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Policy on the Protection from Sexual Exploitation and Abuse (PSEA)

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Terre des hommes
Helping children worldwide.

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1. Background to this policy

1.1 Reference framework

This policy follows on directly from the Terre des hommes' Global Code of Conduct (GCoC), which sets out the importance of and requirements for the good conduct of staff and establishes a systematic obligation to report any behaviour that contravenes it. Any form of sexual exploitation and abuse (SEA) of our beneficiaries and the communities in which we work is a profound betrayal of Tdh's fundamental values, as well as of our mandate to protect vulnerable populations. All our employees, including consultants and partners, are therefore required, without exception, to take all the necessary measures and undertake high levels of due diligence to prevent and manage any suspected or proven case of SEA.

Obligations with respect to the Protection from Sexual Exploitation and Abuse (PSEA) derive from international human rights law, in particular the provisions on combating trafficking in human beings.^[1]

In addition, the 2003 United Nations General Secretariat's bulletin sets out the concept of SEA and its total ban in United Nations' partner organisations. The work conducted in the Task Force of the Inter-Agency Standing Committee^[2] on SEA complements this framework. The policy is also the result of research and discussions based on international good practices in SEA.^[3]

Several types of behaviours in this policy are also sanctioned by national criminal law in most of the countries in which we operate, and a systematic analysis must be conducted of the national legislation.

This policy applies exclusively to the protection and management of cases against beneficiaries and members of communities over the age of 18. The Child Safeguarding Policy (CSP) shall apply to any cases relating to a child.^[4] This policy sets out the various types of abuse towards the latter and regulates all the methods for prevention and risk management.

^[1] United Nations *Convention against Transnational Organized Crime* of 15 November 2000; Additional protocol of 15 November 2000 to the United Nations Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children of 15 November 2000.

^[2] The IASC Task Force was set up by the IASC in 2012 to create a culture of accountability and protection against SEA at every level in the humanitarian system and is open to all interested humanitarian organisations.

^[3] Documentation from the IASC Task Force AAP/PSEA, MOSS PSEA, CHS Alliance, UNWomen, UNODC, International Council of Voluntary Agencies, WHO, UNDP, IFRC, etc.

^[4] In accordance with Article 1 of the *Convention on the Rights of the Child*, a child is understood to be any human being under the age of eighteen.

1.2 Policy Objectives

With this policy, Tdh has set up the SEA risk prevention and management strategy and specified its commitments to a zero-tolerance approach.^[5]

This policy is based on a victim/survivor-centred approach^[6] to all the stages in the prevention and case management that complies with the victims' wishes and the overall "Do No Harm" framework^[7].

This policy governs and sets out SEA's risk management policy and is based on the following areas:

1. Community Engagement
2. Prevention
3. Response
4. Management and coordination

The policy aims at:

- meeting our legal, contractual and moral obligations on PSEA;
- setting out measures for the prevention of SEA;
- setting out procedures for managing SEA cases;
- informing and educating staff and partners about the risks associated with PSEA and their obligation to act;
- recognising the importance and role of each of Tdh's players and specify their level of responsibility in preventing and managing SEA cases.

This policy is supplemented by procedures, guidelines and tools to ensure it is implemented.

^[5] See point 1.4 Definitions

^[6] See point 1.4 Definitions

^[7] Concept derived from the Do No Harm project, which began in 1994 and consists of a learning process in many international organisations to identify the interaction between aid delivery and the wider context to minimise the risk of aid being diverted in conflict situations. See M. B. Anderson, *Do No Harm: How Aid Can Support Peace-Or War*, Cambridge, 1999.

1.3 Scope

The policy applies to all staff from headquarters and in the field regardless of their contractual arrangement, including consultants, professionals under different contractual arrangements and our partners who are required to sign the GCoC. To a degree, it also applies to suppliers and other professionals with whom Tdh collaborates without a contractual arrangement by systematically implementing standard contractual clauses.

This policy must be followed and applied in all the countries in which Tdh operates, irrespective of any less binding legislation.

