



**FINDINGS AND RECOMMENDATIONS REGARDING  
THE ACTIONS BY MERCY CORPS FOLLOWING  
THE 2018 RECEIPT OF ALLEGATIONS  
CONCERNING CO-FOUNDER ELLSWORTH CULVER**

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## EXECUTIVE SUMMARY

On October 8, 2019, The Oregonian/Oregon Live published an investigative report detailing allegations of sexual abuse experienced by Tania Culver Humphrey in the 1970s and 1980s at the hands of her father, Ellsworth Culver, co-founder of Mercy Corps. Culver was the organization's president until 1994 and then served as vice-president for international relations until his death in 2005. The report also focused on Mercy Corps' investigation of Ms. Culver Humphrey's allegations in the 1990s. Additionally, the reporting described Mercy Corps' response to an email that Ms. Culver Humphrey and her husband Chris Humphrey submitted to Mercy Corps' Integrity Hotline in 2018 requesting an assessment of the adequacy of the 1990s investigation in light of the organization's new ethics policies and investigative practices. The story and accompanying video shook Mercy Corps deeply. Within days, its Chief Executive Officer, Senior Legal Counsel, and a longstanding board member resigned.

In the wake of the Oregonian report, Mercy Corps' Board of Directors established a Special Committee ("SC") to oversee an independent investigation into Mercy Corps' 2018 response to Ms. Culver Humphrey. The SC retained Vestry Laight through Nichols Liu, a law firm that advises international non-governmental organizations on the standards and expectations of USAID, Mercy Corps' largest donor. Vestry Laight was asked to conduct an independent investigation, culminating in a public report, focusing on Mercy Corps' 2018 response to Ms. Culver Humphrey. Vestry Laight was not tasked with assessing Mr. Culver's conduct or Mercy Corps' investigation in the 1990s.

Over the course of six weeks, Vestry Laight reviewed over 50,000 documents collected from Mercy Corps relating to the 2018-2019 time frame and conducted 55 in-person or telephone interviews. To ensure interview subjects were comfortable speaking candidly with investigators, interviews were conducted confidentially with the promise not to disclose identifying information in the report without the subjects' consent. Vestry Laight had full cooperation from staff at Mercy Corps.

Vestry Laight provided detailed factual findings to the SC. Vestry Laight then created this public report, in accordance with the SC's instructions and in coordination with Nichols Liu, summarizing key findings and highlighting potential areas for reform. At the SC's request, the report references individuals by title only and does not include references to materials potentially covered by attorney-client privilege. The findings in this report reflect Vestry Laight's independent observations and conclusions.

Vestry Laight found that in 2018 Mercy Corps had sophisticated policies and processes for handling safeguarding allegations – complaints that raise issues of sexual exploitation and abuse of beneficiaries or community members and internal sexual misconduct, including sexual harassment and abuse. Mercy Corps' safeguarding policies follow a survivor-centered approach for handling allegations stating "Mercy Corps will, first and foremost, take into account the safety, security and well-being of the survivors during any investigation or follow-up action." The scope of the policies make it clear they apply to all Mercy Corps team members, board members, partners and visitors or anyone else who receives Mercy Corps resources. However, it is not clear these safeguarding policies applied to the circumstances described in the Humphreys'

email to Mercy Corps, and the individuals who handled the matter did not follow safeguarding protocol here.

Vestry Laight found that Mercy Corps' initial approach was appropriately survivor centric. The initial communication with Ms. Culver Humphrey in November 2018 promised to take a survivor-centered approach. However, as discussed in more detail below, several missteps occurred subsequently which resulted in a response that was not survivor centered: the matter was assigned to the Senior Legal Counsel, a seasoned and distinguished litigator, but one with no experience in safeguarding or survivor-centric investigations; the matter was approached strictly as an investigation into prior Board actions; Mercy Corps did not take the Humphreys' request at face value or consider the prior investigation in light of today's ethics policies, and thus Mercy Corps and the Humphreys did not have a meeting of the minds on what the request entailed; the tone used in the emails from the Senior Legal Counsel was inappropriate and failed to take into account the harm inflicted by the earlier investigation; and the General Counsel, who had been a proponent of safeguarding in the past, did not argue strongly enough for a different approach. Moreover, the Humphreys' email requests arrived at a time when the Ethics Team lacked a safeguarding expert, leaving a void of expertise on these issues. The CEO underestimated the risk that mishandling the complaint posed to the organization. He and others involved were overly confident in the Board's prior investigation and conclusion.

Opportunities for course correction by the Board, which has ultimate oversight authority, were also missed by the Joint Audit and Risk Committee (JARC) which oversees safeguarding matters and potential risks to Mercy Corps.

Some cultural factors may also have contributed to the missteps in the response. Vestry Laight did not undertake a cultural audit, but interviews suggest the leadership did not value hearing negativity, meaning strong objections to the course of action chosen may not have been encouraged. Also, the organization's tendency to focus on the field may have meant that risks from headquarters were underestimated by leaders.

Having said that, Vestry Laight did not find any evidence of intentional wrongdoing or of any effort to cover up Ms. Culver Humphrey's abuse or Mercy Corps' earlier investigation. Furthermore, the missteps, mistakes in judgment, and governance lapses were made by a small handful of individuals. Very few members of senior leadership even had substantive knowledge of the Humphreys' email given that Mercy Corps keeps cases involving sexual misconduct confidential.

Based on our investigation, Vestry Laight makes several recommendations to the Special Committee, the full Board of Directors, and Mercy Corps' current management for improvements. These include conducting the investigation and assessment requested by Ms. Culver Humphrey; restructuring the legal and ethics functions, ensuring adequate resources for safeguarding; and strengthening board governance, including improving oversight of safeguarding and culture.

