

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**

1. Authority

- 1.1. This Operational Instruction (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 direction from the Executive Director pursuant to Financial Rule 105.05

2. Purpose

- 2.1. The purpose of this OI is to ensure that UNOPS functions in an open, transparent and fair manner, with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations or other duly authorised fact-finding activities, and 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 OD.PCG.2017.01- Human Resources, Ethics and Culture.

3. Effective Date

- 3.1. This OI shall become effective immediately.

4. Consequential Changes

- 4.1. This OI shall supersede and abolish Organizational Directive No. 35 - Protection against retaliation for reporting misconduct or cooperating with duly authorized fact-finding activities, of 26 August 2010.

[signature redacted]

David Mitchels, Ethics Officer

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5. General

- 5.1. 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. An individual who makes such a report in good faith has the right to be protected against retaliation.
- 5.2. It is also the duty of personnel to cooperate with duly authorized audits and investigations and other duly authorised fact-finding activities. An individual who cooperates in good faith with an audit or investigation or other duly authorised fact-finding activity has the right to be protected against retaliation.
- 5.3. Retaliation against individuals who have reported misconduct or who have cooperated with audits or investigations or other duly authorised fact-finding activities 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.
- 5.4. 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 an individual because that individual engaged in an activity protected by the present policy as set out in section 2 below (“protected activity”).

6. Protected activity

- 6.1. Protection against retaliation applies to any personnel (staff members recruited under the United Nations Staff Rules and persons under other contractual arrangements such as contractors engaged under the Individual Contractor Agreement (ICA), interns and volunteers) who:
 - i. Reports the failure of one or more personnel to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, the Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service, or the terms of that individual’s contract with UNOPS, including any request or instruction from any personnel to violate the above-mentioned regulations, rules or standards, or reports wrongdoing by any person that, if established, would be manifestly harmful to the interests, operations, or governance of UNOPS or the UN. In order to receive protection, the report should be made as soon as possible and not later than six years after the individual becomes aware of the misconduct. The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred; or
 - ii. Cooperates in good faith with a duly authorized investigation or audit or other duly authorised fact-finding activity.
- 6.2. The present OI is without prejudice to the legitimate application of regulations, rules and administrative procedures, including those governing evaluation of performance, non-extension or termination of appointment. However, the burden of proof shall rest with UNOPS to demonstrate by clear and convincing evidence that it would have taken the same action absent the protected activity referred to in section 2.1 above or that the alleged retaliatory action was not taken for the purpose of punishing, intimidating or injuring the individual who engaged in the protected activity.

- 6.3. 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 misconduct and may result in disciplinary or other appropriate action.
- 6.4. Protection shall be afforded to personnel who are UNOPS supervised by the UNOPS Ethics Office. Personnel on UNOPS contracts, but supervised by a partner organisation, shall seek protection through the Ethics Office of that partner organisation, under the applicable legislative provisions of that organisation.

7. Reporting misconduct through established internal mechanisms

- 7.1. Except as provided in section 4 below, reports of misconduct should be made through the established internal mechanisms:
 - 7.1.1 Discrimination, harassment, sexual harassment or abuse of authority shall be reported to the People and Change Group (PCG);
 - 7.1.2 Retaliation for reporting suspected wrongdoing or for co-operating with an investigation or audit or duly authorised fact finding activity shall be reported to the Ethics Officer;
 - 7.1.3 All other suspected misconduct shall be reported to the Internal Audit and Investigations Group (IAIG).
- 7.2. It is the duty of UNOPS to protect the confidentiality of the individual's identity and all communications through those channels to the maximum extent possible.

8. Reporting misconduct through external mechanisms

- 8.1. Notwithstanding staff regulation 1.2 (i), protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:
 - i. Such reporting is necessary to avoid:
 - a. A significant threat to public health and safety; or
 - b. Substantive damage to the UNOPS or UN 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 he/she will be subjected to retaliation by the person(s) he/she should report to 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) he/she should report to pursuant to the established internal mechanisms; or
 - c. The individual has previously reported the same information through the established internal mechanisms, and UNOPS 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 such report.

9. Prevention action

- 9.1. IAIG and PCG will inform the Ethics Office of any report of wrongdoing received that IAIG or PCG identifies as posing a retaliation risk. IAIG or PCG will provide this information to the Ethics Office only upon the consent of the individual who made the report.
- 9.2. When informed by IAIG or PCG of an individual who is at risk of retaliation, the Ethics Office will consult with the individual on appropriate retaliation prevention action. 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 his or her engaging in a protected activity.

10. Reporting retaliation to the Ethics Office

- 10.1. Individuals who believe that retaliatory action has been taken against them because they have engaged in a protected activity may submit a request for protection against retaliation to the Ethics Office in person, by regular mail, by email or through the Ethics Office helpline (ethicsofficer@unops.org). They should forward all information and documentation available to them to support their complaint to the Ethics Office as soon as possible.
- 10.2. 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.

11. Preliminary review by the Ethics Office

- 11.1. Upon receipt of a complaint of retaliation or threat of retaliation, the Ethics Office will conduct a preliminary review of the complaint to determine whether (a) the complainant 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.
- 11.2. The Ethics Office shall maintain the confidentiality of all communications received from complainants who request protection against retaliation, and from all relevant third parties. Complainants may authorize the Ethics Office to contact any office or personnel 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 United Nations oversight bodies or from the United Nations Dispute Tribunal or the United Nations Appeals Tribunal in the course of their official functions.
- 11.3. 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 IAIG records that are subject to confidentiality requirements.

