Operational Instruction Ref. OI.Ethics.2022.01
Protection against Retaliation

Preamble:

The Ethics Officer, for the purpose of ensuring that the organization functions in an open, transparent and fair manner with the objective of enhancing protection for individuals who report misconduct or wrongdoing or cooperate with duly authorized audits or investigations and with the specific purpose to enhance protection of whistleblowers and UNOPS' protection against retaliation system, taking into account lessons learned from other United Nations entities, promulgates the following Operational Instruction ("OI") for the independent implementation by the Ethics Office.

Authority:

This OI is promulgated by the Ethics Officer under section 6.1.2 of Operational Directive Ref. OD.PCG.2017.01 – Human Resources, Ethics and Culture of 13 July 2017, on the basis of a delegation of authority from the Executive Director pursuant to Financial Rule 105.05.

Purpose:

The purpose outlined in section 1.1 is in accordance with paragraph 161(d) of General Assembly resolution 60/1, paragraph 6 of Assembly resolution 70/255, paragraph 44 of Assembly resolution 71/263, UNOPS Financial Rule 105.05, ST/SGB/2007/11 (as amended) and section 6.1.2 of Operational Directive Ref. OD.PCG.2017.01- Human Resources, Ethics and Culture.

Effective Date:

This OI shall become effective **immediately.**

Promulgation Date:

19 Aug 2022

Consequential changes:

This OI shall supersede and abolish Operational Instruction Ref. OI.Ethics.2018.01 - Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations or other fact-finding activities, of 22 February 2018.

[signature redacted]

Berkan Manaigo-Vekil
Director a.i., Ethics Office

1. Definitions and principles

1.1. It is the duty of UNOPS personnel ("personnel") to report any breach of United Nations ("UN") or UNOPS's regulations and rules to the officials whose responsibility it is to take appropriate action. It is also the duty of personnel to cooperate with duly authorized audits and investigations.

1.2. An eligible individual who: i) has reported, in good faith, any breach of UN or UNOPS's regulations or rules; or ii) has cooperated with a duly authorized audit or investigation, has the right to be protected against retaliation. Retaliation against such individuals violates the fundamental obligation of all personnel to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of UNOPS in view.

1.3. All offices and personnel shall cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office, except for medical records that are not available without the express consent of the personnel concerned and records that may be subject to confidentiality requirements.

1.4. The following stipulations are without prejudice to the legitimate application of UN and UNOPS regulations, rules and administrative procedures, including those governing evaluation of performance, non-extension or termination of appointment, employment or contract.

1.5. For the purposes of this OI an "eligible individual" means a current or former (see section 7.4) UNOPS personnel recruited under the UN Staff Rules and persons under other contractual arrangements such as contractors engaged under the Individual Contractor Agreement (ICA), interns and volunteers.

2. Overview

2.1. Protection against retaliation applies to an eligible individual who has engaged in a protected activity.

3. Protected Activity

3.1. A protected activity is where an individual:

3.1.1. Cooperates in good faith with a duly authorized investigation or audit, except that cooperation as a subject of the investigation or audit will not normally be considered a protected activity under this OI; or

3.1.2. Has reported through the established channels the failure of one or more personnel to comply with their obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, the Financial Regulations and Rules, the Standards of Conduct of the International Civil Service, UNOPS Directives, Instructions or the terms of that individual's contract with UNOPS.

3.2. The making of false accusations or the transmission or dissemination of unsubstantiated rumors is not a protected activity. Making a report or providing information that is intentionally false or misleading is not considered to be made in good faith and constitutes misconduct which may result in disciplinary or other appropriate action.

4. Retaliation

4.1. For the purposes of this OI, retaliation means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or injuring that individual because they engaged in a "protected activity" as defined in section 3.

4.2. For the purposes of this OI, detrimental action may include, inter alia: harassment, intimidation or bullying; discrimination; unsubstantiated negative performance appraisals or feedback that is not reflective of actual performance; unjustified contractual changes, such as non-extension or termination of appointment, demotion, reassignment, transfer, dismissal, reductions in (or deductions of) wages; suspension, loss of promotion opportunities; unjustified modification of duties; unjustified non-authorization of holidays and other leave types; malicious delays in authorizing travel, or the provision of entitlements.

4.3. For purposes of this OI, the legitimate application of regulations, rules or administrative policies, issuances or procedures, or the mere expression of disagreement, admonishment, criticism or a similar expression regarding work performance, conduct or related issues within a supervisory or similar relationship, do not constitute retaliation.