## CONTENTS

I. SCOPE OF REVIEW AND METHODOLOGY .....	1
II. STATEMENT OF FINDINGS .....	2
A. In 2018, Mercy Corps Had a Sophisticated Safeguarding Policy .....	2
B. Mercy Corps’ Initial Response to Learning of Ms. Culver Humphrey’s Abuse was Survivor-Centric.....	3
C. Mercy Corps Later Response to Ms. Culver Humphrey’s 2018 Request Involved Missteps and Errors of Judgment .....	5
1. Mercy Corps Did Not Consider the Humphreys’ November Request Through a Safeguarding Lens .....	6
2. Mercy Corps’ Communications with the Humphreys Were Damaging and Counterproductive .....	8
3. The JARC’s Oversight of the Humphrey Matter Was Ineffective .....	10
4. The Responsible Leaders at Mercy Corps Failed to Recognize or Adequately Address the Risks of an Inadequate Response to Ms. Culver Humphrey .....	12
5. Mercy Corps’ Culture Contributed to the 2018 Circumstances .....	12
III. RECOMMENDATIONS .....	14
A. Own the Past: Investigate Further .....	14
B. Restructure the Legal, Ethics, and Safeguarding Functions .....	14
C. Strengthen the Board’s Governance .....	16

## **I. SCOPE OF REVIEW AND METHODOLOGY**

On October 21, 2019, Mercy Corps' Board of Directors established the SC to "engage and oversee outside legal counsel to conduct an independent investigation of the adequacy of Mercy Corps' and its Board's handling of Ms. Culver Humphrey's allegations in the 1990s and in 2018/19." The SC is comprised of four board members and two staff representatives. Three days later, the SC retained Vestry Laight, through the law firm Nichols Liu, to independently investigate Mercy Corps' response to Ms. Culver Humphrey's 2018 request. Vestry Laight's principals have recognized expertise on gender-based violence and abuse. This report focuses on Mercy Corps' 2018 response to Ms. Culver Humphrey's email request.

Vestry Laight began its investigation by searching and reviewing over 50,000 documents that included: all correspondence between Mercy Corps and the Humphreys in 2018; internal emails and other correspondence from Mercy Corps; the organization's Code of Conduct and policies addressing sexual misconduct, safeguarding, and ethics complaints (including reporting and investigations under such policies); Board committee charters and minutes; and job descriptions for senior leaders.

Vestry Laight conducted 55 in-person or telephone interviews between October 23 and December 2, 2019. Interviewees include senior, mid-level, and junior staff and former staff working in different parts of the organization. Four staff interviewees are based in Europe and three are based in locations outside of Europe or Portland. Vestry Laight also received email submissions from six staff members, some of whom work abroad. Eleven of the interviewees are board members and former board members. Vestry Laight also interviewed Ms. Culver Humphrey in person with her attorney on December 1, 2019, at her attorneys' offices.

Interviewees were located using two methods: Vestry Laight requested interviews with current and former staff and board members who may have direct knowledge of relevant events in 2018 and early 2019. Mercy Corps also provided all staff members with contact information for Vestry Laight for those interested in speaking with investigators. Eighteen staff members reached out to Vestry Laight directly to participate in the investigation.

To ensure interview subjects were comfortable speaking candidly, Vestry Laight conducted interviews confidentially with the promise not to disclose identifying information in the report without the subject's consent. Vestry Laight also relied on emails during the interviews to help establish a record of events. In cases where memories of events are inconsistent between different participants, it has been noted.

Vestry Laight did not conduct an audit of Mercy Corps' culture, nor did we attempt to hear from all 5,500 team members. However, we did repeatedly hear issues pertaining to culture during interviews with staff and former staff, predominantly from the Portland office. Given that we view these cultural issues as contributing to the missteps that occurred, we include our observations in this report.

## II. STATEMENT OF FINDINGS

### A. In 2018, Mercy Corps Had a Sophisticated Safeguarding Policy

In 2017, Mercy Corps began updating its existing policies relating to safeguarding complaints. Relevant safeguarding policies updated in 2018 include Sexual Misconduct in The Workplace; Child Safeguarding; Anti-Trafficking; and Sexual Exploitation and Abuse of Beneficiaries and Community Members. The policies are drafted in language that reflects Mercy Corps' commitment to an inclusive and safe environment.<sup>1</sup>

Mercy Corps' Child Safeguarding Policy states that the organization has "zero tolerance for and abhors conduct towards children that is exploitative or abusive." It prohibits sexual exploitation and abuse by its employees "at all times, whether working or not." Mercy Corps also requires team members to "[r]efrain from engaging in any activity which may be exploitative or intimidating."

Mercy Corps' safeguarding policies adopt a survivor-centered approach stating, "We are committed to putting survivors first, providing them with the support they need, ensuring transparency with donors and local communities, and taking corrective action."<sup>2</sup> The Sexual Exploitation and Abuse of Beneficiaries and Community Members Policy makes the Ethics Team responsible for ensuring a survivor-centric approach while investigating sexual exploitation and abuse ("SEA") reports, stating "Mercy Corps will, first and foremost, take into account the safety, security and well-being of the survivors during any investigation or follow-up action." The JARC has oversight of all safeguarding matters.

