FAO WHISTLEBLOWER PROTECTION POLICY

Definitions

For the purposes of this Policy:

(a) “complaint” is any allegation, claim, concern or information submitted or known to the Office of the Inspector General (OIG), indicating possible wrongdoing, and for the purposes of this Policy, including reports of retaliation as provided under paragraphs 8-13 of this Policy;

(b) “oversight activity” means any duly authorized investigation, audit or inspection authorized under the Charter of the Office of the Inspector General, or duly authorized evaluation, or other oversight activity undertaken in accordance with the terms of reference of the FAO External Auditor, the FAO Audit Committee or any other oversight activity specifically authorized by the Director-General;

(c) “FAO personnel” or “individual” shall refer to staff members and all other persons engaged by the Organization. It includes inter alia personnel specially engaged for conference and other short-term service, consultants, subscribers to Personal Service Agreements, Associate Professional Officers, Junior Professional Officers, 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;

(d) “retaliation” or “retaliatory action” means any direct or indirect detrimental action by FAO personnel that adversely affects the employment or working conditions of an individual where such action has been recommended, threatened or taken in whole or in part, because s/he reported wrongdoing, or cooperated with, or assisted an authorized oversight activity. When established, retaliation in itself constitutes unsatisfactory conduct that will lead to an administrative or disciplinary action;

(e) “complainant” is any FAO personnel, as defined above, or third party who reports retaliation or threats of retaliation, as defined in the Policy;

(f) “unsatisfactory conduct” by FAO personnel is conduct which is incompatible with his/her undertaking or implied obligation to the Organization or failure to comply with the requirements of Article I of the Staff Regulations;
(g) “sanctionable action” by a third party, namely a FAO vendor or implementing partner, means a corrupt, fraudulent, collusive or coercive practice, occurring at any time during the procurement process or in the context of contract execution, as well as any unethical practice, or obstruction – including retaliation – of a duly authorized oversight activity, by a third party;

(h) “delegated authority” means the office within FAO charged with taking administrative or disciplinary action based on a finding of wrongdoing;

(i) “wrongdoing” means unsatisfactory conduct by FAO personnel or sanctionable action by a third party including, but not limited to: fraudulent or corrupt practices, harassment, abuse of authority, serious violation of any applicable law, sexual exploitation or abuse, willful or grossly negligent acts that endanger lives or cause damage to FAO’s property or improper use of the Organization’s resources;

(j) “prima facie” (case of retaliation) is established when the information available to the Ethics Office indicates that it is more likely than not that a causal connection exists between the protected activity (explained below) and the detrimental action that has been taken or threatened against the individual. When the Ethics Office has determined that a prima facie case is established, the matter will be referred to the Office of the Inspector General for a full investigation.

Background

1. It is the duty of all FAO personnel to report any breach of the Organization’s Regulations, Rules or Policies 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 fully with any authorized oversight activity. An individual who cooperates in good faith with such an oversight activity has the right to be protected by the Organization against retaliation.

3. Retaliation against individuals who have reported wrongdoing or who have cooperated with any duly authorized oversight activity 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. The Organization has a duty to address suspected wrongdoing and ensure that due diligence is exercised when reviewing and investigating complaints of wrongdoing and retaliation. The review and investigation of reports of complaints of wrongdoing and complaints of retaliation will be completed, in full compliance with the relevant rules, even if the complainant’s employment status and relationship with the Organization changes during the review and/or investigation. In accordance with the Charter for the Office of the Inspector General and Guidelines for Internal Administrative Investigations, the complainant will be kept informed of the outcome of the review or investigation irrespective of his/her employment status with FAO.

