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administrative circular

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FAO WHISTLEBLOWER PROTECTION POLICY

The purpose of this Administrative Circular is to inform FAO personnel of the issuance of the revised “FAO Whistleblower protection policy” as approved by the Director-General.

The revised policy aligns with best practices across the United Nations common system and aims to foster a culture of trust and ethical conduct in our Organization.

The revised policy has been subject to wide stakeholder engagement, including the Office of the Inspector General, the Legal Office, the Human Resources Division and the Staff Representative Bodies, and has been endorsed by the Oversight Advisory Committee.

This Administrative Circular replaces and supersedes Administrative Circular 2019/06 issued on 14 August 2016. The text of the revised policy is attached and can also be found [here](#).



Date: 28 June 2021

FAO WHISTLEBLOWER PROTECTION POLICY

Definitions

1. For the purposes of this Policy:

(a) “**complaint**” is any allegation, claim, concern or information submitted by a complainant or third party to the Office of the Inspector General (OIG), indicating possible misconduct or sanctionable action, and, for the purposes of this Policy, retaliation as provided under paragraphs 10–15 of this Policy.

(b) “**complainant**” is a person or entity, making a complaint of misconduct to OIG or of retaliation to the Ethics Office.

(c) “**delegated authority**” means the office within FAO charged with taking administrative, including disciplinary, action based on a finding of misconduct;

(d) “**evidence**” means any type of information that tends to establish or disprove a fact material to the case. It includes, but is not limited to, oral testimony of witnesses, including experts on technical matters; documents; electronic, audio, and video records; and photographs.

(e) “**FAO personnel**” or “**individual**” means staff members and other individuals engaged by the Organization. It includes but is not limited to all staff members whether holding continuing, fixed-term or short-term appointments, working full-time or part-time at headquarters or in decentralized offices; all affiliated personnel such as consultants, subscribers to Personnel Services Agreements, National Project Personnel, interns and volunteers..

(f) “**Misconduct**”, as used in this Policy, refers to any wrongdoing by FAO personnel or third parties in connection with their engagement with FAO, including (i) conduct which is incompatible with their undertaken or implied obligation to the Organization; (ii) failure to comply with the requirements of Article I of the Staff Regulations and/or referred to in various rules and policies as misconduct or unsatisfactory conduct. It includes unsatisfactory conduct by FAO personnel, as per the non-exhaustive list of examples in FAO Administrative Manual

paragraph 330.1.52. It also includes sanctionable actions by a third party, as defined in the [FAO Vendor Sanctions Procedures](#).

(g) “**oversight activity**” means any investigation or audit authorized under the OIG Charter, collaboration with the FAO Security Service in accordance with MS 550, or duly authorized evaluation, or other oversight activity undertaken in accordance with the terms of reference of the FAO External Auditor, the FAO Oversight Advisory Committee or any other oversight activity specifically authorized by the Director-General.

(h) “**prima facie**” (case of retaliation) is established when the information available to the Ethics Office indicates that:

- i. the complainant engaged in a protected activity within the meaning of the present Policy, and
- ii. the protected activity appears to be a contributing factor in causing the alleged retaliation.

(i) “**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, or negatively affects a third party, where such action has been recommended, threatened or taken in whole or in part, because the individual or third party reported misconduct or cooperated with an oversight activity. When established, retaliation constitutes misconduct and will lead to administrative, including disciplinary, action.

General Principles

2. It is the duty of FAO personnel to report any breach of the Organization’s Staff Regulations, Staff 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 in accordance with this Policy.
3. It is the duty of FAO personnel to cooperate fully with any 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.
4. Retaliation against individuals who have reported misconduct or who have cooperated with any 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.
5. The Organization has a duty to address suspected misconduct and ensure that due diligence is exercised when reviewing and investigating complaints of misconduct and retaliation. The review and investigation of complaints of misconduct and complaints of retaliation will be completed in compliance with the relevant rules, even if the complainant’s employment status and relationship with the Organization changes during the review or investigation. In accordance with the OIG Charter and [FAO Investigation Guidelines](#), the complainant will be kept informed of the conclusion of the review or investigation irrespective of the individual’s employment status.

