risks providing reasons to doubt its integrity or even its exclusion in any future process. The principal components to preparing for a thorough investigation are a safe and secure storage system, an investigations kit and folder, an investigations plan and a risk assessment and strategy.

It is in everyone's interest that investigations are conducted as quickly as possible without prejudicing quality. A number of factors (communication systems, travel, distance etc.) will influence what is a reasonable timeframe. However, as a general rule, investigations should be complete (i.e. final report submitted) within six months of receipt of complaint of misconduct and preferably much faster.

Never disregard or discard any evidence that appears even vaguely relevant, while continuing to consider all possible outcomes. At the early stages of an investigation, it is not possible to fully anticipate what might be relevant and probative. Conclusions cannot be safely reached until the entirety of the evidence has been gathered. This requires that the NIO must record, collect and preserve all evidence gathered. They must also not limit the scope of their investigation by drawing premature conclusions about what happened. NIO must continually consider all possible outcomes and whether witnesses and evidence are relevant, adequate and reliable. The preservation of all evidence requires the NIO to ensure that it is not damaged, does not deteriorate or become contaminated and is secured. As well as being approached objectively, this requires the implementation of a chain of custody for all physical, documentary and digital evidence.

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Confidentiality, informed consent and safety and welfare are essential principles for all investigations. These three are focused on basic and essential protection. Confidentiality must be maintained at all times. Anonymity allows the complaints process to function. Safety and welfare of all victims, complainants, witnesses, and subjects of a complaint must be paramount.


The general principle of confidentiality is such that the disclosure of the identity of complainants, witnesses, victims, the subject of the complaint and any others involved in an investigation, is restricted and is permitted only on an authorised or need to know basis, and only in certain exceptional circumstances. Confidentiality is not only an ethical obligation but an operational necessity as privacy and security measures are often critical in building trust with victims and witnesses and a pre-requisite to them accepting to disclose information.


Confidentiality is important because it protects the privacy and safety of all the people involved in the complaint. Witnesses may fear retaliation from the subject of the complaint, community or co-workers. Moreover, the experience of abuse can be very intimate and a matter of shame for victims of SEA, their family and/or community – it may even lead others to reject or harm them. Even the subject of a complaint has an interest in confidentiality – her/his reputation will suffer if people know about the complaint and s/he may be targeted in revenge attacks. Therefore, breaches of confidentiality undermine everyone's confidence and trust in the UN and the investigation itself. It will also undermine the NIO ability to establish the facts.

In some instances, it will not be possible to guarantee confidentiality e.g. where the witness' identity will be readily inferred. In such cases the guiding principle should be that of informed consent. Information needs to be shared on a need-to-know basis with the parameters of this being established at the planning stage. The identity of those involved should only be disclosed on an authorised basis.

When documenting SEA, NIO should be particularly rigorous in protecting confidentiality. Victims of SEA may have particular concerns about evidence being shared, including negative

consequences stemming from retaliation by family members or the local community, coercive pressure to marry assailants or lie about what happened, and sometimes punishment or arrest in situations where sexual activity outside of marriage or homosexual sex is condemned.

 What should be kept confidential? All aspects of a complaint are confidential, namely the fact and nature of the complaint, the identity of the key trainees (the victim, the complainant, the subject of complaint and witnesses) and the investigation itself.

 What is accidental and intentional disclosure and how can it be prevented? Confidentiality is breached by unauthorised disclosure, accidental or intentional. The NIO should undertake a risk assessment of the impact of accidental and intentional disclosure, including measures to mitigate if a breach occurs.

Accidental disclosure occurs when key details about the complaint are inadvertently revealed, generally in casual conversation or by documents falling into the wrong hands. To minimise the risks of accidental disclosure, NIO should develop an action plan, which identifies the risks to confidentiality, defines who is responsible for addressing those risks in each stage of the investigation and identifies ways to prevent disclosure.