4.4. The present OI is limited in scope to addressing retaliation because of a protected activity. Individuals who consider that they have been subjected to detrimental action within the meaning of section 4.1 of the present OI or to other prohibited conduct as defined in OI.PCG.2017.01 ("Personnel Management Framework"), but have not themselves engaged in a protected activity within the meaning of the present OI, could also look to section 8.9 of OI.PCG.2017.01, as a possible means of addressing their concerns in relation to discrimination, harassment, abuse of authority or other suspected misconduct, including sexual harassment.

4.5. Similarly, detrimental action, even if determined not to constitute retaliation under the present OI, may constitute prohibited conduct pursuant to section 8.6 of OI.PCG.2017.01.

5. Preliminary review by the Ethics Office

5.1. Upon receipt of a request for protection against retaliation or threat of retaliation, the Ethics Office will consult with the individual to determine the best way forward, to provide support to the individual as appropriate, and, with the consent of the individual, will liaise with any persons or parties within UNOPS as necessary in order to effectively provide such support. The Ethics Office will also keep a confidential record of such requests.

5.2. Specifically, upon receipt of a formal request for protection against retaliation or threat of retaliation, the Ethics Office will conduct a preliminary review of the request to determine whether:

5.2.1. The individual requesting protection has engaged in a protected activity; and

5.2.2. There is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.

5.3. At the preliminary review stage, the individual requesting protection against retaliation is responsible for providing evidence or verifiable information to cumulatively support each of the elements outlined in section 5.2.

5.4. If the individual does not provide the authorization for the Ethics Office to obtain information and/or records, pursuant to section 10.1, and/or does not provide the requisite evidence or information specified in section 5.2 to support their request, and the Ethics Office considers that the individual does not have the requisite evidence or information to conduct a preliminary review of the request, the Ethics Office shall close the case. In such an event, the individual will be informed (in writing) as soon as reasonably possible.

5.5. If it appears that the request may be better resolved informally, the Ethics Office may, with the consent of the individual, refer the matter to the appropriate function for informal resolution, including but not limited to the Office of the Ombudsman. The review period for the Ethics Office to complete its preliminary review will be suspended during any period of informal resolution for a maximum of 120 days, provided that the individual: i) notifies the Ethics Office, in writing, that they have sought informal resolution of the matter; and ii) includes written confirmation from the office conducting the informal resolution that said office is involved in such informal resolution process.

5.6. In cases where the Ethics Office becomes aware of an immediate risk to the safety and security of the individual or their immediate family when considering a request for protection against retaliation or threat of retaliation, the Chief of Security shall be informed with the consent of the individual. In such cases, with the consent of the individual, protective measures may be considered in consultation with the Ethics Office.

5.7. The Ethics Office will promptly send the individual an acknowledgement of receipt of the formal request and seek to complete its preliminary review within 30 days of receiving all information requested concerning a request for protection against retaliation. If the Ethics Office does not formally consider the request within said 30 days, the individual may then refer the matter in writing to the Chairperson of the Ethics Panel of the United Nations (“EPUN”).

5.8. At any stage during the preliminary review, the Ethics Office, where considered appropriate, may recommend to the Executive Director or a designate, that appropriate interim measures be taken to safeguard the interests of the individual. The Executive Director or designate will make a decision as to whether such interim measures should be taken. With the consent of the individual, such interim measures may include, inter alia: i) temporary suspension of the implementation of the alleged detrimental action; ii) temporary reassignment of the individual and/or change of reporting lines; and iii) where temporary reassignment and/or change of reporting lines would have been recommended by the Ethics Office but is not feasible, placement of the individual on special leave with full pay. Such interim measures shall not include reinstatement or extension of an engagement beyond its original date of completion. In cases involving an individual who is not a UNOPS member of personnel, remedies may be limited to those available in that person’s particular contractual arrangement with UNOPS.

5.9. If, following the preliminary review, the Ethics Office determines that there is no prima facie case of retaliation, it shall so notify the individual in writing and provide a summary of the reasons for its determination.

5.10. Should the Ethics Office determine in such cases that there is an interpersonal issue within a particular function, it may additionally advise the individual of the mandate of the Office of the Ombudsman or of the existence of other informal mechanisms of conflict resolution in UNOPS. Likewise, if the Ethics Office considers there to be a managerial issue relating to a particular function, it will advise the head of department or office concerned and, if it considers it appropriate, the Executive Director.