Protected activities

6. Any FAO personnel (regardless of grade and geographical location, type of appointment or contract, contractual status or duration) who engage in one or more of the following activities have a right to be protected in accordance with this Policy:
 - i. reporting possible misconduct in good faith and in accordance with applicable procedures as described in paragraphs 11 and 15;
 - ii. cooperating in good faith with an oversight activity.
7. In order to receive protection under this Policy, the individual's protected activity must in all circumstances be made in good faith. With regard to 6.i and 6.ii, the complaint or information provided concerning possible misconduct must be grounded in a reasonable belief that misconduct has occurred. The transmission or dissemination of baseless rumours is not a protected activity. Reporting or providing information that is intentionally false or misleading, or known to be so, constitutes misconduct and may result in administrative, including disciplinary, action.
8. The present Policy does not prejudice the right of FAO management, including supervisors, to apply regulations, rules and administrative procedures, including those governing performance evaluation and extension, renewal, or termination of appointment or contract. In cases where a *prima facie* case has been found, 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 6 had been undertaken by the individual concerned, and
 - ii. that the action was taken for legitimate and documented or otherwise recorded, managerial purposes.
9. If the foregoing conditions are not met, retaliation will be found.

Reporting misconduct through internal mechanisms

10. The Standards of Conduct for the International Civil Service state that it is the duty of FAO personnel to report any breach of the Organization's Staff Regulations, Staff Rules and/or policies (Administrative Manual Section 304 Appendix A, paragraph 20 refers). The oath or declaration of office taken by staff members and confidentiality clauses in contracts do not preclude such reporting.
11. Except as provided in paragraph 15 below, complaints of misconduct should be made through the established internal mechanisms and following the established guidelines for the type of misconduct in question. Depending on the nature of the allegations, this may include:
 - i. the head of the office concerned;¹

¹ "Office" includes office, centre, stream, division

- ii. OIG;²
 - iii. the Director, Human Resources Division (CSH);
 - iv. the focal point for complaints of sexual exploitation and abuse.³
12. 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 OIG. The identity of the complainant should not be disclosed without their prior permission, and only if it is necessary for administrative, including disciplinary, action. That notwithstanding, all information related to the complaint may be shared with OIG, which will maintain confidentiality in accordance with applicable rules and procedures.
13. A complaint of possible misconduct can also be made anonymously through OIG's investigations hotline (investigations-hotline@fao.org).⁴
14. OIG shall conduct its preliminary review and investigation into allegations of misconduct in accordance with the FAO Investigation Guidelines and applicable policies (including on harassment, abuse of authority, sexual harassment, sexual exploitation and abuse, and vendor sanctions).

Reporting misconduct through external entity

15. Protection against retaliation will be extended to an individual who reports misconduct to an individual or entity outside of the established internal mechanisms, where the criteria 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) When the complaint is made, the individual has grounds to believe that such a complaint will result in retaliation by the person(s) to whom the complaint 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 persons or offices that are part of the established internal

² See Charter of the Office of the Inspector General Manual Section 107 (App. A) and Policy on Fraud and Improper use of the Organization's Resources (Administrative Circular 2015/08)

³ See Administrative Circular 2013/27 on Protection against Sexual Exploitation and Abuse

⁴ <http://www.fao.org/about/who-we-are/departments/office-of-the-inspector-general/en/>

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 misconduct.

Preventive action

16. OIG will inform the Ethics Office of any complaint of misconduct received that OIG identifies as posing a retaliation risk, provided the complainant agrees with such action.
17. When informed by OIG of an individual who is at risk of retaliation, the Ethics Office will consult with the individual on an appropriate preventive action. With the individual's consent, such action may include engagement by the Ethics Office with 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

18. Individuals who believe that retaliatory action has been taken or may be taken against them because they have engaged in a protected activity should submit a complaint of retaliation, including any supporting information and documentation available to them, to the Ethics Office.
19. Complaints of retaliation must be made as soon as possible and no later than one year after the latest alleged act of retaliation has taken place.