Intentional disclosure is more difficult to prevent – by definition it involves someone who is trusted with evidence disregarding the rules and telling others. NIO can reduce the risk by limiting the number of people who know about the complaint, choosing team members carefully and after extensive background checks, remaining alert to conflicts of interest and taking strong action against anyone who knowingly broadcasts confidential evidence about the investigation.

It is essential that the investigation plan addresses how to keep the identities of victims, declarers, witnesses and the subject(s) of complaint confidential. This includes:

- * Only disclosing identities to those who need to know.
- * Accessing interpreters in such a way as to maximise confidentiality.
- * Carefully considering how the confidentiality of the complainant in particular is to be preserved when informing the subject of the nature of the complaint. There are potential conflicts of interest in such situations in that the subject needs to know the details of the allegation if s/he is to have an opportunity to respond. This may entail the NIO exercising a great care in the presentation of evidence to the subject of a complaint.

The informed consent of victims and UN external witnesses for any investigative activity is a core principle of any NIO investigation. Procurement of evidence from non-UN personnel without informed consent may have serious implications for the individual, the community and any future use of the evidence gathered. NIO must obtain the informed consent of all victims and UN external witnesses prior to any engagement with them, including before they are interviewed, referred to any support services, or have their evidence recorded or shared with third parties.

The consent of victims and UN external witnesses must be informed, voluntary and explicit. Obtaining informed consent means that the victim or witness (or any other person affected by the investigative process) is fully aware of the consequences that may arise as a result of their

interaction with the investigation and continue to consent to that interaction in full knowledge of the consequences. They should be informed of the process of the investigation, confidentiality procedures, the intended use of the gathered evidence and the risks and/or benefits for them. Obtaining voluntary consent means that the victim or UN external witness has not been coerced or put under any pressure to provide consent. The NIO should be aware of any factors that might impede the ability to provide informed consent, such as age or intellectual disabilities, in which case, consent must be obtained from a legally authorised representative.

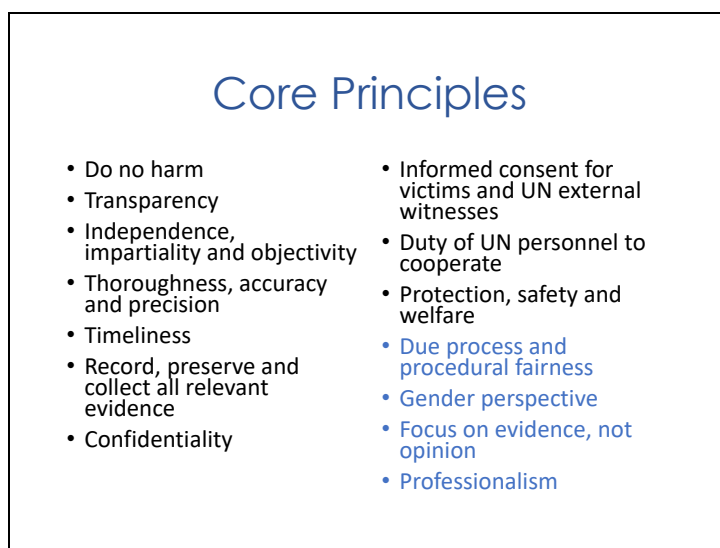
Obtaining explicit consent means that the informed consent obtained is explicit and recorded, preferably in writing with signature or recorded orally by means of audio or video recording. To ensure that informed consent is obtained, NIO should, where possible, ask the victim or witnesses to detail their grasp of the investigation process to exclude misunderstanding or iron out any confusion or ambiguity.

UN personnel, including members of the contingent that the NIO is assigned to, have a duty to cooperate fully and may not withhold their consent. Only the subject of the investigation and any witnesses whose testimony would disclose criminal behaviour of their own, may assert their right to remain silent (which is not a right to proactively mislead investigators). In fact, UN personnel have a duty to proactively report any information or evidence they have about serious misconduct and disciplinary measures can and should be sought where they intentionally fail to comply with this duty.