Scope of application

5. Protection against retaliation applies to any FAO personnel (regardless of the type of appointment, contract type, status or duration, grade, and geographical location) who engage in the following protected activity:

   i. reports in good faith the failure of FAO personnel to comply with their obligations under, as applicable, the 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, policies or standards, and relevant administrative issuances;
ii. provides information in good faith on unsatisfactory conduct by FAO personnel;

iii. reports or provides information in good faith relating to any other wrongdoing in connection with FAO's operations or activities by third parties, including FAO vendors or implementing parties;

iv. cooperates in good faith with a duly authorized oversight activity.

6. In order to receive protection under this Policy, the individual must make a report or provide information in good faith, and must have a reasonable belief that wrongdoing has occurred. The transmission or dissemination of baseless rumors is not a protected activity. Making a report or providing information that is intentionally false or misleading, or known to be so, constitutes unsatisfactory conduct and may result in administrative, disciplinary, or other appropriate action.

7. The present Policy in no way prejudices the right of FAO management, such as 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. In doing so, however, FAO management must show by clear and convincing evidence that:

i. it would have taken the same action regardless of whether the protected activity referred to in paragraph 5 had been undertaken by the individual concerned, or

ii. that the alleged retaliatory action was taken for legitimate and documented or otherwise recorded, managerial purposes.

If the foregoing conditions are not met, retaliation will be found.

**Reporting wrongdoing through internal mechanisms**

8. As per the Standards of Conduct for the International Civil Service (MS 304 Appendix A, paragraph 20 refers), it is the duty of FAO personnel to report any breach of the Organization's Regulations, Rules and/or Policies. Confidentiality clauses and oaths in contracts of employment do not preclude such reporting.

9. Except as provided in paragraph 13 below, complaints of wrongdoing should be made through the established internal mechanisms and following the established guidelines for the type of wrongdoing in question. Depending on the nature of the allegations, this may include:

i. the Head of the department or office concerned;

ii. the Office of the Inspector General;¹

iii. the Ethics Office;

iv. the focal point appointed to receive reports of sexual exploitation and abuse.²

10. It is the duty of the individual or office receiving the report to protect to the maximum extent possible the confidentiality of the complaint in all other communications related to the complaint, including when referring it to the Office of the Inspector General. The identity of the complainant should not be disclosed without their permission, and only if it is necessary for administrative, disciplinary or judicial action. Notwithstanding the foregoing, all information related to the complaint may be shared with the Office of the

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² See Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and non-UN Personnel.
Inspector General, which will in turn keep it confidential in accordance with applicable rules and procedures.

11. A report of alleged wrongdoing can also be made anonymously through the OIG’s investigation hotline.³

12. OIG shall conduct its preliminary review and investigations into allegations of wrongdoing in accordance with the applicable policies and guidelines (e.g. Policy on Prevention of Sexual Harassment, Policy on the Protection from Sexual Exploitation and Abuse, Vendor Sanctions Policy, this Whistleblower Protection Policy).

**Reporting wrongdoing through external mechanisms**

13. Protection against retaliation will be extended to an individual who reports wrongdoing to an entity or individual outside of the established internal mechanisms, where the criteria set out below are satisfied:

   i. Such reporting is necessary to avoid:

      a) A significant threat to public health and/or safety; or

      b) Substantive damage to the Organization’s operations; or

      c) Violations of national or international law; and

   ii. The use of internal mechanisms is not possible because:

      a) At the time the report is made, the individual has grounds to believe that such a report will result in retaliation by the person(s) to which the report should be made pursuant to the established internal mechanism; or

      b) It is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) or office(s) indicated in the established internal mechanisms; or

      c) The individual has previously reported the same information through the established internal mechanisms, and the Organization has failed to inform the individual in writing of the status of the matter within six months of such a report; and

   iii. The individual does not accept payment or any other benefit from any party for reporting wrongdoing.

**Preventative action**

14. OIG will inform the Ethics Office of any complaint of wrongdoing received that OIG identifies as posing a retaliation risk. OIG will provide this information to the Ethics Office only with the consent of the complainant.