The following behaviours are covered by the policy:

▶ **Sexual abuse**

Any form of sexual abuse as defined in point 1.4 is completely prohibited, regardless of its form or the circumstances in which the abuse occurs.

▶ **Sexual exploitation**

Any form of sexual exploitation as defined in point 1.4 is completely prohibited, regardless of its form or the circumstances.

▶ **Consensual sexual relations with beneficiaries or members of the community where Tdh is present who are over 18 years of age**

Such relations, whether occasional or regular, are based on an intrinsically unequal power dynamic and undermine Tdh's credibility and integrity; they are therefore strongly discouraged. Every employee has an obligation to inform his or her superior as soon as possible if such a situation occurs.

▶ **Abuse of power**

Any direct or indirect abuse of power over a beneficiary or a member of the community will be reported to the competent authorities according to the legal framework and barring exceptional duly documented circumstances.^[8] The appropriate disciplinary measures will be ordered according to the staff regulations in force in the programme country or at headquarters.

▶ **Sexual activities with a child (under 18)**

See *Child Safeguarding Policy*. According to the rules set out in the latter, any sexual activity with a child is prohibited.

^[8] See *Global Code of Conduct*

1.4 Definitions

Tdh uses the following definitions in this policy:

▶ **Sexual abuse**^[9]

Actual or threatened physical abuse of a sexual nature, which may take place by force, coercion, violence or in situations of inequality, hierarchical relations or a breach of trust. This term includes, but is not limited to, acts of rape, harassment, coercion, child pornography, non-consensual sexual acts or any other sexual offence.

This means that physical force is not necessary for sexual abuse to be considered. Such an act may also occur in situations where apparent consent has not been given, in situations of inequality, psychological pressure or coercion. Consent to drink alcohol or use drugs must not under any circumstances be considered consent to sexual activity and in no way diminishes the perpetrator's responsibility.

▶ **Sexual exploitation**

Any actual or attempted sexual abuse of a person in a position of vulnerability, trust or where there is a power differential including, but not limited to, profiting financially, socially or politically from the sexual exploitation of another. Prostitution, even when legal, is a form of sexual exploitation.

This means that exploitation can also occur when an individual is an intermediary for the abuse.

▶ **Victim or survivor**

A person who is, or has been, sexually exploited or abused. For the purposes of this policy, this is a person who has been sexually abused or exploited by a person bound by a contract with Tdh.^[10]

▶ **Zero tolerance**

Approach consisting in severely punishing any person under contract^[11] with Tdh who has committed a sexual offence against beneficiaries or members of the communities in view of the unacceptable nature of such an act, whether this occurred as part of their Tdh activities or in a private context.

^[9] Terre des hommes applies the definitions set out in the *United Nations Secretary-General's Bulletin* in 2003 – ST/SGB/2003/13.

^[10] This policy recognises the validity of both terms and that they can be used interchangeably. The term "survivor" is seen by some as more positive because it suggests resilience (see for example the United Nations Glossary, available at: https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf The "Rape, Abuse & Incest National Network" (RAINN), the largest network in the United States fighting sexual violence, uses the term "victim" at the start of the process, in accordance with the steps of the legal process, and "survivor" to define people who have made progress in their recovery. The organisation suggests asking the person what terminology they prefer.

^[11] See point 1.3 Paragraph 1

2. Areas

To prevent and manage possible cases of SEA, and ensure the reporting process is effective, Tdh bases its approach to protection on the following:

2.1 Community Engagement

The mainstay of the work that needs to be carried out to ensure effective protection from sexual exploitation and abuse by our staff is at field level as we often work in situations where people may find themselves in highly vulnerable situations. To implement this policy, Tdh makes it a point of honour to engage actively the local communities and people and tries to encourage setting up a partnership to improve our understanding of the various issues and dynamics. This requires support in several areas:

▶ **Mapping local stakeholders and organisations**

To improve our understanding of the challenges and specificities of the local contexts in which the teams operate and to develop the appropriate tools and means of communication, it is important that each delegation is able to identify the key stakeholders and entities that could play a role at community level in preventing, reporting and managing SEA incidents.