Mercy Corps primarily receives allegations of wrongdoing through its Integrity Hotline, the same mechanism used by Ms. Culver Humphrey in 2018. Safeguarding incidents may also be reported to any Mercy Corps leader or supervisor or to members

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<sup>1</sup> The organization's policies apply to all Mercy Corps entities, subsidiaries, and affiliated organizations; board members, "officers, management, employees, seconded employees, interns and volunteers (collectively 'Team Members'); Sub recipients, partner organizations, contractors, outside experts (including attorneys), consultants, agents, representatives, and any other organization or individual that acts on Mercy Corps' behalf or at Mercy Corps' direction (collectively 'Partners'); and visitors to any Mercy Corps facilities, which includes photographers, filmmakers, journalists, researchers, donors and prospective donors, and anyone else hosted by Mercy Corps or visiting Mercy Corps' implemented or financially supported programs ('Visitors')." Sexual Exploitation and Abuse of Beneficiaries and Community Members Policy, section 2. See also Mercy Corps Ethics Complaint and Whistleblower Policy, section 2.

<sup>2</sup> "Ethics and Policies: Mercy Corps commitment to ethics, inclusion, diversity and safeguarding," <https://www.mercycorps.org/about-us/ethics-and-policies>.

of the Ethics Team or Human Resources Team. An allegation against a Mercy Corps executive may be reported directly to the JARC.<sup>3</sup>

Mercy Corps logs safeguarding complaints it receives into a central confidential register. The Ethics Team handles safeguarding complaints involving a Mercy Corps team member, participant, or partner. The assigned team member acknowledges the complaint; offers any necessary medical, legal or other support to victims or witnesses; and commences the investigation. If the allegations in the report involve only Mercy Corps team members, the complaint is referred to Human Resources. Mercy Corps suspends any subject of an SEA complaint during the investigation. Substantiated allegations against a team member will result in termination and make the team member ineligible for re-hire. Investigations are reported to the JARC at its regularly scheduled meetings.

Confidentiality is ensured throughout the investigation. At the conclusion of the investigation, a report of the findings is prepared and submitted to Human Resources or management for action. The report is also reviewed for possible management implications and corrective measures.

Mercy Corps posts these policies on its website in English, French, Spanish and Arabic. As part of the roll-out of the policies on safeguarding, team members (including executives and board members) are required to participate in online courses that explain the policies.

Based on our interviews of Mercy Corps employees, the general reaction toward the organization's safeguarding policies is positive. Several staff affirmed that, while safeguarding could use more resources, they had faith in the safeguarding process and believed it worked well. This is why they were so dismayed by recent events involving Ms. Culver Humphrey's allegations which they did not feel reflected Mercy Corps' approach and the hard work that had been done in this area.

## **B. Mercy Corps' Initial Response to Learning of Ms. Culver Humphrey's Abuse was Survivor-Centric**

When Mercy Corps first learned of Ms. Culver Humphrey's abuse early in 2018, the initial response factored in a consideration of her well-being as described below.

On January 15, 2018, Ms. Culver Humphrey posted to Facebook a lengthy personal entry in which she began to open up about sexual abuse she suffered as a child

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<sup>3</sup> Mercy Corps also is in the process of implementing two new initiatives to assist reporting for in-country program operations: Safeguarding Focal Points and Community Accountability Reporting Mechanisms (CARM). Focal Points are trained team members who can receive reports or assist in making reports through the Integrity Hotline or otherwise and act as a resource in countries where they operate. CARMs are community facing mechanisms, particularized to each country, that may include suggestion boxes, toll-free hotlines and WhatsApp messages.

at the hands of her father, “a well-known humanitarian and diplomat.” The post did not name Mercy Corps or her father. Mercy Corps’ General Counsel learned of the post through a Mercy Corps staff member and sent the post to Mercy Corps’ CEO and the chair of the JARC. In an email response the CEO said the allegations had been investigated in the 1990s and instructed the General Counsel to speak to the JARC Chair who had been one of those who had handled it.<sup>4</sup>

The General Counsel consulted with members of the Ethics Team, including a safeguarding expert, about what to do. The safeguarding specialist suggested investigating further and expressed her opinion that the Facebook posting raised several red flags: that Ms. Culver Humphrey had also posted separately about her father taking her into refugee camps as a child; that the 1990s investigation may have been inadequate by today’s standards; that she believed an expert had been brought in perhaps to discredit Ms. Culver Humphrey; and that the investigators in the 1990s had been close to Ellsworth Culver. The General Counsel had some level of concern about an investigation undertaken 25 years ago, but took comfort in his belief that a law firm had done the investigation and had consulted a prominent expert. He relied on the JARC chair’s recollection of the earlier investigation and its conclusion that the allegations were unsubstantiated. He also believed it could be difficult to investigate the Board’s prior actions given the passage of time and lack of records.<sup>5</sup>

The General Counsel and Mercy Corps’ safeguarding expert at that time discussed contacting Ms. Culver Humphrey but ultimately decided that an appropriate survivor-centered response would be to wait for Ms. Culver Humphrey to reach out to Mercy Corps. After a few months monitoring the situation and waiting for Ms. Culver Humphrey to approach Mercy Corps or go public with the abuse, the issue receded in the minds of Mercy Corps’ management.

Several months later, on November 17, 2018, the Humphreys sent an email to Mercy Corps’ Integrity Hotline. The email noted Mercy Corps’ efforts to be “pro-active and a leader” regarding “sexual misconduct and ethical violations of its staff.” It stated:

I contact you today to inform you of a sexual abuse investigation that Mercy Corps and its Board of Directors were involved in in the early 1990’s. I would like to request

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<sup>4</sup> The CEO says he was never briefed about the investigation when he joined Mercy Corps; nor was he ever subsequently briefed by anyone about the investigation or shown any files. He did say “he heard vague references to issues between Ells [Culver] and his daughter at the 2005 memorial service and relief that they had reconciled before Ells [Culver] died, and to an investigation conducted by the Board/[former JARC Chair] but without any details or references to what emerged in 2018.” He says he only learned about the investigation and what it entailed following the November hotline request and the Senior Legal Counsel’s subsequent memo.