15. When informed by OIG of an individual who is at risk of retaliation, the Ethics Office will consult with the individual on appropriate preventative action. With the individual’s consent, such action may include engagement by the Ethics Office with senior management to ensure monitoring of the individual’s working conditions with a view to preventing any retaliatory action against the individual as a consequence of her/his engaging in a protected activity.

**Complaints of retaliation**

16. Individuals who believe that retaliatory action has been taken or may be taken against them because they have reported wrongdoing or cooperated with a duly authorized oversight activity should submit a request for protection against retaliation and forward all information and documentation available to them in support of their complaint to the Ethics Office.

17. Reports of retaliation must be made as soon as possible and no later than one year after the latest alleged act of retaliation have taken place.

Receipt of complaints of retaliation and prima facie review by the Ethics Office

18. The functions of the Ethics Office with respect to the receipt and review of complaints of retaliation arising under this Policy are as follows:

i. to receive complaints by FAO Personnel and third parties of retaliatory actions;

ii. to keep a confidential record of all such complaints and related communications received from complainants who request protection against retaliation, including those received from third parties. Complainants may authorize the Ethics Office to contact any office or staff member to obtain additional information and records related to their request for protection. However, the Ethics Office may be required to cooperate with requests for information from the Office of the Inspector General, or FAO’s internal appeals committee or the ILO Administrative Tribunal;

iii. to conduct an initial assessment of such complaints to determine if:
   a) the complainant engaged in a protected activity (see paragraph 5); and
   b) there is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation, or that an alternative option would be more appropriate, such as informal resolution, referral to the Office of Human Resources (OHR), or other office, or no further action. In any case, the Ethics Office shall maintain appropriate detailed records relating to the outcome of its initial assessment;

   iv. where a prima facie case of retaliation is determined to exist to refer complaints to the Office of the Inspector General.

19. All offices and staff members are required to cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office in connection with reviews arising under this Policy, except for medical records that are not available without the express consent of the personnel concerned and OIG’s records that are subject to confidential requirement.

20. Where the complainant can be contacted, the Ethics Office will send an acknowledgement of having received the complaint of retaliation within one week.

21. The Ethics Office will normally complete its initial assessment within 20 working days of receiving all information it may have requested in accordance with paragraph 19. If there is an unavoidable delay in completing the initial assessment, the Ethics Office will notify the complainant of this in writing and advise as to when the assessment is expected to be completed.

22. If the Ethics Office determines that there is no prima facie case of retaliation or threat of retaliation, it shall so notify the complainant in writing. Should the Ethics Office determine in such cases that there is an interpersonal problem within a particular office, it may additionally advise the complainant of the mandate of the Office of the Ombudsman or of the existence of other informal mechanisms of conflict resolution in the Organization.

23. If the Ethics Office determines that there is no prima facie case of retaliation or threat of retaliation, it shall so notify the complainant in writing. And if the Ethics Office considers there to be a managerial problem relating to a particular department or office, and provided that the complainant has consented to such action, it will advise the head of department or office concerned and, if it considers it appropriate, the Director-General.
24. If, in the view of the Ethics Office, there is a *prima facie* case of retaliation or threat of retaliation, it will refer the matter in writing to OIG for investigation and will immediately notify the complainant in writing that the matter has been referred.

**Investigations by the Office of the Inspector General**

25. Upon receipt of the Ethics Office’s referral of a *prima facie* case of retaliation, the Office of the Inspector General will conduct its investigation in accordance with the guidelines for internal administrative investigations by the Office of the Inspector General in force. OIG submits investigation reports on allegations of retaliation to the Director-General, with a copy to the Ethics Office.

**The decision-making process**

26. Upon receipt of an investigation report, the Ethics Office will conduct an independent review of the findings of the OIG report and supporting documents to determine whether the report and the supporting documents show whether the applicable standard of proof, as provided in paragraph 7 hereof, has been met.