▶ **Awareness-raising**

Local communities are made aware of their right to unconditional humanitarian aid, of the importance of denouncing any request for sexual favours, any abuse or pressure towards them, of the strict ban on staff engaging in such behaviour and of the mechanisms in force to report any behaviour that breaches Tdh's GCoC. Emphasis must be placed on how best to communicate with beneficiaries and communities by using visual tools in a language and form that is adapted to the local and cultural context, as well as on providing appropriate training for the various stakeholders.

▶ **Adapting reporting tools and the mechanism to local realities**

To improve the level of reporting of SEA cases by the local people, we must also improve the understanding of the issues that are specific to each community and adapt the reporting mechanisms to the realities on the ground.

▶ **A sensitive approach to the dynamics of gender, diversity and social inclusion**

The tools and mechanisms to be put in place must be designed so as best to reflect everyone's challenges and specificities and ensure they remain fully accessible to all. It is therefore crucial, when they are developed and implemented, to combine and consider the various points of view and priorities of the different groups and to ensure each actively participates and is complied with during the process. The tools and mechanisms must also benefit all the different groups in a community or who benefit from Tdh's assistance, regardless of their race, ethnicity, colour, caste, religion or belief, status, origin, nationality, politics, gender, sexual orientation, disability or age.

2.2 Prevention

EAS cases are a serious violation of the trust placed in us by our beneficiaries, the members of the communities in which we work, the donors and the public and it is Tdh's duty to create and maintain an environment that ensures these risks are prevented. Given that the relationship between the stakeholders collaborating with Tdh, the beneficiaries and the members of the communities where we are operating is by its nature unequal in terms of power relations, Tdh must remain vigilant and avoid any action that would suggest or imply that a sexual act could be required as a condition for providing aid. Preventing and mitigating risks are a priority for Tdh, which is particularly focused on improving the understanding of the causes and mechanisms in a society that could enable such abuse. This effort is supplemented by systematically incorporating the EAS risk management cycle in all of Tdh's actions.

Terre des hommes' preventive approach is based on the following:

► **Promoting an institutional culture of transparency consisting of:**

- Promoting and ensuring a strong commitment by the leadership and management teams to the fight against SEA cases.
- Communicating Tdh's zero-tolerance approach clearly to all levels in the organisation and to all stakeholders and the consequences of a failure to adhere to this approach.
- Helping to fight at every level against the culture of silence, taboo and the abuse of power.
- Establishing a culture of transparency, respect for the self and boundaries.

► **Establishing a SEA risk management cycle**

- Consider the notion of SEA at all levels and from the early project concept stage.
- Identify and analyse SEA risks based on the economic, sociological and cultural contexts of each programme, project community, beneficiary and employee.
- Prevent risks from occurring and put forward measures to reduce these through close collaboration between headquarters and the field.
- Manage incidents.
- Monitor, evaluate and consider lessons learned through the implementation of SMART indicators.

► **Constant monitoring of best practice consisting of:**

- Monitoring literature and research on criminology, victimology, sociology, abuse, exploitation, gender-based sexual violence, etc.
- Legal monitoring and updating of internal rules.

- ▶ **A focus on the project's beneficiaries and communities (see also point 2.1) consisting of:**
 - Systematically consider principles of accountability, transparency and quality throughout the project's life cycle.
 - Put in place safeguards and ensure that the rights of individuals are met.
 - Communicate clearly about behaviours that will not be tolerated by Tdh, clarify the legal procedures, explain the consequences for those who violate the rules and the protection guarantees for victims/survivors and witnesses.
 - Ensure that clear and frequent training sessions are regularly conducted and adapted to the context.

- ▶ **Setting up a PSEA coordinator**
 - See "*Roles and Responsibilities of the Abuse Focal Point*", which should be adapted to each local context.

- ▶ **Active contribution from Human Resources**
 - See "*Roles and Responsibilities of Human Resources*", which should be adapted to each local context.

