UNICEF POLICY ON WHISTLE-BLOWER PROTECTION AGAINST RETALIATION Document Number: DHR/POLICY/2018-001 v. 21 June 2023
Effective Date:21 June 2018

RATIONALE

1. The purpose of this policy is to ensure that UNICEF has the measures in place to protect all UNICEF personnel who report misconduct or cooperate with duly authorized audits, investigations and other oversight activities against retaliation.

POLICY STATEMENTS

2. All UNICEF personnel have a duty to report any breach of the UN Charter, the UN Staff Regulations and Rules, UNICEF's Financial Regulations and Rules, the Standards of Conduct for the International Civil Service, or any UNICEF internal policies to officials formally designated to receive such reports by a UNICEF or UN policy. Any individual who submits such a report in good faith has the right to be protected against retaliation.

3. All UNICEF personnel also have a duty to cooperate with duly authorized audits and investigations and other oversight activities. Any individual who cooperates with such activities in good faith has the right to be protected against retaliation.

4. Retaliation against individuals who have reported or provided information concerning acts of misconduct, or who have cooperated with duly authorized audits or investigations or other oversight activities, is strictly prohibited. Such behavior violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions.

5. Retaliation constitutes misconduct, for which disciplinary or other appropriate action will be taken.

POLICY ELEMENTS

Scope of application

6. For the purpose of this policy, 'retaliation' means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in good faith in a protected activity defined as follows:

   6.1. Reports the failure of UNICEF personnel to comply with their obligations under the Charter of the United Nations, UN Staff Regulations and Rules, UNICEF's Financial Regulations and Rules, the Standards of Conduct for the International Civil Service or other relevant policy or procedures, including any request or instruction from any UNICEF personnel to violate those regulations, rules, standards, policy or procedures.

   6.2. Provides information on wrongdoing by one or more individuals; or

   6.3. Cooperates with a duly authorized investigation, audit or other oversight activities.

7. Protection against retaliation applies to all UNICEF personnel, i.e. any staff member (regardless of the type of appointment or its duration), United Nations Volunteer (UNV), individual contractor, consultant, intern, fellow, standby personnel or volunteer who engages in a protected activity.

8. Retaliation against a contractor, a partner or its employees, agents or representatives, or any other individual engaged in dealings with UNICEF because such person has engaged in a protected activity will equally be considered misconduct for which disciplinary or other appropriate action will be taken.

9. It is not retaliation to legitimately apply regulations, rules and administrative procedures, including those governing evaluation of performance and non-extension or termination of appointment/employment. However, in applying such regulations, rules and administrative procedures to UNICEF personnel, UNICEF management must show by clear and convincing evidence that the same action would have been taken absent the protected activity referred to in paragraph 6.

10. The transmission or dissemination of unsubstantiated rumors is not a protected activity. Making a report or providing information that is known to be false or intentionally misleading constitutes misconduct and may result in administrative, disciplinary or other appropriate action.

11. Acts or threats of retaliation against a retaliator constitute misconduct which, if established, will lead to administrative or disciplinary action, in accordance with this policy.

Reporting misconduct and preventive actions against retaliation

12. Except as provided in paragraphs 32 and 33, all reasonable suspicions of misconduct[1] must be reported through one of the below channels:

    12.1. Managers or Heads of Office, who will contact the Director, Office of Internal Audit and Investigations (OIAI), or to the Deputy Executive Director, Management if the issue relates to the OIAI or its staff;
    12.2. The Director, OIAI;
    12.3. The UNICEF misconduct hotline, integrity1@unicef.org, which is managed by the Director, OIAI;
    12.4. The designated local focal point if the suspicions involve sexual exploitation and abuse; or another official formally designated to receive such reports by a UNICEF or UN policy.

13. The identity of the individual reporting misconduct should remain confidential to the maximum extent possible, as should all communication with any UNICEF personnel that relates to the report.

14. Where OIAI identifies a retaliation risk for any UNICEF personnel reporting a wrongdoing, and subject to the consent of the individual concerned, it will inform the Ethics Office, who will recommend appropriate preventive actions in accordance with paragraph 24.