<sup>5</sup> The JARC Chair searched for files on the earlier investigation at this time and was unable to locate any.

you review that case to ensure that it was handled in conformance with Mercy Corp’s current ethics policy and investigative processes. The case involved child abuse allegations that my wife (Tania Culver) made against her father (Ellsworth Culver).

That same day, Mr. Humphrey sent a follow-up email suggesting it would not be appropriate for the Chair of the JARC to “be involved in this case as an investigator or reviewer,” since he had participated in the original investigation in the 1990s.

The General Counsel’s response to the Humphreys on November 19 was appropriate in tone, stating in part:

We are sorry to hear about this case, but grateful you reached out. We too would like to learn what we can from the past. I am asking my colleague and Mercy Corps Senior Legal Counsel [...]to follow up on this. [The Senior Legal Counsel] likely will be reaching out to you in the hope that you might be willing to meet in person to help inform our efforts. We will do our best to ensure that any discussions we have are informed by our survivor centered approach. . . . Given the time that has lapsed and the very significant changes at Mercy Corps since the early 1990s our search may take time and there may not be many records.

During a later interview with Vestry Laight, Ms. Culver Humphrey said she had been extremely apprehensive waiting for a response to her email. When she read this email, she remembered the phrase “survivor-centered approach” standing out. She said she was not sure what it meant, but it sounded different from the earlier approach and described it as a “hold your breath moment” – that maybe this would be different. She also was concerned that the email said the matter would be handled by a senior lawyer and that there might not be any documents, so she remained skeptical and deeply afraid that Mercy Corps would again fail to respond properly.

### **C. Mercy Corps’ Later Response to Ms. Culver Humphrey’s 2018 Request Involved Missteps and Errors of Judgment**

Vestry Laight found no evidence that any Mercy Corps employee or board member engaged in intentional wrongdoing or an effort to cover up Ellsworth Culver’s conduct, Ms. Culver Humphrey’s abuse, or Mercy Corps 1990s investigation of such abuse. Vestry Laight did find, however, that those responsible for overseeing Mercy Corps’ response made several missteps and showed poor judgment, detailed below, in their approach to Ms. Culver Humphrey that resulted in a mishandling of the request and ultimately a failure to adhere to Mercy Corps’ stated commitment to putting survivors first.

## **1. Mercy Corps Did Not Consider the Humphreys' November Request Through a Safeguarding Lens**

Senior managers did not follow the procedures prescribed in Mercy Corps' safeguarding policies when responding to the email request that the Humphreys sent to the Integrity Hotline in November 2018.

At the time the email came in, the Ethics Team was overwhelmed and short-staffed (the safeguarding expert had submitted her resignation and was unavailable) and was working on a number of complex ethics and safeguarding cases. In addition, the General Counsel was deeply involved in other significant initiatives. The General Counsel described it as "one of his most difficult periods at Mercy Corps."

The General Counsel assigned the matter to Mercy Corps' former General Counsel, who had stayed on as Senior Legal Counsel. The General Counsel believed that the CEO would not have supported hiring an independent firm to investigate, and he viewed the Senior Legal Counsel as "wise, compassionate, kind, and a straight shooter" who could maintain objectivity and independence. The General Counsel also anticipated that the review would focus not on the underlying abuse but rather on the investigation in the 1990s conducted by three key board members (a co-founder, a former Board Chair, and the Chair of the JARC), something the Senior Legal Counsel's extensive experience and gravitas made him particularly well suited for. Other Mercy Corps staff stated in later interviews that they were not surprised by the assignment, even though the Senior Legal Counsel had never done safeguarding cases previously, because he was very well respected within the organization. He is also a nationally recognized leading lawyer in Oregon.

The Senior Legal Counsel likewise viewed the matter as a review of the board's prior investigation in the 1990s, given Ms. Culver Humphrey's request. He did not believe that it fell within Mercy Corps' new safeguarding policies. Furthermore, while the General Counsel's initial email had mentioned a survivor-centered approach, the Senior Legal Counsel was not a member of the Ethics Team, had no expertise in this area, and was not familiar with what a "survivor-centered approach" would be in this context. He understood it in the context of natural disasters or conflict zones where Mercy Corps frequently takes the lead role in survivor psycho-social response, but said generally speaking "there is no 'guidebook' on a survivor-centric approach" and he had not been trained in what such an approach would involve. As a result, Mercy Corps did not offer any support to Ms. Culver Humphrey as it would normally do if following its prescribed safeguarding investigation practices.

The Senior Legal Counsel took an approach consistent with a traditional investigation or a legal matter. He searched for documents at Mercy Corps.<sup>6</sup> He asked

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<sup>6</sup> Mercy Corps did not have a legal department until 2003 and no formal system for document retention until 2009. Many documents were lost or destroyed that year when Mercy Corps moved to new offices. The Senior Legal Counsel was only able to locate

those who had been involved in the 1990s investigation to search their personal files for relevant documents. The JARC Chair conducted a search of records in his law firm and was unable to locate any documents on the prior investigation in the 33 boxes of archived material he located. The Senior Legal Counsel interviewed those involved and found them to be forthcoming but their recollections vague due to the long passage of time and no documents to refresh their recall. In general, they recalled conducting an extensive investigation that included consultation with a prominent expert in recovered memory and a polygraph test of Ellsworth Culver. They did not recall the abuse allegations being serious, and concluded the claims had not been substantiated. They had the impression that the allegation was made in part as a result of anger over a bitter divorce.