The protection, safety and welfare needs of those involved in an investigation is paramount. This includes victims, witnesses, complainants and the subject of a complaint. As part of the principle to ensure protection, medical, psychological or security needs must be assessed prior to commencement of documentation processes and on an on-going basis. These needs can be summarised under the following three areas:

- * Safety – this is crucial for reasons outlined above. Whilst the TCC may be unable to guarantee safety, it is essential that a witness plan is developed and reviewed - and the witness advised as to the limits of the TCC capacity to protect (where such exist) when 'informed consent' is sought. Steps to promote safety might include establishing a 'safe zone,' moving to a 'safe house,' relocating the subject, relocating the witness or maintaining an effective security/ law enforcement presence.
- * Health – upon receipt of informed consent to do so, medical intervention should be arranged to promote the witness' health and well-being to, for example, prevent unwanted pregnancy, treat injuries or treat sexually transmitted diseases. Where there is a report of sexual abuse within the previous 72 hours the victim should be referred immediately if medical treatment for HIV post-exposure or emergency contraception is to be effective.
- * Psycho-social – to help the witness deal with fear, guilt, shame etc. via access to support groups and/or crisis counselling.

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Due process and procedural fairness are legal principles that requires the NIO to respect all the legal rights owed to all persons concerned with an investigation, witnesses and the subject of the complaint. Investigations should be initiated, conducted, and reported in accordance with all applicable rules, regulations, and guidelines including due respect for the rights and privacy of those involved. Procedural fairness means fairness in the procedures followed when arriving at an administrative decision. It is a principle that is fundamental to the administration of justice. Administrative decision makers are required to accord procedural fairness before making a decision that will affect a person's rights, interests or legitimate expectations.

Procedural fairness usually involves two requirements:

- * The fair hearing rule. The fair hearing rule means that the decision maker must give a person the opportunity to be heard before making a decision that affects them.
- * The rule against bias. The rule against bias means that the decision maker must not be biased in a way that prevents them from making an objective and impartial decision. A decision maker must be free of actual bias as well as any apprehension of bias.

NIO investigations shall be conducted in a timely manner and shall respect those legal rights of due process and procedural fairness that are provided to the national contingent member by national and international laws. Procedural fairness means fairness in the procedures followed when arriving at an administrative decision. In other words, procedural fairness means acting fairly in decision making.

A gender perspective strengthens investigations and reports by contributing to an analysis that addresses the adverse and differing impacts of misconduct on women, men, girls and boys. NIO must adopt a gender perspective throughout their documentation and investigation activities to understand the difference in status, power, roles, and needs between men and women. Not all gendered impacts will be of a sexual nature or be immediately obvious, nonetheless NIO should take steps to reveal and explore all gendered impacts of the misconduct investigation. For example, serious misconduct amounting to SEA may have a gendered element based upon the specific targeting on women, girls, men, and/or boys, or

because of the differences in status, power, roles and needs of males and females in a specific context.

A gender perspective also informs an awareness of the challenges involved in collecting evidence of SEA, particularly the societal, cultural or religious factors, stigmas, lack of readily available evidence (due to the under-reporting or limited documentation), informal settlements that can happen at any stage between the alleged perpetrator and the victim, or the family/community, fear of reprisals (including losing job or income) and inadequate or limited support services at national level.

Being cognisant of the gender-specific protection needs of victims of SEA improves investigatory outcomes. In particular, it is particularly important to watch for signs of trauma and to refer victims to appropriate medical and psychological services. Victims of SEA may also have specific concerns relating to the collection of their testimony. Consider victims or witnesses preference for the gender of the interviewer and the location of any interview conducted to ensure a private and safe location where they will feel comfortable.