- ▶ **Expected behaviour with partners and suppliers consisting of:**
 - Conducting a risk assessment before formalising a new partnership, considering the potential vulnerability of community members and beneficiaries.
 - Verifying if there is a SEA policy, documentation and practices in place for partners.
 - Including a contractual clause on the GCoC and SEA in all partnership agreements and service contracts.
 - Setting up trainings or conducting a briefing to emphasise the partners' responsibility and help implement a policy if needed.
 - Communicating our approach to suppliers and professionals with whom we collaborate outside of partnership agreements.
 - Communicating transparently and regularly to partners on SEA and on the obligations of all stakeholders to ensure compliance with this policy (reporting, consequences of non-compliance and safeguards for the victim/survivor(s) and/or witness(es)).
 - If necessary, additional assistance should be provided to partners in line with this policy.

2.3 Response

► Procedure for reporting cases

- Tdh has set up an internal reporting procedure based on the GCoC, which is used to report allegations of violations of the code, including cases of sexual abuse and/or exploitation. This procedure is regularly updated by the Risk Management Sector to reflect best practice in the international community.
- The internal reporting procedure must be adapted to the different areas and communities in which Tdh operates. When inter-agency complaint mechanisms have been formalised in some contexts, this needs to be communicated clearly to staff, community members and partners.

► Protective measures for the victim/survivor and/or witness(es)

The following emergency measures will be taken to protect and safeguard the victim/survivor and/or witness(es):

- **Availability of the Abuse/PSEA Focal Point.** The coordinator is empowered to receive and manage complaints of sexual abuse and/or exploitation, to listen to the survivor and provide them with sympathetic and confidential advice and assistance.
- **Emergency medical assistance or evacuation and psycho-social support.** If someone makes an urgent complaint to our teams about a case of sexual abuse or exploitation, they must be able to receive prompt and appropriate care in line with their wishes. Each delegation must have an emergency procedure in place.
- **Protection measures and logistical assistance.** If events should arise that could jeopardise the safety of one of the parties, Tdh must be able to intervene and take extraordinary measures to deal with them as quickly as possible.

In the longer term, following the emergency period, the following measures may be taken to protect and safeguard the parties' best interests:

- Legal and administrative assistance.
- Medical and psycho-social follow-up.
- Medium-term protective measures and logistical support.
- The victim/survivor's consent. The victim/survivor's consent will be sought before each step in the process that involves them making a choice. Decisions will be taken to respect their rights and dignity where possible according to legal obligations.
- Confidentiality. Confidentiality rules apply at every stage in the case management.
- Help with case management. A specific procedure sets out the terms for case management.

► Legal follow-up of a case

- A protection risk assessment should be conducted systematically before determining what action to take on a case. The decision will be weighted according to the parties' safety, the wishes of the victim/survivor and the legal framework.

- Tdh will, accordingly, and subject to duly documented exceptional circumstances^[12], report the case to the competent authorities and/or impose appropriate disciplinary sanctions, according to the staff rules in force in the project country or at headquarters.
- If the offence is only prosecuted following a complaint, Tdh will issue recommendations to the victim/survivor, advise and support them during legal proceedings.
- Tdh reserves the right to seek damages against the perpetrator of the offences in question or to pursue any other legal remedy.

▶ **Disciplinary sanctions**

- If the alleged facts are so serious that, according to the rules of good faith, they do not allow Tdh to demand that a working relationship continue, Tdh will proceed with immediate dismissal for valid reasons. If the facts do not constitute justified grounds for dismissal and the applicable labour law so permits, disciplinary sanctions may be applied.
- The sanctions that may be imposed against the employee are comprehensively set out in the Staff Regulations in force in the programme country. In the absence of such regulations, the Staff Regulations at headquarters will prevail.

2.4 Management and coordination

▶ **Setting up an Abuse Focal Point**

An Abuse Focal Point will be appointed to play an active role in all the areas described in this policy. See *“Roles and Responsibilities of the Abuse Focal Point”*, which should be adapted to each local context.

▶ **Participation in the Inter-Agency Standing Committee Task Force on SEA and other platforms**

Tdh is a member of the global Task Force and ensures the best practice developed in this framework is applied when creating the tools and mechanisms to protect against SEA. At field level, many countries have their own network of inter-agency PSEA coordinators responsible for implementing an action plan nationally. Where possible, Tdh must ensure that it is part of this and guarantee smooth communication between the field and headquarters.