5.11. If the Ethics Officer determines that there is an actual or potential conflict of interest with the Ethics Officer in reviewing a request for protection against retaliation, the Ethics Officer shall, after informing the individual, refer the request to an alternative reviewing body, including the Chair of EPUN or another member of EPUN. If the Ethics Officer considers that there is an actual or potential conflict of interest in any particular member of the Ethics Office reviewing a request for protection against retaliation, that member of the office shall not be involved in reviewing the request, or have any role in determining the outcome of the review.

5.12. Pursuant to section 5.11 above, the Ethics Officer may refer the case to the Chairperson of EPUN for advice and guidance regarding selection of an alternate body to conduct said review. The Ethics Officer shall inform the Executive Director of such referral as soon as reasonably possible.

6. Ethics Office action if a prima facie case exists

6.1. If the Ethics Office considers that the individual making a request for protection against retaliation has presented a prima facie case of retaliation or threat of retaliation, it will refer the matter in writing to IAIG for investigation and will, as soon as reasonably possible, notify in writing the individual that the matter has been so referred. IAIG will seek to complete its investigation and submit its report to the Ethics Office within 120 days.

6.2. The investigation will gather evidence to aid the Ethics Office in its independent evaluation of whether any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual was recommended, threatened or taken for the purpose of punishing, intimidating or injuring that individual because they engaged in a protected activity. The burden of proof shall rest with UNOPS, which must prove by clear and convincing evidence that it would have taken the same action absent the protected activity or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the individual.

6.3. Where the Ethics Office makes a prima facie determination of retaliation following a request for protection against retaliation that involves a member of IAIG, or, in the opinion of the Ethics Office, there may be a conflict of interest in IAIG conducting the investigation as referred to in section 6.1 above, the Ethics Office will refer the matter to the Executive Director to determine whether the matter should be investigated by IAIG or referred to an alternative investigating mechanism. If the Executive Director determines that such referral is appropriate, the Executive Director shall make the referral to an alternative investigating mechanism within 60 days of the Ethics Office's referral and shall notify the Ethics Office when the referral has been made, and the identity of the alternative investigating mechanism. Where there is a conflict of interest in the Executive Director making any such determination, the Ethics Office will instead refer the matter to the Chair of EPUN for appropriate action.

6.4. Pending completion of the investigation and the final determination of a request for protection against retaliation by the Ethics Office, the Ethics Office may recommend to the Executive Director or a designate, that appropriate interim measures be taken to safeguard the interests of the individual. The

Executive Director or designate will make a decision as to whether such interim measures should be taken. Such interim measures are conditioned upon the consent of the individual and may include, inter alia: i) temporary suspension of the implementation of the alleged detrimental action; ii) temporary reassignment of the individual and/or change of reporting lines; and iii) where temporary reassignment and/or change of reporting lines would have been recommended by the Ethics Office but is not feasible, placement of the individual on special leave with full pay.

6.5. Upon receipt of the investigation report, the Ethics Office will conduct an independent review of the findings of the report and supporting documents to determine whether the report and the supporting documents show, by clear and convincing evidence, that UNOPS would have taken the same action absent the protected activity or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the individual. In this regard:

6.5.1. If, in the view of the Ethics Office, this standard of proof is not met, the Ethics Office will determine that retaliation has occurred.

6.5.2. If, in the view of the Ethics Office, this standard of proof is met, the Ethics Office will determine that retaliation has not occurred.

6.5.3. If, in the view of the Ethics Office, the investigation report and supporting documents are not sufficient to allow the Ethics Office to come to a determination, the Ethics Office may request that IAIG conduct additional inquiries.

6.5.4. In all cases, the Ethics Office will inform the individual in writing of its determination and provide a summary of the reasons therefore, and make any recommendations that might be considered appropriate to the Executive Director or a designate. Those recommendations may include that the matter be referred to the General Counsel for consideration of possible disciplinary procedures or other action that may be warranted as a result of the determination.

6.6. If the Ethics Office considers that there has been retaliation against an individual, it may, after taking into account any recommendations made by IAIG or other concerned office(s) and after consultation with the individual, recommend appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action and protecting the individual from any further retaliation. Any such recommendations of the Ethics Office shall be made to the Executive Director or a designate, who will make a decision in relation to such measures. Such protective measures may include, inter alia:

6.6.1. The rescission of the decision considered to be retaliatory, including reinstatement;

6.6.2. Change of reporting lines;

6.6.3. Lateral transfer to another duty station within the same entity; or

6.6.4. Following Ethics Office consultation with the Executive Director or a designate, transfer to another office and/or suitable function.