Focus on evidence, not opinion. Investigations should be fact-led. It is incumbent on the NIO to present facts as they are, in true, correct, or exact form and free from error, ambiguity or defect. Investigation reports and conclusions must be supported by adequate, accurate records and documentation. Premature assessments of what the evidence might reveal should be avoided. Fact-led investigations ensure that the truth of what happened is revealed, rather than a partial view based on NIO preconceived idea of what may have happened. The investigation conducted must be verifiable, accurate, independent and impartial. This will provide those subsequently reviewing the investigation with a clear view of the precise relevance and probative value of evidence. It will protect NIO and the integrity of the process from any subsequent complaint(s).

Professionalism means that all those involved in investigations must have the appropriate training, skills and knowledge, sound judgment and skill to fulfil their responsibilities. NIO must be trustworthy, dependable and personally accountable for the decisions they take throughout any investigation. NIO engaging in investigative processes need to be confident of their own competence prior to undertaking a task. If they believe they do not have the competence to undertake the task, they should refrain and seek advice from appropriately qualified personnel (for example OIOS, FPM etc.) The methodology and techniques used in the investigation must be appropriate for the objectives and circumstances of each investigation.

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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

Now that we have looked closely at the principles that must be applied to investigations, we will look further at essential elements to conducting investigations. In addition to the core principles, there are several essential elements that must be understood:

- * 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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Ask the class what they think the responsibilities of investigators are? Record between 5-10 answers on butcher chart or white board so the class can view the progress.

If this goes well: ask them to give a mission example for the example they provide.

This discussion should take 5-10 minutes.

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Responsibilities of Investigators

- Developing a written plan of the investigation
- Conducting the investigation, including gathering evidence, 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

Investigators are responsible for developing a written plan of the investigation and conducting the investigation in accordance with established complaint procedures. This includes:

- * Developing a written plan of the investigation (Lesson 3.2).
- * 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.



Depending on the nature and seriousness of the alleged misconduct, establishing a multi-disciplinary team around the NIO may be advisable, and consideration of using a professional with relevant experience and skills in counselling may also make sense. Other UN investigation personnel will be able to assist the NIO at the request of the TCC member state, and as necessary, in the conduct of the investigation, including the identification and interviewing of witnesses, the recording of witness statements, and the collection of documentary and forensic evidence. Other UN personnel may also be involved in the provision of administrative and logistical assistance.

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At minimum NIO must be:

- * Professional, exercising sound judgment and exhibiting skill. NIO demonstrate professionalism by displaying integrity in all actions and decisions, fairness and impartiality without fear, favour, affection and without undue influence or ill will, respect for the dignity of all people including their need for confidentiality, discreetness and preservation of their privacy, and the application of skill, care and diligence in all undertakings.
- * Responsible, trustworthy, dependable and personally accountable for the decisions they take throughout the investigation. Responsibility is invested in NIO to be transparent and accountable for the professional conduct of their investigations.
- * Qualified, experienced in interviewing and (at least) trained in NIO investigations. In order to ensure professional care and competence, NIO must receive training in the skills and knowledge required to fulfil their responsibilities. Member states must ensure that NIO receive the necessary training, supervision, emotional and psychological support to undertake investigations into circumstances whereby persons have been sexually exploited and/or abused.
- * Independent, having no material, personal or professional interest in the outcome of the complaint and no personal or professional connection with any witnesses (especially the complainant and the subject of the complaint).

It is extremely important that NIO have extensive experience in conducting interviews – even in the course of other duties. Moreover, they should be extremely knowledgeable about UN and national policies in relation to SEA and have knowledge of other thematic areas of UN peacekeeping such as WPS, CAAC/CP, POC and humanitarian action.

