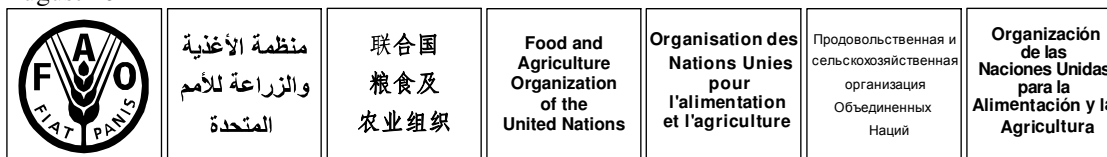


August 2012



COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Ninety-fifth Session

Rome, 8 - 11 October 2012

Review of the Implementation of the Whistleblower Protection Policy

I. Background

1. The concept of protection against retaliation has always been present in FAO rules and regulations. However, in the context of the strategy to enhance integrity within FAO, in 2010 the Office of the Inspector General (hereafter 'OIG' or 'the Office') led the development of an Organization-wide Whistleblower Protection Policy (hereafter the 'Policy') in collaboration with the Legal Office and the Human Resources Management Division (CSH). The Policy was approved by the Director-General in December 2010 and issued as Administrative Circular No. 2011/05, dated 9 February 2011. Although there had been provision in its Charter for OIG to investigate allegations of reprisal against staff for cooperation with its audits and investigations, the Policy broadened the scope of whistleblower protection and elaborated OIG's responsibilities to investigate all complaints of whistleblower retaliation.
2. At its 92nd Session (Rome, 7-9 March), the Committee on Constitutional and Legal Matters (CCLM) noted that, "...it was proposed to revisit the Administrative Circular at the end of 2011, following a review of experience with the first year of implementation of the Policy and, on that occasion, it would be possible to make adjustments to the Policy, if necessary"¹.
3. At its 138th Session (Rome, 21-25 March 2011), the Finance Committee (FC) acknowledged the proposal of the Secretariat regarding the review of the Administrative Circular at the end of 2011.
4. With the agreement of the Chairpersons of the two Committees, a report on the review will be presented at their autumn 2012 sessions.
5. OIG conducted a review of the first year of implementation in 2012 and presented the results of this to the Audit Committee and FAO management.
6. This document is organized as follows:

¹ CL 141/7

- Relevant circumstances observed in cases handled by OIG
- Significant matters identified in the Policy implementation
- Conclusions

II. Implementation of the Whistleblower Protection Policy

A. Relevant circumstances observed in cases handled by OIG

7. This section offers a summary presentation of the most relevant aspects related to allegations of retaliation received by OIG during 2011 and the first half of 2012. The following points should be highlighted:

- a) in the period since the Policy was issued until the end of June 2012, OIG received a total of seven complaints of retaliation; this is significantly more per year than previously received;
- b) all seven complaints met the criteria established under article 5 of the Policy: i) reports the failure of one or more FAO personnel to comply with his or her obligations under the Organization's Rules; ii) provides information in good faith on wrongdoing by one or more FAO personnel; and iii) cooperates in good faith with a duly authorized audit or investigation;
- c) three of the seven complaints involved allegations of retaliatory actions, which have reportedly taken place against individuals because of their cooperation with OIG;
- d) the reported complaints included, among others, threats of non-renewal of contracts, staff mistreatment by the supervisor, unsatisfactory performance appraisal conducted without following established procedures, harassment and bullying;
- e) the related complaints of unsatisfactory conduct were made in good faith and the complainants displayed a reasonable belief that the conduct had occurred;
- f) allegations of retaliation have been presented no later than one year after the alleged acts of retaliation occurred, as prescribed by the Policy;
- g) alleged retaliatory actions have all taken place in field offices;
- h) in most cases, the alleged retaliation took place in offices where the working environment was difficult and characterized by tense relationships among the parties involved;
- i) the period established by the Policy to complete the preliminary review was extended in two cases, due to the need to field missions in order to interview additional witnesses;
- j) in six cases, the preliminary review concluded that there was not a 'prima facie' case of retaliation. Conclusions were mostly based on lack of evidence to show the nexus between the hypothetical retaliatory action and the alleged conduct reported; the complainant was unable to provide consistent information or/and documentation; or the complainant withdrew the complaint;

- k) in one case, OIG concluded that, although there was a ‘prima facie’ case of retaliation, FAO management could demonstrate that it would have taken the same action regardless of whether the protected activity had been undertaken by the individual concerned;
- l) FAO applied protective measures in one case, mitigating the risk of retaliation by transferring the complainant to a different project located in the same Region, in accordance with article 17 of the Policy.