6.7. Subject to all relevant due process rights, recommended measures may also include transfer of the person who engaged in retaliation.

6.8. The Executive Director or a designate shall provide a written decision to the individual and the Ethics Office on the recommendations of the Ethics Office within 30 days. Subject to section 10, the decision must respect the confidentiality rights of the person who allegedly engaged in retaliation in relation to any ongoing disciplinary process.

6.9. Whilst the Ethics Office can recommend to the Executive Director certain actions aimed at correcting negative consequences as noted above, the procedures set out in the present OI are without

prejudice to the rights of an individual who has suffered retaliation to seek redress through such other internal recourse mechanisms as provided under the Staff Regulations and Rules or other UNOPS policies.

6.10. Individuals will be informed on a confidential basis of any disciplinary sanctions imposed for the retaliatory action.

7. Reporting misconduct or wrongdoing through internal channels

7.1. Individuals who believe that retaliatory action has been taken against them because they engaged in a protected activity may submit a request for protection against retaliation to the Ethics Office in person, by email to the Ethics Office mailbox (ethicsofficer@unops.org[1]) or by following the link to report wrongdoing at http://unops.org/ethics . The individual should forward all information and documentation available to them to support their request to the Ethics Office as soon as reasonably possible.

7.2. Requests for protection against retaliation must be submitted to the Ethics Office no later than six months after the date on which the individual knew, or in the opinion of the Ethics Office should have known, that the alleged retaliatory action was taken. This time limit may be extended where, in the opinion of the Ethics Officer, it is in the interest of UNOPS to do so or is otherwise necessary to give effect to the overall intent and purpose of this OI.

7.3. In order to receive protection against retaliation, a report made pursuant to section 7.1 should be made as soon as possible and not later than six years after the individual becomes aware of the misconduct or wrongdoing. Such six year time limit does not apply in relation to a report of sexual harrassment, abuse or exploitation. The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct or wrongdoing has occurred.

7.4. Former personnel, interns or volunteers may request protection against retaliation where the early termination or non-renewal of their contract is claimed to be retaliation and where the request is made within 30 days of receiving notice of the termination or non-renewal of their contract.

7.5. Reports of misconduct or wrongdoing should be made via UNOPS's secure and confidential channel for reporting misconduct or wrongdoing, or through the established channels, namely:

7.5.1. Discrimination, harassment, sexual harassment or abuse of authority shall be reported to the People and Performance Group (PPG);

7.5.2. Retaliation for: i) reporting suspected misconduct or wrongdoing; or ii) co-operating with an investigation or audit, shall be reported to the Ethics Office; and

7.5.3. All other suspected misconduct or wrongdoing shall be reported to the Internal Audit and Investigations Group (IAIG).

7.6. When reporting sexual or violent misconduct or prohibited conduct, personnel must respect the key principles of the victim-centered approach. These include: i) respecting the safety, dignity and well-being of the victim of misconduct; ii) referring a victim / individual to available assistance and support services; iii) ensuring non-discrimination on the grounds of race, ethnicity, gender, sexual orientation,

1. mailto:ethicsofficer@unops.org

language, religion, age, disability, or other status; iv) ensuring confidentiality by reporting only through the established channels set out in section 7.5; and v) obtaining informed consent to share an individual's or victim's name with investigation colleagues and/or colleagues involved in any referral to support services.

8. Reporting misconduct or wrongdoing through external channels

8.1. Notwithstanding the above, protection against retaliation will be extended to an individual who reports misconduct or wrongdoing within UNOPS to an entity or individual outside of the established internal channels, where the criteria set out in sub-sections 8.1.1, 8.1.2 and 8.1.3 below are satisfied:

8.1.1. Such reporting is necessary to avoid:

i. A significant threat to public health and safety;

ii. Substantive damage to UNOPS or UN operations; or

iii. Violations of national or international law; and

8.1.2. The use of the internal channels is not possible because:

i. At the time the report is made, the individual has grounds to believe that they will be subjected to retaliation by the person(s) they should report to pursuant to the established internal channels; or

ii. It is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) they should report to pursuant to the established internal channels; or

iii. The individual has previously reported the same information through the established internal channels, and UNOPS has failed to inform the individual in writing of the status of the matter within six months of such a report; and

8.1.3. The individual does not accept payment or any other benefit from any party for such a report.

9. Prevention action

9.1. If, in the course of an individual having engaged in a protected activity, the party reviewing the allegations determines that such individual is at risk of retaliation, the party may notify the Ethics Office in writing with the consent of the individual concerned. In such a case, the party reviewing the allegations shall provide the Ethics Office with all information necessary for the Ethics Office to engage in appropriate action to seek to prevent retaliation where such action is considered appropriate by the Ethics Office.