27. If, in the view of the Ethics Office, this standard of proof is not met, the Ethics Office will consider that retaliation has occurred. If the standard of proof is met, the Ethics Office will consider that retaliation has not occurred. In all cases, the Ethics Office will make its recommendations to the Director-General, which may include recommendations on possible disciplinary or administrative action, or other action.

28. The Director-General or delegated authority shall seek to provide a written decision to the complainant and subject on the recommendations contained in the investigation report and those provided by the Ethics Office within 30 days following receipt of the recommendation of the Ethics Office. The decision must respect the confidentiality rights of the person who allegedly engaged in retaliation in relation to any ongoing disciplinary process.

29. The Director General or delegated authority shall inform complainants, regardless of their employment status with the Organization, in writing on a confidential basis of any disciplinary or administrative measures imposed for the retaliatory action, and of available recourse mechanisms.

**Conflict of interest**

30. If the Ethics Office is of the opinion that there is an actual or potential conflict of interest in its conducting an initial assessment of a report of retaliation, or reviewing a request for protection against retaliation, it shall report this to the Director-General, who shall recommend such actions that may be needed to mitigate and reduce the undesirable effects of any actual or potential conflict of interest, including referring the matter to an alternative reviewing body.

31. Where the Ethics Office or the Office of the Inspector General determines that there is an actual or potential and significant and material conflict of interest in conduct by the Office of the Inspector General of an investigation under this Policy, this shall be reported to the Director-General, who shall recommend such actions that may be needed to mitigate and reduce the undesirable effects of any potential, perceived, or real conflict of interest, including referring the complaint to an alternate investigation mechanism.

**Protective measures**

32. Pending the completion of the investigation, the Ethics Office may recommend to the Director-General that appropriate *interim* protective 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, in consultation with the complainant, temporary reassignment of the complainant or placement of the complainant on special leave with full pay. Pursuant to paragraph 25 above, OIG may make similar
recommendations at any time to the Director-General, with the Ethics Office in copy, for consideration. The office making the recommendation shall keep the complainant informed of its outcome.

Protection of the person who suffered retaliation

33. If retaliation against an individual is established, the Director-General may, after taking into account any recommendations made by the Ethics Office 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 and where the complainant can work independently of the person who engaged in retaliation. The Director General shall communicate the outcome of any request for protection to the complainant in a timely manner.

Recourse through appeals mechanisms

34. The procedures set out in this Administrative Circular are without prejudice to the rights of an individual who has allegedly suffered retaliation to seek redress through the applicable appeal mechanisms provided for in Manual Section 331, in accordance with the timelines set out in that section.

Review of a determination by the Ethics Office

35. If, following a determination by the Ethics Office under paragraphs 22, 23, and 30 of this Policy, the complainant wishes to have the determination reviewed further, he/she may, within thirty (30) working days of notification of the determination, refer the matter in writing to the Ethics Office of another UN organization with which there is an established agreement for this purpose. The complainant shall communicate any such action to FAO’s Director-General or delegated authority. The outcome of the review by the external reviewing body shall be final and binding. Absent an agreement for such a review between FAO and another UN organization, the determination by the Ethics Office may be the subject of an appeal through the appeal mechanism provided for in Manual Section 331.

Action against FAO personnel who engaged in retaliation

36. Acts or threats of retaliation constitute unsatisfactory conduct. Should retaliation be established in accordance with the procedures set out in this Policy, the person(s) responsible will be subject to administrative or disciplinary action.

Prohibition of retaliation against outside parties

37. 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 wrongdoing in relation to FAO’s operations and activities will be considered unsatisfactory conduct that, if established, will lead to administrative or disciplinary action.

Review of the Policy


39. The Ethics Office shall review this Policy periodically, but at a minimum every 3 years, and shall implement any revisions identified on an as-needed basis, taking into account lessons learned from monitoring of the implementation of the Policy and any changes that would have an impact on the implementation of this Policy.