The Senior Legal Counsel asked the Humphreys to make available whatever documents they had and offered to meet with them. However, he did not respond to their questions seeking reassurances about how the matter would be handled. He ultimately did not work with them on the investigation or review their documents.

The Senior Legal Counsel prepared a memo with his findings. The General Counsel reviewed and edited the document. The Senior Legal Counsel also circulated his memo to those he interviewed to ensure it was accurate as far as they could recall.

The Senior Legal Counsel stated that “At no time while working on this matter in late 2018 did anyone suggest to me that we were mishandling the issue, that we should have brought in someone with sex abuse survivor training, or that Mercy Corps should either repudiate or do a full review of its process in 1992-1994 to try now to investigate the claims.” While acting in good faith and in what he believed were the best interests of Mercy Corps, in hindsight he believes “the response was staffed, structured and supervised too much as a legal matter, and not enough as the survivor-centered approach that we outline in our policies and practice daily in the field.”

Vestry Laight believes that Mercy Corps should have appointed an expert in safeguarding to assist with the case, even if that meant bringing in outside resources. Furthermore, given that the Humphreys’ request called into question how the directors had handled the 1990s investigation, Mercy Corps should have utilized an investigator who was independent of the organization. Having said that, Vestry Laight agrees that Ms. Culver Humphrey’s 2018 request did not fit squarely within Mercy Corps’ new safeguarding policies. Despite their broad scope, these policies do not cover former or deceased employees or address how to deal with allegations that are decades old. Vestry Laight nevertheless believes that, regardless of the strict applicability of the policies, Mercy Corps’ values should have led it to respond in a manner that reflected its stated commitment to the well-being of survivors.

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board minutes from 1994 and a file showing that Culver’s performance review had been removed from his personnel file.

## **2. Mercy Corps' Communications with the Humphreys Were Damaging and Counterproductive**

The lack of a survivor-centered approach showed most clearly in the poor communications with the Humphreys. The Senior Legal Counsel, who again lacked training and expertise in survivor-centered approaches to safeguarding, engaged in dialogue through email. He began by asking directly “just what it is that you think Mercy Corps can do now to help your wife gain closure on whatever occurred between her and her father and her family some 24 years ago” and stating that “there is no interest here in relitigating the underlying events.” Though he offered to meet with the Humphreys, he failed to answer their repeated questions about processes and what rights and protections would be afforded to Ms. Culver Humphrey. He later asked them to drop off or mail their documents.

The Humphreys' responses raised concerns with the Senior Legal Counsel. They did not provide any documentary evidence in response to the Senior Legal Counsel's requests, and they seemed to him to want more than a review of the past investigation under current policies. The email exchanges led both the Humphreys and Mercy Corps to doubt the intentions of the other side. The communications quickly broke down, as the Oregonian report described in detail.

Ms. Culver Humphrey told Vestry Laight that the tone of the Senior Legal Counsel's emails had caused her to feel demeaned and triggered. She interpreted them as condescending and intended to make her go away and “feel shame.” They brought up traumatic and painful flashbacks to the 1990s investigation, which was itself an extremely traumatizing, intimidating, and demoralizing experience for her. She said, “it was clear to me that they weren't going to go by the ethics policy” and were not going to be held accountable for failing to follow that policy, much less their prior actions. She was very scared, was not sleeping well, was experiencing severe headaches, and found this period very stressful.

When interviewed later, the Senior Legal Counsel said he did not intend to shame Ms. Culver Humphrey or talk down to her, though he later saw that his lawyerly tone might have been perceived differently – particularly by a sexual abuse survivor. He said that he was simply trying to be direct in asking Ms. Culver Humphrey what she was hoping Mercy Corps would do for her and for information to help in the investigation.

The General Counsel recognized the tone in communications might have been problematic. He recalls being very surprised and concerned by the tone and content in the Senior Legal Counsel's initial email to the Humphreys and says he went to his office and spoke to him about communicating in a more appropriate tone and manner, consistent with Mercy Corps intent to learn all that it could from the situation. However, the Senior Legal Counsel said he does not recall this conversation and believes he would have recalled if there had been a serious disagreement between them. Similarly, the General Counsel had been copied on all the correspondence from the Humphreys asking for information about how the case would be handled and what

protections they had, but he did not respond, nor is there any indication he pressed the Senior Legal Counsel to respond differently.<sup>7</sup>

The General Counsel said his comfort level went down as communications went on. He genuinely wanted the Humphreys to provide any information they had because it would be very helpful and felt that if the Humphreys wanted Mercy Corps to be able to assess the investigation thoroughly, they would be willing to provide any documents that might help with this. At the same time, the General Counsel said he did not yet fully appreciate the damage done by the Senior Legal Counsel's first email and did not know or appreciate the extent of Ms. Culver Humphrey's experience with the 1990s investigation and how that could impact her willingness to share even documentary information now.

On December 4, the Senior Legal Counsel sent the Humphreys a final letter summarizing his findings. It indicated that Mercy Corps was unable to locate records but that interviews with those involved in the investigation indicated Ms. Culver Humphrey's claim was carefully reviewed. The letter also described some steps in that review process (including interviews, the lie detector test, and consultation with an expert on recovered memory) and stated that "they concluded that there was insufficient evidence to require any further action by Mercy Corps." The General Counsel also contributed to this letter.

Ms. Culver Humphrey found the letter extremely demoralizing, unresponsive and erroneous. The Humphreys sent a lengthy response on December 9 outlining a great deal of information they believed needed further investigation. It also included detailed reference to extensive and disturbing sexual abuse of Ms. Culver Humphrey that the Senior Legal Counsel and General Counsel had not previously been aware of. The Senior Legal Counsel forwarded the Humphreys' December 9 response (and the full email chain) to the CEO, the JARC Chair, and the General Counsel with a recommendation that no further action be taken. Ultimately, the General Counsel, CEO, and JARC Chair concluded that nothing was to be gained by further communications. Mercy Corps never sent a response to the Humphreys' December 9 email.