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Key Skills for Conducting an Investigation

- Planning
- Communication
- Thoroughness
- Careful listening
- Observation
- Adaptability
- Structure
- Cultural sensitivity
- Analytical
- Curious
- Common sense
- Creativity
- Specificity
- Investigative

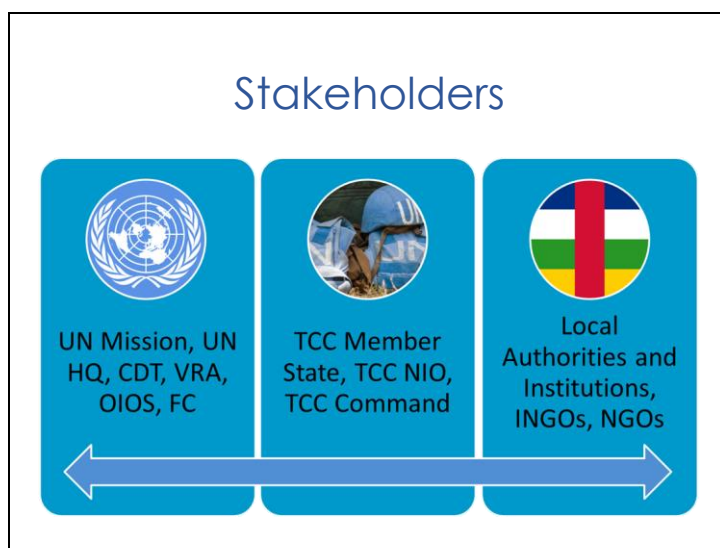


Ask the group to describe in their own words these key skills for conducting investigations.



Investigators should be extremely knowledgeable about policies in relation to SEA, conduct and discipline, and protection.

Slide 19



TCCs are required to include NIO in their contingents to ensure that investigations start in a timely manner. Key stakeholders in any NIO investigation can include:

UN Entities:

- * DPO/ UNHQ NY
- * CDU/CDT
- * OIOS
- * FC
- * Mission HQ
- * Other Mission Investigators [FPM, BOIs, SIU]
- * IRTs
- * Victims' Rights Advocate
- * Other UN Agencies, Funds and Programmes [UNICEF, UNHCR, etc.]

TCC:

- * TCC Commander and Command Structure in Mission
- * TCC Military Police

In-Mission Local Authorities:

- * Local Government Officials and Entities
- * NGOs/INGOs/Local advocacy groups [*DRC, ACTED, MSF*]
- * Local religious/community leaders

NIO should seek to understand the mandate, functions and roles of each of these entities, their presence or absence, and that their cooperation or stonewalling can have a tremendous impact on investigative activities. Understanding the role that each of these actors play and how they can either assist or prejudice an investigation is crucial, especially the impact of local advocacy groups or religious leaders on the willingness of victims to come forward.

Slide 20



What is a Victim-Centred Approach?



Ask the class what they think victim-centred approach means: record between 5-10 items on butcher chart or white board so the class can view the progress. If this goes well, ask them to give a practical example.

This discussion should take 5-10 minutes.

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Victim-Centred Approach

- Needs and priorities of victims at the forefront
- Protection, safety and minimising harm
- Prioritising confidentiality
- Support services
- Physical and psychological wellbeing
- Appropriate interviewing techniques, particularly with children
- Avoiding re-traumatisation

A victim-centred approach means placing the needs and priorities of victims at the forefront of any response. Every effort must be made to ensure that any victim is provided with the necessary means for protection and rehabilitation. This is especially important in investigations into allegations of serious misconduct amounting to SEA.

Each victim is to be regarded as a single individual (victims are not a single homogenous group). This involves listening to victims to assess individual needs and promote their rights and interests. Investigations must also take appropriate action to protect persons from retaliation.

Integrating a victim-centred approach means:

- * Placing victims needs at the forefront of the investigation.
- * Enhancing protection, safety and minimising harm.
- * Prioritising confidentiality and ensuring informed consent is respected.
- * Ensuring evidence about support services, legal and human rights is widely available and accessible to victims.
- * The physical and psychological wellbeing of any victim must be a primary concern throughout the investigation process.
- * The use of appropriate interviewing techniques with victim and witnesses, particularly with children.
- * Every effort should be made to avoid re-traumatisation of victims and witnesses by them having to repeat their stories on numerous occasions.
- * Realising that the victims may have been subjected to other types of misconduct, crimes or violations of their human rights, beyond the particular case that the NIO is investigating, which requires particular attention to their needs and circumstances.