Tdh takes part in other platforms that coordinate on PSEA, where appropriate.

▶ **Setting up regional Working Groups of coordinators**

Working Groups are set up in each region, in line with linguistic and cultural specificities, to develop a network of regional coordinators that are trained, active and autonomous.

▶ **Implementing an annual action plan by delegation**

The annual action plan includes all the “Abuse” elements in Risk Management. Its main goal is to improve each delegation’s practices and achieve a minimum standard within Tdh. The plan provides an overview of where the delegation stands and what it needs to do to improve its situation.

^[12] See *Global Code of Conduct*

3. Roles and responsibilities

3.1 Individual Responsibilities

Individual responsibility is a cornerstone in the fight against exploitation and abuse and everyone has an active role to play in ending any behaviour that might not be consistent with Tdh's honour and value system and that undermines the integrity of our beneficiaries and the communities in which we operate. The staff must abide strictly by the GCoC, this policy, and the guidelines and procedures put in place by Tdh on PSEA. Everyone is expected to comply with the obligations set out in this policy in particular the obligation to report suspicions and allegations to Tdh, to respect the confidentiality of the parties, not to act in bad faith and not, under any circumstances, to engage in any form of retaliation.

3.2 Management

Managers are expected to set an example by behaving impeccably and that they meet their obligations towards the staff with respect to prevention, training and monitoring in the most appropriate way possible according to the specific circumstances in which the teams work. They must also ensure that staff are aware of the whistleblowing and case management procedures for SEA and that the requirements for this policy are met.

3.3 Operations

Operations bear ultimate responsibility for the implementation and monitoring of this policy by the field teams, as well as the resulting guidelines, procedures, tools and mechanisms.

3.4 Risk Management Sector

The Risk Management Sector is responsible for reviewing, disseminating and communicating this policy. It ensures that the tools and mechanisms that comply with best practice are developed and disseminated and supports teams in adapting them for the field. It also assists operations in setting up and monitoring national action plans and supports coordinators in implementing the tools, mechanisms and policy. The Risk Management Sector plays a key role in preventing SEA cases at headquarters and in the field.

3.5 The Human Resources Department

The Human Resources Department promotes best practice and procedures for safe recruitment and the training of staff on SEA issues.

The Human Resources Department drafts specifications for managers, including an obligation to prevent, investigate and supervise SEA-related risks at headquarters and in the field and takes the Focal Point's role into account in job descriptions.

3.6 The Director General and the CODIR

The Director General and the CODIR are responsible for ensuring that policies and procedures are put in place and that they contain a clear outline of responsibilities. The Director General and Management Committee will actively and publicly promote this policy and the resulting best practice and procedures.

3.7 The Council of Foundation

Tdh Lausanne's Council of Foundation protects the Foundation's interests, provides support and actively implements this policy. It is responsible for ensuring that the policy's rules and the checks put in place are in line with the current legislation and are complied with, both with a view to preventing the risks related to SEA and dealing with incidents that have occurred.

Considering the importance of the topics covered and the increased due diligence incumbent upon the Council of Foundation's members, the members are responsible for regularly monitoring the work carried out on PSEA and to act as a role model in reinforcing the standards described in this policy. Similarly, in line with point 3 of this document, each member of the management, manager and team leader is expected to set an example by behaving impeccably and fulfilling their commitments towards the staff with respect to prevention, training and monitoring as well as possible and according to the team's specific circumstances.

**Every child in the world
has the right to a childhood.
It's that simple.**



Policy on the Protection from Sexual Exploitation and Abuse (PSEA)



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Other attached documents:

Global Code of Conduct,

Child Safeguarding Policy,

Directive on Staff Misconduct at the Workplace



Siège | Hauptsitz | Sede | Headquarters
Av. Montchoisi 15, CH-1006 Lausanne
T +41 58 611 06 66, F +41 58 611 06 77
E-mail: info@tdh.ch, CCP: 10-11504-8

www.tdh.ch
 www.facebook.com/tdh.ch
 www.twitter.com/tdh_ch
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