Submitting a request for protection against retaliation or a complaint of retaliation to the Ethics Office

20. Individuals who believe they have been threatened by retaliation or that retaliatory action has been taken against them may report this to the Ethics Officer. The retaliation complaint may be made in person to the Ethics Office (Office A110E), by telephone (+39 06 570 53800) or email (Retaliation-Report@fao.org). The Ethics Office may then request that a written complaint be submitted. Complainants should forward all information and documentation available to them to support their complaint to the Ethics Office as soon as possible.

Review of complaints by the Ethics Office

21. The Ethics Office shall:
 - i. receive complaints of retaliatory actions;
 - ii. keep a confidential record of all such complaints and related communications received

from complainants who report retaliation, including those received from third parties. Complainants may authorize the Ethics Office to contact any office or member of FAO personnel to obtain additional information and records related to their complaint of retaliation as necessary to carry out the *prima facie* review set out in point (iii) below.

- iii. conduct a *prima facie* review of such complaints to determine whether the complainant engaged in a protected activity within the meaning of this Policy and, if so, whether the protected activity appears to have been a contributing factor in causing the alleged retaliation. The *prima facie* review is not an investigation and the Ethics Office shall not interview or contact the subject of any retaliation complaint, or disclose to the subject the existence of any retaliation complaint.
 - iv. refer complaints to OIG for a full investigation where it is determined that a *prima facie* case of retaliation exists.
22. All offices and FAO personnel 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, which are not available without the express consent of the member of personnel concerned, and OIG's records, which are subject to confidentiality.
23. The Ethics Office may be required to cooperate with requests for information made by OIG, the internal Appeals Committee, or the Administrative Tribunal of the International Labour Organization.
24. The Ethics Office will acknowledge receipt of the complaint of retaliation within five (5) working days.
25. The Ethics Office will normally complete its *prima facie* review within 45 working days following receipt of all supporting information requested by the Ethics Office. If there is an unavoidable delay in completing the *prima facie* review, the Ethics Office will notify the complainant of this in writing and advise when the *prima facie* review is expected to be completed.
26. If the Ethics Office determines that there is no *prima facie* case of retaliation or threat of retaliation, it shall notify the complainant in writing, stating the reason for this determination. The Ethics Office will also inform OIG of its determination.
27. In such case:
 - i. if it is found that an interpersonal problem exists within a particular office, the Ethics Office may inform the complainant of the mandate of the Office of the Ombudsman or of other informal conflict resolution mechanisms available in the Organization.
 - ii. if it is found that a managerial problem exists in a particular office, the Ethics Office may, with the complainant's consent, advise the head of office concerned and, if considered appropriate, the Director-General.
28. If, in the view of the Ethics Office, a *prima facie* case of retaliation or threat of retaliation has been established, it will refer the matter in writing to OIG for investigation and will concurrently notify the complainant in writing of this referral. In such cases, OIG may request the Ethics Office to share any information obtained during the *prima facie* review.

29. The determination by the Ethics Office that a complaint does not set out a *prima facie* case of retaliation does not prevent a complainant from submitting a complaint of other alleged misconduct including the same facts to OIG.

Investigations by OIG

30. Upon receipt of the Ethics Office's referral of a *prima facie* case of retaliation, OIG will conduct its investigation in accordance with the FAO Investigation Guidelines. OIG submits investigation reports on allegations of retaliation to the Director-General, with a copy to the Ethics Office. In the event of an unavoidable delay in completing the investigation, OIG will notify the complainant in writing of the delay and will advise when the investigation is expected to be completed. OIG shall also inform the Ethics Office of any such delay and expected completion date.