To the Humphreys, receiving no response was frightening and worse than the earlier responses because now Mercy Corps knew she had evidence and credible information demonstrating both the abuse and Mercy Corps' knowledge of and concealment of the same. Ms. Culver Humphrey decided the only way she could feel safe was if she would get the story out as quickly as possible. She therefore overcame her concerns about reporters and decided to take a chance and reach out to the Oregonian.

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<sup>7</sup> Vestry Laight was able to find some evidence that the General Counsel had hoped to take a different approach and had a discussion with the CEO suggesting that Mercy Corps could do more on the investigation with more time and resources and take a more survivor-centric approach. The CEO, however, was comfortable with their process.

### **3. The JARC's Oversight of the Humphrey Matter Was Ineffective**

The JARC is responsible for overseeing all risks to Mercy Corps, including safeguarding matters.<sup>8</sup> The JARC is expected to raise significant matters with the full Board. In this case, the JARC's oversight function was severely undermined by three circumstances.

First, as noted, the JARC Chair had been directly involved in Mercy Corps' investigation of Ms. Culver Humphrey's allegations in the 1990s. Given the JARC's oversight role, the Chair should have recused himself from the Humphrey matter (other than acting as a witness) and had the JARC appoint another member to serve as lead for this matter. The General Counsel and Senior Legal Counsel should have insisted on this.

Second, the JARC's effectiveness was also greatly eroded by the substance of the communications from the legal team informing them of the Humphrey matter and leaving it to their discretion as to whether to raise the matter to the full Board. The Senior Legal Counsel drafted a memo summarizing the allegations, the recent correspondence with the Humphreys, the scope and findings of his review, management's decision not to respond further, and the expectation that the Humphreys may publicize the issue. The General Counsel edited the memo and sent it to the CEO and the JARC Chair. The CEO responded with minor edits and stated that he was not concerned about the risk of this going public because the process followed was good, then and now. On December 13, 2018, the General Counsel sent the memo to the JARC with a cover email describing the matter as an old allegation. The memo and email indicated that they were for information purposes only and there was no action for the JARC to take. There was no mention either in the email or the memo of the specifics of the sexual abuse detailed in the Humphreys' last communication, but mentioned that the Humphreys had expressed dissatisfaction with Mercy Corps' response.

The General Counsel told Vestry Laight that he had considered recommending that the JARC hire an independent firm to more fully investigate. However, he believed that would jeopardize his ability to work with the CEO and the JARC Chair, both of whom he reported to. Therefore, the memo did not include that recommendation. The General Counsel said he did not attach any of the underlying correspondence because the agreement with the JARC chair, Senior Legal Counsel and CEO was that the memo would act as a summary.

Later, when interviewed, several JARC members said that they trusted the lawyers' expertise and judgment, and that the memo led them to believe that no action

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<sup>8</sup> The JARC's Charter makes it responsible for Financial Statements, Regulatory Reporting, External and Internal Audits, Risk Management, and numerous policies including the Whistleblower Policy. The Ethics Complaint and Whistleblower Policy governs how investigations are conducted, including safeguarding investigations, and provides that the JARC has ultimate oversight of complaints and their resolution.

was required by the committee because the legal department was handling the matter. One JARC member was left off the email with the memo and therefore was unaware of the complaint. When interviewed, she unequivocally stated that had she seen the memo, she would have raised the issue with the full Board as she had experience on these issues and was aware of the risks.<sup>9</sup> One senior executive was also copied on the JARC email and memo, and he passed it to another board member who was not on the JARC or on the Mercy Corps Global Board.

Third, the JARC meets at least three times per year, when it receives reports of all incidents and investigations relating to sexual misconduct and safeguarding. For confidentiality reasons, safeguarding and sexual misconduct issues are discussed in a closed executive session at the end of the regular meeting. The General Counsel sets the agenda for the executive session and, along with safeguarding staff, presents information about sensitive cases. The next scheduled JARC meeting after the Humphrey case arose was February 12, 2019. The General Counsel did not recirculate his December 13, 2018 memo to committee members in advance of the meeting, and his agenda for the executive session allocated only two minutes to discuss the Humphreys' allegations. Furthermore, the executive session, during which safeguarding issues would have been discussed, was held in an open space at Mercy Corps because the JARC had lost the use of the conference room before the end of the meeting. The three JARC members attending by phone were dropped, so only the JARC Chair and one other JARC member were in attendance for the executive session with the safeguarding staff. The General Counsel spoke to the matter very briefly at only a high level because of the lack of privacy and need for confidentiality.

These three circumstances undermined the JARC's effectiveness in overseeing this matter.

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<sup>9</sup> Vestry Laight was unable to find a clear explanation for this omission.

#### **4. The Responsible Leaders at Mercy Corps Failed to Recognize or Properly Address the Risks of an Inadequate Response to Ms. Culver Humphrey**

Vestry Laight found that the senior managers involved in this matter – the CEO, the General Counsel, the JARC Chair, and the Senior Legal Counsel – underestimated the risks of not properly addressing Ms. Culver Humphrey’s complaint. These Mercy Corps leaders were most responsible for identifying risks to the organization and implementing appropriate responses. Yet they did not follow a survivor-centric approach: they did not seek to understand the trauma suffered by Ms. Culver Humphrey or show compassion for her. They had a blind spot for how these circumstances would play out in the era of the #MeToo movement even though they all suspected the allegations would eventually be made public. In sum, they failed to recognize the potential impact on Ms. Culver Humphrey or the risk that the matter presented to Mercy Corps’ reputation.

