

February 2011

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FINANCE COMMITTEE

Hundred and Thirty-eighth Session

Rome, 21 – 25 March 2011

Whistleblower Protection Policy

Queries on the substantive content of this document may be addressed to:

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EXECUTIVE SUMMARY

- At its 135th Session in October 2010, the Finance Committee requested to receive for its March 2011 session the Organization's Whistleblower Protection Policy.
- At its 92nd session from 7-9 March 2011, the Committee on Constitutional and Legal Matters was presented with the recently-approved Administrative Circular promulgating the Whistleblower Protection Policy approved by the Director-General in December 2010.

GUIDANCE SOUGHT FROM THE FINANCE COMMITTEE

- The Finance Committee is invited to take note of the Whistleblower Protection Policy attached to this document.

Draft Advice

- **The Finance Committee takes note of the FAO Whistleblower Protection Policy.**

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Ninety-second Session

Rome, 7 – 9 March 2011

Whistleblower Protection Policy

1. At its Ninety-first Session in September 2010, the Committee on Constitutional and Legal Matters (CCLM) took note of the proposed adoption of a Whistleblower Protection Policy and requested review and endorsement of the matter at its forthcoming Session in the Spring of 2011¹. The Council, at its Hundred and Fortieth Session in November and December 2010 noted that the CCLM would at this session examine issues related to the Whistleblower Protection Policy². The Finance Committee, at its Hundred and Thirty-fifth Session in October 2010 looked forward to receiving the whistleblower policy at its session of March 2011.

2. Following extensive review of the matter by the concerned units of the Organization, and taking into account practices followed in other organizations of the United Nations System, including the United Nations itself, the Director-General has adopted the attached Whistleblower Protection Policy. The policy was adopted following consultation with staff representative bodies, in accordance with the relevant provisions of the Staff Regulations on staff relations. The Audit Committee also reviewed and welcomed the policy. In light of their advice, a review of experience with the first year of implementation of the policy will be made at the end of 2011. The policy will also be revisited once the Ethics Office and Ethics Committee are fully functioning.

3. The CCLM is invited to take note of the Whistleblower Protection Policy, adopted by the Director-General, attached to this document.

¹ CL 140/6, paragraph 47.

² CL 140/REP, paragraph 71.



Appendix I

administrative circular

ORIGINATOR: Office of the Inspector-General (AUD)**No.** 2011/05**ENQUIRIES TO BE DIRECTED TO:** Investigations Unit**Date.** 9 February 2011

WHISTLEBLOWER PROTECTION POLICY

INTRODUCTION

This Administrative Circular is intended to announce FAO's "Whistleblower Protection Policy". The Policy aims to enhance the protection of FAO personnel (also referred to hereafter as "individuals" or "complainants") against retaliation when reporting cases of unsatisfactory conduct, providing information in good faith on wrongdoing by one or more employees, or cooperating with a duly authorized audit or investigation. The provisions below explain the conduct that is protected, as well as the protective measures which FAO will apply in the event of retaliation against whistleblowers. The Whistleblower Protection Policy mandates the Office of the Inspector-General to receive and investigate complaints of alleged retaliation.

The Guidelines for Internal Administrative Investigations by the Office of the Inspector-General which have been published under AC 2011/04 dated 9 February 2011 are available at <http://www-data.fao.org/aud/docs/Guidelines-Final.pdf>.

WHISTLEBLOWER PROTECTION POLICY

The purpose of this policy is to enhance protection against retaliation for FAO personnel¹ (also referred to hereafter as "individuals" or "complainants") who report unsatisfactory conduct,

¹ "FAO personnel" refers to staff members and other persons engaged by the Organization, within the meaning of Staff Regulation 301.13.6. It includes *inter alia* personnel specially engaged for conference and other short-term service, consultants, subscribers to Personnel Services Agreements, Associate Professional Officers, Junior Professionals, Interns, Volunteers, part-time personnel, field project personnel, National Professional Officers, National Project Personnel and other personnel locally recruited for services in established offices away from Headquarters.

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provide information in good faith on wrongdoing by one or more employees, or cooperate with a duly authorized audit or investigation.

Background

1. It is the duty of all FAO personnel to report any breach of FAO's Regulations and Rules to officials whose responsibility it is to take appropriate action and to cooperate with the Organization's oversight functions. An individual who makes such a report in good faith has the right to be protected against retaliation.
2. It is the duty of FAO personnel to cooperate with duly authorized audits and investigations. An individual who cooperates in good faith with an audit or an investigation has the right to be protected against retaliation.
3. Retaliation against individuals who have reported unsatisfactory conduct or who have cooperated with audits or investigations violates the fundamental obligation of all FAO personnel to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct in a manner that is in the best interests of the Organization.
4. Retaliation is defined as any direct or indirect detrimental action recommended, threatened or taken towards an individual who has reported unsatisfactory conduct or provided information concerning the same. When established, retaliation in itself constitutes unsatisfactory conduct that may lead to an administrative or disciplinary action.

Scope of application

5. Protection against retaliation applies to any FAO personnel (regardless of the type of appointment, contractual status or duration), who:
 - i. reports the failure of one or more FAO personnel to comply with his or her obligations under Organization's Constitution, General Regulations and Rules, the Organization's Financial Regulations and Rules, Administrative Manual, the Standards of Conduct for the International Civil Service, or other relevant organizational administrative issuances. This includes any request or instruction from any FAO personnel to violate the above-mentioned regulations, rules or standards;
 - ii. provides information in good faith on wrongdoing by one or more FAO personnel; or
 - iii. cooperates in good faith with a duly authorized audit or investigation.