9.2. Where, pursuant to section 9.1 above the Ethics Office is made aware that an individual is at risk of retaliation, the Ethics Office will consult with the individual on appropriate action to seek to prevent retaliation. With the individual's consent, such action may include engagement by the Ethics Office with the individual's senior management to ensure monitoring of the individual's workplace situation with a

view to preventing any retaliatory action against the individual as a consequence of having engaged in a protected activity.

10. Confidentiality

10.1. The Ethics Office shall maintain the confidentiality of all communications received from individuals who request protection against retaliation, and from all relevant third parties. Individuals may authorize the Ethics Office to contact any office or personnel to obtain additional information and records related to their request for protection.

10.2. The requirement to maintain confidentiality within this OI is subject to the following:

10.2.1. The Ethics Office may be required to cooperate with requests for information from UN oversight bodies or from the UN Dispute Tribunal or the UN Appeals Tribunal in the course of their official functions. Wherever possible, the Ethics Office shall seek to cooperate with such requests by means other than appearance at tribunal hearings and shall request to be excused from testifying regarding confidential information.

10.2.2. Confidentiality may be waived where, in the view of the Ethics Office: i) there is a risk of danger posed to the individual making a report or another person; ii) there is a risk of environmental damage or a threat to public health; iii) there is a need to obtain legal advice in relation to the individual making the report, the information provided or on a matter that has arisen during any investigative process; or iv) as determined by the Executive Director, UNOPS is required to provide information to a national or international authority or a law enforcement agency.

10.2.3. In all such instances, the individual would be consulted prior to any disclosure being made. UNOPS will not be bound to maintain confidentiality in situations where the individual requesting protection against retaliation does not maintain confidentiality or acts in such a manner from which it may be reasonably inferred that the individual waives confidentiality.

11. Review of Ethics Office determinations

11.1. If, following a determination by the Ethics Office under section 5.9 that there is no prima facie case of retaliation or threat of retaliation, the individual wishes to have the matter reviewed further, they may, within 30 days of notification of the determination, refer the matter, in writing, to the Chair of EPUN. The Chair of EPUN will either conduct the review or request a member of the EPUN to conduct the review (the “EPUN reviewer”).

11.2. The Chair of EPUN or EPUN reviewer may seek comments from the individual and UNOPS on the request for review, and shall consult with other members of EPUN. The Chair of EPUN or EPUN reviewer will undertake an independent review of the matter, which shall include consideration of the determination previously made by the Ethics Office and a determination of any additional action required, including whether referral for investigation is warranted under section 6.1 above. The review will not consider evidence or allegations of retaliation raised by the individual that were not previously raised in the request to the Ethics Office. Any new evidence or new allegations of retaliation should instead be submitted to the Ethics Office for further consideration under the present OI.

11.3. Following the completion of their review, the Chair of EPUN or EPUN reviewer will notify the individual in writing of the outcome of their review, and will provide a summary of the reasons for their determination. The Chair of EPUN or EPUN reviewer will also submit any recommendations that they may have to the Ethics Office. The Ethics Office will implement the recommendations, including any recommendation to refer the matter to IAIG for investigation pursuant to section 6.1 above.

11.4. If the Chair of EPUN or EPUN reviewer is of the opinion that there is an actual or potential conflict of interest in their reviewing the matter, they shall decide on an alternative reviewing body, including possible referral of the matter to another member of EPUN.

12. Review of administrative decisions under chapter XI of the Staff Rules

12.1. The action, or non-action, of UNOPS on a recommendation from the Ethics Office under section 6.6 above will constitute a contestable administrative decision under chapter XI of the Staff Rules if it has direct legal consequences affecting the terms and conditions of appointment of the individual, and may be contested within the deadlines specified under those Rules.

12.2. Staff members are reminded that they may seek to challenge any administrative decision that they consider to be retaliatory under chapter XI of the Staff Rules. Such recourse must comply with the deadlines specified under those Rules.

12.3. Recommendations of the Ethics Office and the Chair of EPUN under the present OI do not constitute administrative decisions and are not subject to challenge under chapter XI of the Staff Rules.

13. Periodic review of implementation of the present OI

13.1. At least every two years, the Ethics Officer shall review and assess the terms and implementation of the present OI.

Annexes

- OI.Ethics.2022.01 Protection contre les représailles
- OI.Ethics.2022.01 Protección ante represalias