As mentioned above, prior to the disclosure of the case to the JARC in December the CEO made a decision that the risk this complaint presented was low and that the processes followed were good. After that decision, the General Counsel said he felt his hands were tied and did not press the issue. The General Counsel later told Vestry Laight that he was concerned that the organization’s mishandling of the Humphreys’ request would become a larger problem, particularly if the Humphreys took their allegations to the press. However, he did not make that concern clear enough to other senior leadership or to the JARC. By way of explanation, he said he believed that framing his views in email as agreement was important to get the CEO, the Senior Legal Counsel and the JARC Chair to consider how a lack of a response would be perceived by the public and to consider other options and experts with deep expertise in how to address older cases like this. He said he proposed sending a memo to the full JARC because he felt at that point other board members needed to be aware and have the chance to raise questions. However, as discussed above, when he did inform the JARC about the Humphreys’ case, he did so in a way that downplayed the matter’s significance and virtually ensured the matter would not be elevated to the full board.

By failing to alert the entire Board to the complaint, the JARC also did not meet its responsibility to alert the Board to significant potential organizational risks.

#### **5. Mercy Corps’ Culture Contributed to the 2018 Circumstances**

Several staff affirmed that they had faith in the safeguarding process and had seen it work, which is why they were so dismayed by recent events. Many of those interviewed described Mercy Corps as having an underlying culture that is “survivor centered.” They said Mercy Corps always took safeguarding seriously and is a model in safeguarding policy and practice. Some described the new safeguarding policy as a clarification of existing principles, rather than something new and expressed pride (but not surprise) that staff was very engaged in developing such a strong policy. As one former staffer said, “[i]t was always clear from day one that the staff was passionately

committed to safeguarding and that it was a prize component of the culture. It was always a number one priority.”

The new on-line training programs are widely praised. The Ethics Team considered its approach the “gold standard” and said they had worked hard to build trust across Mercy Corps. The uptick in complaints to the hotline indicated to them that their hard work was paying off. One who works on these issues said she is “super proud” of work they have done on safeguarding. Those who work on safeguarding said how Mercy Corps handled the Humphreys’ request in 2018 is not reflective of their accomplishments and undermines their hard work. Indeed, one said the approach taken in the Humphrey case “is the complete opposite of how we do investigations here.” Another saw this as “absolutely an anomaly.”

Staff and board members expressed a deep commitment to Mercy Corps and its work. Many people told Vestry Laight they love Mercy Corps, have devoted years to it, and believe in its vision. People also expressed appreciation for working with “highly principled people,” the “smartest group of most compassionate people I have ever seen.” Some described a solidarity among the staff and said one of Mercy Corps’ strengths is that people care, and that is why, in part, it is so upsetting that this incident happened at such a great place. Most of those who came forward did so because they saw this as an opportunity to reflect more deeply on the culture and make positive changes.

The culture was strongly impacted by the CEO. The CEO was described by multiple staff as a “visionary” but one who lacked dedication to operational concerns and compliance. While the CEO had overseen the implementation of strong compliance policies and procedures, some people described him as “not a compliance guy.” The CEO told Vestry Laight he was concerned that too much bureaucracy would squelch the ability to do great things and limit innovation. Priority was placed on programs in the field where most staff and the beneficiaries are based, and policies seem to have been designed primarily with the field in mind. There was also always a tension between spending on beneficiaries and supporting necessary internal infrastructure.

Many interviewees also said that Mercy Corps has a “culture of niceness” and of using positive language that makes it difficult to dissent or raise constructive criticism. Staff members said they are reluctant to speak up and be the “squeaky wheel.”<sup>10</sup>

More diversity in senior management could have led to better decision-making in response to the Humphreys’ request. Despite recent changes bringing new members and increased diversity to the Board, Mercy Corps’ Global Board was still perceived by staff as “full of close friends” of the CEO who had “been there forever” and who were unwilling to question his leadership. As a result, staff did not think that going to the Board was realistic.

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<sup>10</sup> In the aftermath of the publication of the story about Ms. Culver Humphrey staff members have been vocal about concerns with management and culture. However, a number of people we interviewed expressed concerns that discussions are dominated by a few strong voices with one perspective.

Vestry Laight believes that the CEO's failure to embrace a culture that valued constructive criticism from board members or staff likely contributed to Mercy Corps' errors in judgments and missteps in dealing with the Humphreys' 2018 request. Mercy Corps' board, management, and staff expressed a great deal of shock and emotion about what Ms. Culver Humphrey endured and about how Mercy Corps handled her request. They expect better of Mercy Corps as an organization and on a personal level and have a strong desire to support Ms. Culver Humphrey. They view helping Ms. Culver Humphrey heal as a priority.

### **III. RECOMMENDATIONS**

Based on these findings, as well as suggestions received from the Board and staff, we recommend Mercy Corps focus on the following areas.