Reporting retaliation to UNICEF Ethics Office

15. Complaints of retaliation, with supporting information and documents, should be promptly sent by the alleged victim to the Ethics Office. Individuals who believe that retaliatory action has been taken against them because they engaged in a protected activity should forward all information and documentation available to them to support their complaint to the Ethics Office. Such reporting should be done as promptly as possible to ensure that UNICEF is able to respond effectively.

16. The functions of the Ethics Office with respect to protection against retaliation for reporting misconduct are as follows:

    16.1. To receive complaints of retaliation or threats of retaliation, or reports of risks of retaliation from OIAI;
    16.2. To keep a confidential record of all such complaints;
    16.3. To conduct an initial review of the complaint to determine if:

        16.3.1. The complainant engaged in a protected activity;
        16.3.2. The action alleged to be retaliatory or a threat of retaliation did take place; and
        16.3.3. It appears that, on the first review (*prima facie*), the protected activity was a contributing factor in causing the action alleged to be retaliatory or a threat of retaliation.

[1] For complete information, please see CF/EXD//2012-005 on Disciplinary process and measures and the Ethics Office webpage, Reporting Misconduct.

17. The Ethics Office will send an acknowledgement of the complainant promptly upon having received it, if the complainant can be contacted.

18. Individuals who wish to receive informal guidance and support on issues related to retaliation may also do so by contacting the Ethics Office, the Office of the Ombudsman, the Staff Counsellors, their office's staff representatives or the Office of Staff Legal Assistance (OSLA).

Review of retaliation reports by UNICEF Ethics Office

19. The Ethics Office will normally complete its initial review within 30 calendar days of receiving the complaint of retaliation. If the Ethics Office does not formally consider the complaint within 30 calendar days[2], the complainant may refer the matter in writing to the Chairperson of the United Nations Ethics Committee[3].

20. Alternatively, should the Ethics Office be of the opinion that there may be a conflict of interest, or should the complainant following a final determination by the Ethics Office, wish to have the matter reviewed further, he/she may refer the matter, in writing, to the Chairperson of the Ethics Committee. The Chairperson, after consultation with the Ethics Committee, may then undertake his/her own independent review of the matter and provide a report to the Executive Director[4].

21. All divisions, offices and UNICEF personnel are required to cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office, except for medical records, which are not available without the expressed consent of the individual concerned.

If a prima facie case exists

22. If, in the opinion of the Ethics Office, there is a *prima facie* case of retaliation or threat of retaliation, the Ethics Office will refer the matter in writing to OIAI for investigation and will immediately notify, in writing, the complainant that the matter has been so referred. OIAI will seek to complete its investigation and submit its report to the Ethics Office within 60 days.

23. Where, in the opinion of the Ethics Office, there may be a conflict of interest in OIAI conducting the investigations as referred to in paragraph 22 above, the Ethics Office may recommend to the Executive Director that the complaint be referred to an alternative investigating mechanism.

Preventive measures

24. Pending the completion of its initial review and/or the OIAI investigation, the Ethics Office may recommend that the Executive Director take appropriate measures to safeguard the interests of the complainant and to prevent any retaliatory action as a consequence of engaging in a protected activity. These preventive measures may include but are not limited to:

    24.1. Temporary suspension of implementation of the action reported as retaliatory;
    24.2. Engagement by the Ethics Office with the individual's senior manager or managers to ensure monitoring of the individual's workplace situation, subject to the consent of the complainant;
    24.3. Involvement of the Principal Advisor, Security, Office of Emergency Operations (EMOPS), if any security or safety risk to the complainant or family members has been identified;
    24.4. Change the reporting line to the next higher level of authority and/or exclusion of the alleged retaliator(s) from any decision or decision-making process related to the complainant;
    24.5. Placement of the alleged retaliator on administrative leave, in accordance with CF/EXD/2012-005 on Disciplinary process and measures;

[2] See section on Transitional Measures.
[3] The United Nations Ethics Committee consists of the heads of the Ethics Offices of the separately administered Organizations and Programmes of the United Nations and the Ethics Office of the United Nations Secretariat (UNST), and is chaired by the Head of the Ethics Office of the UNST.
[4] Secretary-General's Bulletin "United Nations system-wide application of ethics: separately administered Organs and Programmes" (ST/SGB/2007-011).