- 11.4. The Ethics Office will seek to complete its preliminary review within 30 days of receiving all information requested concerning a complaint of retaliation submitted.
- 11.5. 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 UNOPS.
- 11.6. If the Ethics Office determines that there is no prima facie case of retaliation or threat of retaliation but considers there to be a managerial problem relating to a particular department or office, it will advise the head of department or office concerned and, if it considers it appropriate, the Executive Director.
- 11.7. If the Ethics Officer is of the opinion that there is an actual or potential conflict of interest in his or her reviewing a request for protection against retaliation, he or she shall decide on whether to refer the request to an alternative reviewing body, including the Chair of the Ethics Panel of the United Nations.¹

¹ Pursuant to ST/SGB/2007/11/Amend.1, the Ethics Panel of the United Nations consists of the heads of the Ethics Offices of the separately administered organs and programmes of the United Nations and the Ethics Office of the United Nations Secretariat.

12. Ethics Office action if a prima facie case exists

- 12.1. If the Ethics Office considers that there is a credible case of retaliation or threat of retaliation, it will refer the matter in writing to IAIG for investigation and will immediately notify in writing the complainant that the matter has been so referred. The Ethics Office will also undertake such action if it is recommended in accordance with section 9 below. IAIG will seek to complete its investigation and submit its report to the Ethics Office within 120 days.
- 12.2. Where, in the opinion of the Ethics Office, there may be a conflict of interest in IAIG conducting the investigation as referred to in section 8.1 above, the Ethics Office may recommend to the Executive Director that the complaint be referred to an alternative investigating mechanism.
- 12.3. Pending completion of the investigation, the Ethics Office may recommend that the Executive Director take appropriate measures to safeguard the interests of the complainant, including, but not limited to, temporary suspension of the implementation of the action reported as retaliatory; with the consent of the complainant, temporary reassignment of the complainant and/or change of reporting lines; or placement of the complainant on special leave with full pay.
- 12.4. 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 the Administration would have taken the alleged retaliatory action absent the complainant's protected activity or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the complainant. 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 inform the complainant in writing

of its determination and make its recommendations to the head of department or office concerned and to Director, PCG. Those recommendations may include that the matter be referred to General Counsel for consideration of possible disciplinary procedures or other action that may be warranted as a result of the determination.

- 12.5. If the Ethics Office considers that there has been retaliation against a complainant, it may, after taking into account any recommendations made by IAIG or other concerned office(s) and after consultation with the complainant, recommend to the head of department or office concerned appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action and protecting the complainant from any further retaliation, including, but not limited to: the rescission of the retaliatory decision, including reinstatement, or, if requested by the complainant, transfer to another office and/or function and/or change of reporting lines.
- 12.6. Subject to all relevant due process rights, including rights under chapter X of the Staff Rules, recommended measures may also include transfer of the person who allegedly engaged in retaliation.
- 12.7. The head of department or office concerned shall provide a written decision to the complainant and the Ethics Office on the recommendations of the Ethics Office within 30 days. The decision must respect the confidentiality rights of the person who allegedly engaged in retaliation in relation to any ongoing disciplinary process.
- 12.8. Should the Ethics Office not be satisfied with the response from the head of department or office concerned, it can make a recommendation to the Executive Director. The Executive Director will provide a written decision on the recommendations of the Ethics Office to the complainant, the Ethics Office and the department or office concerned within 30 days.
- 12.9. Complainants will be informed on a confidential basis of any disciplinary sanctions imposed for the retaliatory action.

13. Review of Ethics Office determinations

- 13.1. If, following a determination by the Ethics Office under section 7.5 or 7.6 above that there is no prima facie case of retaliation or threat of retaliation, the complainant wishes to have the matter reviewed further, he or she may, within 30 days of notification of the determination, refer the matter, in writing, to the Chair of the Ethics Panel of the United Nations.
- 13.2. The Chair of the Ethics Panel will seek comments from the complainant and the Administration on the request for review and undertake his or her own independent review of the matter, which shall include review of the action previously taken by the Ethics Office and a determination of any additional action required, including whether referral for investigation is warranted under section 8.1 above. The Chair of the Ethics Panel, following the completion of his or her review, will submit his or her recommendations to the Ethics Office. The Ethics Office will implement the recommendations of the Chair of the Ethics Panel, including any recommendation to refer the matter to IAIG for investigation pursuant to section 8.1 above.
- 13.3. If the Chair of the Ethics Panel is of the opinion that there is an actual or potential conflict of interest in his or her reviewing the matter, he or she shall decide on an alternative reviewing body, including possible referral of the matter to another member of the Ethics Panel.

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

- 14.1. The action, or non-action, of UNOPS on a recommendation from the Ethics Office under section 8 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 complainant, and may be contested within the deadlines specified under those Rules.
- 14.2. 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.
- 14.3. Recommendations of the Ethics Office and the Chair of the Ethics Panel under the present OI do not constitute administrative decisions and are not subject to challenge under chapter XI of the Staff Rules.

15. Prohibition of retaliation against outside parties

- 15.1. If established, any retaliatory measures against a contractor, a UNOPS vendor or partner, or its employees, agents or representatives or any other individual engaged in any dealings with UNOPS because such person has reported misconduct may lead to disciplinary or other appropriate action.

16. Annual review of implementation of the present policy

- 16.1. On an annual basis, the Executive Director shall review and assess the terms and implementation of the present policy.