The decision-making process

31. Upon receipt of an investigation report, the Ethics Office will conduct an independent review of the findings contained in the OIG report and supporting documents and make its recommendations to the Director-General, which may include recommendations on possible administrative action. The Ethics Office will copy OIG on its recommendation to the Director-General to inform them of the outcome of its independent review.
32. The Director-General or delegated authority shall seek to provide a written decision to the complainant and any subject of the complaint on the recommendations contained in the investigation report and those provided by the Ethics Office within 30 days following receipt of the recommendations of the Ethics Office. The decision must respect the confidentiality rights of any subject of the complaint.
33. The Director-General or delegated authority shall inform the complainant in writing, and on a confidential basis, when an administrative, including disciplinary, measure has been imposed in respect of the retaliatory action. However, the nature of this measure shall not be disclosed.

Conflict of interest

34. If the Ethics Office is of the opinion that there is an actual or potential conflict of interest in its conducting a *prima facie* review, or in reviewing a request for protection against retaliation, it shall report this to the Director-General. The Director-General shall recommend mitigation actions to reduce the effects of any actual or potential conflict of interest, including referring the matter to an alternative review mechanism.
35. Where the Ethics Office or OIG determines that there would be an actual or potential conflict of interest of a significant and material nature should the investigation under this Policy be conducted by OIG, this shall be communicated to the Inspector General so that appropriate mitigating measures can be taken, including referring the complaint to an alternative investigation mechanism.

Protective measures

36. Pending the completion of the *prima facie* review or OIG investigation, the Ethics Office, in consultation with the complainant, may recommend to the Director-General that appropriate interim protective measures be taken to safeguard the interests of the complainant. In considering such measures, the Ethics Office may consult or engage with management with the consent of the complainant. The complainant should be informed in writing of the outcome. Protective measures may include, but are not limited to, temporary suspension of the implementation of the action reported as retaliatory; temporary reassignment of the complainant; or placement of the complainant or the subject of the complaint on special leave with full pay. 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 to the Director-General on protective measures shall keep the complainant informed of the outcome.
37. The outcome of a request for protective measures shall be communicated to the complainant in a timely manner before implementation.

Corrective measures

38. If retaliation against an individual is established, the Director-General shall, 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 corrective measures will be decided on a case-by-case basis and 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(s) who engaged in retaliation.

Appeals of allegedly retaliatory decisions

39. The procedures set out in this Policy 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 Administrative Manual Section 331, in accordance with the timelines set out in that Manual Section, or other recourse mechanisms set out in the individual's contract of engagement.

Review of a *prima facie* determination by the Ethics Office

40. If, following a determination by the Ethics Office that there is no *prima facie* case of retaliation, the complainant wishes to have the determination reviewed further, the complainant may, within 30 working days of notification of the determination, request the Director-General to refer the matter to an alternative review mechanism. The outcome of the review by the alternative review mechanism shall be final and binding. Absent an agreement for such a review between FAO and an alternative review mechanism, the determination by the Ethics Office may

be the subject of an appeal as provided for in Administrative Manual Section 331 or other recourse mechanisms set out in the individual's contract of engagement.

Action against FAO personnel who engaged in retaliation

41. Acts or threats of retaliation, due to engagement in a protected activity, against FAO personnel, contractors or their employees, agents or representatives, or any other person, constitute misconduct. Should retaliation be established in accordance with the procedures set out in this Policy, the person(s) responsible will be subject to administrative, including disciplinary, action.

Options to seek informal guidance and support

42. This policy is without prejudice to individuals who believe they have been threatened by retaliation or who feel they have been subjected to retaliatory action to seek the support of the Ombudsman, the staff counsellor or other support services for informal guidance and support on the underlying matter (i.e. the issue that has given rise to the concern about retaliation).

Review of the Policy

43. This Policy replaces Administrative Circular 2019/06 - Whistleblower Protection Policy, dated 14 August 2019.
44. The Ethics Office shall review this Policy periodically, but at a minimum every three years, and shall implement any revisions identified as necessary, taking into account lessons learned from monitoring the implementation of this Policy and any changes that would have an impact on the implementation of this Policy.