6. In order to receive protection under this policy, the individual must make the report in good faith, and must have a reasonable belief that unsatisfactory conduct has occurred. Reports of retaliation must be made as soon as possible and no later than one year after the alleged acts of retaliation have taken place. The transmission or dissemination of unsubstantiated rumours is not a protected activity. Making a report or providing information that is intentionally false or misleading constitutes unsatisfactory conduct and may result in administrative, disciplinary, or other appropriate action.

7. The present Administrative Circular in no way prejudices the right of a supervisor, initiating body, or similar persons or bodies to apply regulations, rules and administrative procedures, including those governing evaluation of performance and non-extension or termination of appointment. However, in applying such regulations, rules and administrative procedures, FAO management must show by clear and convincing evidence that it would have taken the same action regardless of whether the protected activity referred to in paragraph 6 had been undertaken by the individual concerned.

Reporting unsatisfactory conduct

8. As per the Standards of Conduct for the International Civil Service (MS 304 Appendix A refers), it is the duty of FAO personnel to report unsatisfactory conduct. Confidentiality clauses and oaths in contracts of employment do not preclude such reporting.

9. Reports of unsatisfactory conduct should be made through the established internal mechanisms and following the established guidelines. Depending on the nature of the allegations, this may include:

the Head of the department or office concerned;

the Office of the Inspector-General;²

the Director, Human Resources Management Division;³

the focal point appointed to receive reports of sexual exploitation and abuse.⁴

10. It is the duty of the individual or body receiving the report to protect to the maximum extent possible the confidentiality of the individual when making the report, as well as in all communications related to the report. The individual's identity should not be disclosed without his or her permission, and only if it is necessary for administrative, disciplinary or judicial action or in order to ensure due process in the investigation of the allegations made.

Reporting retaliation

11. Individuals who believe that retaliatory action has been taken against them because they have reported unsatisfactory conduct or cooperated with a duly authorized audit or investigation should forward all information and documentation available to them in support of their complaint

² See Charter of the Office of the Inspector General MS 107 (App. A) and Policy on Fraud and Improper use of the Organization's Resources (Administrative Circular 2004/19).

³ See Policy on the Prevention of Harassment (Administrative Circular 2007/05).

⁴ See Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and non-UN Personnel.

to the Office of the Inspector-General as soon as possible. Complaints may be made in person, by regular mail, by phone or by e-mail.

12. The functions of the Inspector-General with respect to protection against retaliation for reporting unsatisfactory conduct are as follows:
 - i. to receive complaints of retaliation;
 - ii. to keep a confidential record of all such complaints;
 - iii. to conduct a preliminary review of the complaint to determine if:
 - a) the complainant engaged in a protected activity (see paragraph 6); and
 - b) there is a *prima facie*⁵ case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.
 - iv. to investigate complaints where a *prima facie* case of retaliation is determined and report the results to the Director-General.
13. Where the complainant can be contacted, the Inspector-General will send an acknowledgement of having received the report of retaliation within one week.
14. The Office of the Inspector-General will complete its preliminary review within 45 days of receiving the complaint of retaliation.
15. If, in the view of the Inspector-General, there is a *prima facie* case of retaliation, s/he will open an investigation into the allegations and will immediately notify the complainant in writing that the matter is under investigation. The Office of the Inspector-General will normally complete its investigation and submit its report to the Director-General within 120 days.
16. If there is an unavoidable delay in completing either the initial review or the full investigation, the complainant will be notified of this in writing and advised as to when the review or investigation will be completed.
17. Pending the completion of the investigation, the Inspector-General may make recommendations to the Director-General that appropriate measures be taken to safeguard the interests of the complainant, including but not limited to temporary suspension of the implementation of the action reported as retaliatory and, with the consent of the complainant, temporary reassignment of the complainant or placement of the complainant on special leave with full pay.
18. If the Inspector-General finds that there is no credible case of retaliation or threat of retaliation, but finds that there is a dispute within a particular office, s/he will advise the complainant of the existence of mechanisms of conflict resolution in the Organization. A

⁵ “Evidence that if found to be true would establish retaliation”

complainant may appeal such a finding by the Inspector-General through the applicable recourse mechanism.

19. If the Inspector-General finds that there is a managerial problem based on the preliminary review of the complaint or the record of complaints relating to a particular department or office, s/he will advise the Director-General.

20. If, in the opinion of the Inspector-General, there may be a conflict of interest in undertaking the investigation, the Inspector-General may recommend to the Director-General that the complaint be referred to an alternative investigation mechanism.

Protection of the person who suffered retaliation

21. If retaliation against an individual is established, the Director-General may, after taking into account any recommendations made by the Inspector-General and after consultation with the complainant, take appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action. Such measures may include, but are not limited to, the rescission of the retaliatory decision, including reinstatement, or, if requested by the complainant, transfer to another office or function for which the individual is qualified, where s/he can work independently of the person who engaged in retaliation.

22. The procedures set out in the Administrative Circular are without prejudice to the rights of an individual who has allegedly suffered retaliation to seek redress through the applicable recourse mechanism.

Action against the person who engaged in retaliation

23. Acts of retaliation constitute unsatisfactory conduct. Should an investigation establish that an individual engaged in such action, that person may be subject to an administrative or disciplinary action.

Prohibition of retaliation against outside parties

24. Any retaliatory measures against a contractor or its employees, agents or representatives, or any other individual engaged in any dealing with the Organization because such person has reported unsatisfactory conduct by FAO employees will be considered unsatisfactory conduct that, if established, may lead to an administrative or disciplinary action.

Manoj Juneja

Assistant Director-General

Corporate Services, Human Resources and Finance Department