The victim may have immediate and evolving safety and health needs. The victim might have sustained injuries (if violence was used) which may not be visible, including psychological. Similarly, if there is evidence to suggest that sexual activity has occurred within the past 72 hours the victim should be immediately referred for medical treatment in order to maximise

the effectiveness of emergency contraception and treatments to prevent HIV. Urgent medical assistance and counselling must be made available to anyone in matters involving allegations of SEA. This will generally be through referral to the appropriate service provider within the mission area. The NIO should thus have a good understanding of what service providers are within the mission area.

Slide 22

Needs of the Victim

- Being treated with dignity and respect
- Access to a safe, supportive, non-judgmental environment.
- Access to appropriate evidence
- 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 evidence. Examples:
 - * Providing verbal and/or written evidence 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.

It is also important to remember that members of the investigation team may be victims themselves – they could be a professional working in one of the sectors involved who may or may not have disclosed their own experiences. 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 other victims being made to feel stigmatised, silenced or exploited.

Slide 23

Trauma

- Signs of trauma:
 - Memory loss
 - Depression, aggression or social isolation
 - Lack of focus
 - Recurring nightmares, flashbacks or intrusive memories
 - Medically unexplained physical complaints
- Avoid assumptions
- Focus on narrative and conversational approach
- Develop trust
- Acknowledge pain and trauma
- Manage your own emotions

It should be recognised that victims and witnesses who provide evidence or any other form of assistance may be vulnerable to additional trauma. NIO must understand this and take steps to manage these risks, including identifying and preventing traumatisation. In particular, NIO should:

- * Familiarise themselves with signs of trauma, such as memory loss, sudden changes of behaviour including depression, aggression or social isolation, lack of focus, recurring nightmares, flashbacks or intrusive memories of the events, medically unexplained physical complaints, etc.
- * Not assume that the victims or witness are evasive or otherwise distorting the truth.
- * Focus on the narrative and elements of the misconduct. Use a conversational approach rather than a rapid series of questions.
- * Ensure that victims or witness are comfortable and develop a relationship of trust with the NIO. Understand that this may take time.
- * Acknowledge the victim or witness' pain and trauma.
- * Do not take strong reactions by victims or witness personally and managing their own emotional responses throughout the investigation process.

Slide 24

Lesson Takeaway

- Investigations are process designed to gather evidence and establish facts
- The role of NIO is to gather all relevant evidence so as to enable an authority to determine objectively whether an allegation of misconduct is substantiated
- NIO are responsible to their contingent commanders to conduct fair, impartial and professional investigations
- Do no harm
- Needs and priorities of victims are at the forefront of investigations

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:

- * Investigations are process designed to gather evidence and establish facts.
- * The role of NIO is to gather all relevant evidence so as to enable an authority to determine objectively whether an allegation of misconduct is substantiated, and not to judge the victim or the subject of the complaint.
- * NIO are responsible to their contingent commanders to conduct fair, impartial and professional investigations.
- * Do no harm.
- * Needs and priorities of victims are at the forefront of investigations.


Slide 25





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.

Slide 27

Scenario

Patricia is 19-years old and takes care of her 6-year old brother. After the United Nations military contingent deploys in her town, she goes to their camp to ask for a job to earn money to send her brother to school. She meets with a peacekeeper inside his room in the camp. He tells her she is beautiful and gives her a job to clean his room and wash his clothes. Some days later, the peacekeeper finds Patricia cleaning his room and tells her he wants to have sex with her. When she refuses, he tells Maria that she will have sex with him if she wants to keep her job. She then has sex with him inside his room. Patricia wants to stop going to the camp, because she is afraid that people in town may find out about the sex, but she really needs the money. She is afraid to complain fearing what the peacekeeper may do to her or her brother. She does not know his name, but he seems to be important, as everyone calls him "Babu" (sir). She remembers that he had some big things on the shoulders of his uniform.



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.