#### **A. Own the Past: Investigate Further**

Vestry Laight's independent investigation of the 2018 events should be viewed as the first step in a longer process to understand the full scope of Ellsworth Culver's sexual misconduct and the organization's earlier response. Given Culver's role as a co-founder and long-time senior leader of Mercy Corps, the organization needs to understand the potential extent of Culver's sexual misconduct. This is also consistent with the organization's stated values of being survivor-centric and was mentioned by several interviewees, including Ms. Culver Humphrey, as something they thought was necessary. The following additional steps are recommended:

- Conduct an investigation of how Tania Culver Humphrey's case was handled by Mercy Corps in the 1990s
- Investigate Ellsworth Culver's activities to probe whether other related misconduct occurred, particularly with respect to beneficiaries and staff
- Develop an inclusive process to allow Mercy Corps to consider its history in light of the allegations against Culver and Culver's legacy

#### **B. Restructure the Legal, Ethics, and Safeguarding Functions**

Mercy Corps has a long record of high-impact, meaningful relief work, delivering aid to millions of people in over forty countries, often in the worst of circumstances, including war, famine and genocide. To deliver on its mission, Mercy Corps must also invest in its internal capabilities – including making investments in staff and essential functions that enable the quality delivery of its services. We recommend the following actions:

- Hire a Chief Ethics Officer. The General Counsel at Mercy Corps is currently also responsible for ethics and compliance in the organization. This structure likely contributed to the mishandling of the Humphreys' request by addressing it more as a potential litigation risk to the organization rather than, at its core, a safeguarding allegation. Mercy Corps should establish a

new position, Chief Ethics Officer, independent of both the legal and human resource departments, reporting to the CEO and to the Board of Directors. The Ethics Officer should be viewed as an independent, confidential and impartial resource. Safeguarding should report to the Chief Ethics Officer, not the General Counsel or Human Resources. All Human Resources investigations of sexual misconduct or harassment cases, whether between team members or others, should also be the responsibility of the safeguarding team and fall under the auspices of the Chief Ethics Officer.

- Continue Strengthening Safeguarding. Mercy Corps has made substantial strides with respect to its safeguarding policies. To realize its vision, it should ensure sufficient resources are invested to deliver on its policies. It should also be clear that safeguarding includes both program participants and staff and is not only externally focused; the rules that apply in the field also apply at headquarters and among staff. Next steps may include:
  - Commit to an annual public report on safeguarding that provides sufficient detail to identify the type of case and status of investigation while also maintaining confidentiality.
  - Conduct an investigation into how Mercy Corps' safeguarding policies are working in practice to ensure that policies are implemented effectively and sufficiently resourced. This could include an audit of prior safeguarding cases and an examination of how policies are effectuated in the field.
  - Add additional staff to handle the caseload. Mercy Corps should have a sufficient bench of safeguarding experts so that staff with the right skills will always be available to handle these sensitive issues. Current staff has been overstretched and the organization's success in rolling out its safeguarding efforts and building trust will likely result in an uptick in reported cases and increased workload. Accelerate implementation of Community Accountability Reporting Mechanisms and training of local investigators.
  - Appoint a lead safeguarding director on the MCG Board. Although it is the entire Board's responsibility to ensure Mercy Corps is meeting its safeguarding obligations, appointing a designated director to partner with the head of safeguarding and the Chief Ethics Officer provides additional oversight. The safeguarding lead director should meet regularly with the head of safeguarding and ensure that board meetings devote an appropriate amount of time to reviewing safeguarding issues, including robust oversight of cases. This additional layer of board oversight provides an independent resource which is important if management is involved. The lead safeguarding director should also be a member of the JARC and be able to provide a safeguarding, survivor-centered lens to the committee and the Board's work.

- Upskill the Board on safeguarding. The appointment of a lead safeguarding director does not absolve the rest of the Board from safeguarding responsibility. The Board, as well as senior management, should invest in safeguarding training, including hearing directly from a survivor to bring the Board face to face with sexual abuse.
- Engage outside investigators. Have a policy in place requiring referral of cases involving senior management or board members to an external, outside investigator. Mercy Corps' policy allows for the JARC to lead investigations of allegations against organization executives. In particularly sensitive investigations, especially for those that may present a conflict of interest or involve senior management, Mercy Corps should require third-party independent reviews.
- Improve transparency generally by communicating changes made to the safeguarding program, including information about additional resources, clearly to all staff members and specifically by informing those who have come forward about the status of their investigations.

### **C. Strengthen the Board's Governance**

The response of the Board and senior management to Tania Culver Humphrey presents several opportunities to look at the Board and strengthen its oversight, governance and capabilities. Recommendations include:

- Create a Culture and Ethics Oversight Committee. Mercy Corps should create a board committee charged with oversight of ethics and culture. A dedicated committee will ensure that consistent attention and resources to monitor and assess culture are deployed, including efforts around diversity and inclusion. This committee could also provide oversight of the organization's ethics and safeguarding efforts and ensure that criteria for hiring and promotion are transparent to promote equity. The committee would also ensure the Board received data sufficient to provide insight into the culture, including red flags. Such data might include: employee surveys, exit interview data, 360-degree feedback of managers/executives and summaries of scans of social media/employee review sites. This committee would also act as an additional independent (of management) resource for staff to share concerns about culture or ethics.
- Continue to Diversify the Board. Although there are some benefits to continuity, board refreshment provides an opportunity to add new skills and perspectives to the Board. The Board should put in place and honor term limits, both for board and committee tenures, allowing for flexibility to make exceptions when important for the organization's strategy. The Board should also consider augmenting the experience and perspectives of its directors by building a pipeline of directors who provide different dimensions of diverse thought, including expertise on risk and experience in humanitarian aid.

- Drive Leadership Accountability. The CEO and other senior leaders should be evaluated on metrics that include ethics, safeguarding, diversity and inclusion and culture. The compensation system is an opportunity to prioritize how the work gets done.
- Strengthen Governance.
  - Provide a better on-boarding process for directors to ensure they understand governance.
  - Provide regular training on director duties and responsibilities, including deep dives into potential risk areas, like safeguarding, fraud and corruption.
  - Clearly define accountability and communication so directors understand how decisions are made and who has responsibility.
- Review Progress. The Board should review its progress on the above recommendations at one-year intervals and be transparent in its findings.