B. Significant issues identified in the Policy implementation

- 8. The most relevant aspect identified involves the authority given by the Policy to OIG:
 - a) Article 12 of the Policy provides that *“the functions of the Inspector-General with respect to protection against retaliation for reporting unsatisfactory conduct are: 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 is engaged in a protected activity; 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; iv. to investigate complaints where a prima facie case of retaliation is determined and report the results to the Director-General”*. This article confers authority to OIG during the entire process including receipt of retaliation complaints, analyzing personnel reports, interviewing witnesses, conducting preliminary reviews and determining whether there is a ‘prima facie’ case of retaliation and, in such cases, investigating the allegation.
 - b) The majority of complaints received (see Section A, points h). and j) above) ultimately entailed issues concerning the internal environment of the concerned units. As indicated in Section A, point h). above, OIG concluded that the allegations received did not involve retaliation but did arise from disputes between the parties that could have been solved by line managers, if necessary with support from other offices in the Organization. Consequently, the authority assigned by the Policy to OIG in receiving and undertaking the initial review of complaints involved it in exploring manager-staff conflicts, thereby de facto extending its mandate to areas where other departments in the Organization may be in a better position to assist managers to address the issues involved.
 - c) Handling issues that could be addressed by other specific offices within the Organization has an impact on OIG’s operations and workload, as the Office is required under the policy to give priority to screening retaliation complaints over other investigations.
 - d) In other Organizations and Agencies within the United Nations System, the Ethics Office is mandated to receive and conduct a preliminary review of complaints of retaliation, or threats of retaliation, and refer the matter to the Office responsible for its investigation when it finds that there is a credible case of retaliation. In the case of the UN Secretariat, staff can appeal to the Ethics Committee a decision by the Ethics Officer not to refer their complaint for investigation².

² In 2005, the UN Secretary-General Kofi Annan issued a Whistleblower Protection Policy (Bulletin, ST/SGB/2005/21, Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations, available at http://www.un.org/depts/oios/wb_policy.pdf). The policy established an independent Ethics Office, responsible for protecting whistleblowers from retaliation. The policy states that it was formulated in accordance with paragraph 161 (d) of General Assembly resolution 60/1. This provision urges the Secretary-General to *“develop a system-wide code of ethics for all United Nations personnel.*

9. In its 2011 Annual Report, the Audit Committee took note of FAO's new Whistleblower Protection Policy and its impact on the investigative function. The Committee observed that "the majority of the cases dealt with by OIG under this policy related primarily to issues of work place and management performance. Therefore, the Committee recommends that particularly given OIG's limited resources, and in line with Whistleblower Protection Policies in many other UN Organizations and Agencies, the Organization considers whether the initial review of complaints under this policy be handled by a competent party outside OIG. The Committee also noted that the outcome of recent investigations pointed to the need for the Organization to raise awareness on issues related to conflicts of interest by staff and the Organization's policies in this regard".

III. Conclusions

10. While the number of total complaints received by OIG has progressively increased during the last few years, there is no indication that the promulgation of the Policy in early 2011 resulted in an acceleration of this trend. However, the Policy has been successful in encouraging staff members to report conduct that could potentially be considered as retaliatory, as indicated by the significant increase in the number of complaints of retaliation received by OIG since the Policy was issued.

11. In light of the experience to date, FAO management makes no proposals at this time to revise the Policy though agrees to keep under review: a) whether the initial review of complaints under the Policy be handled by a competent office outside OIG, and b) the potential role of the Ethics Office on the matter, including once the Ethics Committee becomes operational³ in line with other UN Whistleblower Protection Policies.

12. OIG will step up, its awareness raising within the Organization, especially in field locations, regarding the existence of the Policy and what constitutes retaliation, to promote the use of alternative channels by complainants when the matter does not meet the criteria in the Policy; and to deter and prevent acts of retaliation. When feasible, this will be coordinated with awareness raising and training efforts by the Ethics Office.

In this regard, we request the Secretary-General to submit details to an ethics office with independent status, which he intends to create..."

³ It was noted by the CCLM that "the Policy will also be revisited once the Ethics Office and Ethics Committee are fully functioning". See CCLM 92/7