24.6. Temporary reassignment or placement of the complainant on special leave with full pay, subject to consultation with the concerned individual.

Independent review

25. Upon receipt of the investigation report, the Ethics Office will conduct an independent review of the findings and supporting documents to determine whether there is *clear and convincing* evidence that:

25.1. the alleged retaliatory action would have been taken even if the complainant had not engaged in the protected activity; and
25.2. the alleged retaliatory action was not taken to punish, intimidate or otherwise injure the complainant.

26. If the Ethics Office determines that the above standard set in paragraph 25 has not been met, it will conclude that the complainant was the victim of retaliation.

Action against the person who engaged in retaliation

27. The Ethics Office will inform the complainant, in writing, of the outcome of the independent review and will submit its recommendations on the case to the Executive Director. Such recommendations may include disciplinary action against the retaliator, subject to all relevant due process rights under Chapter X, and/or administrative action. Complainants will be informed on a confidential basis of any disciplinary sanctions imposed for the retaliatory action.

Redress for person who suffered retaliation

28. If retaliation is established, the Executive Director may, after taking into account the recommendations made by the Ethics Office or other concerned office(s) and after consultation with the complainant, take appropriate measures to amend the 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, and, if requested by the complainant, transfer to another office or function for which the individual is qualified.

29. The procedures set out in this policy are without prejudice to the rights of an individual who has suffered retaliation to seek redress through the internal recourse mechanisms (e.g. management evaluation).

If no prima facie case exists

30. If the Ethics Office finds that there is no prima facie evidence of retaliation or threat of retaliation, but concludes that there might be an interpersonal problem within a particular office, he/she will advise the complainant of the existence of informal mechanisms of conflict resolution in UNICEF, such as the Office of the Ombudsman.

31. If the Ethics Office determines that there is no prima facie case 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, should it determine appropriate, the Executive Director. Furthermore, the Ethics Office may recommend potential remedies or courses of action, including intervention by the Office of the Ombudsman, and follow-up as required.

Reporting misconduct outside the established mechanisms

32. Notwithstanding UN Staff Regulation 1.2(i), protection against retaliation as foreseen in this policy will be extended to an individual who reports misconduct to an entity or individual outside of the established internal channels mentioned in paragraph 12, if the below criteria are satisfied:

32.1. The report concerns:
32.1.1. A significant threat to public health or safety; or
32.1.2. Substantive damage to UNICEF's operations; or
32.1.3. Violation of national or international laws with immediate adverse impact on life or property;
32.1.4. **and**

32.2. The use of internal mechanisms is not possible because:
  32.2.1. At the time the report is made, the individual has reasonable 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
  32.2.2. It is likely that evidence relating to the suspected misconduct will be concealed or destroyed if the individual report to the person(s) he/she should report to pursuant to the established internal mechanisms; or
  32.2.3. 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**

32.3. The individual does not solicit or accept payment or any other benefit, directly or indirectly, for the individual or any other person, from any party for making such a report.

33. When circumstances require that such reports be made outside of the established UNICEF internal established mechanisms, preference must be given to make a report directly to the Executive Director or the United Nations Office of Internal Oversight Services (OIOS).

Review of Administrative decisions under Chapter XI of the UN Rules

34. The action, or failure to take action, by the Executive Director or other officials to whom the Ethics Office submitted recommendations, will constitute an administrative decision, which may be contested under Chapter XI of the UN Staff Rules.

35. Recommendations by the Ethics Office, or final determinations by the Ethics Office or the Chairperson on the UN Ethics Committee, do not constitute administrative decisions and are therefore not subject to appeal under Chapter XI of the UN Staff Rules.

Periodic review of the policy

36. On an annual basis, the Ethics Office shall review and assess the terms and implementation of the present policy and make recommendations, if any, to the Executive Director for updating the policy.

Transitional Measures

37. With reference to paragraph 19, the Ethics Office will gradually implement the new timeline of 30 calendar days to complete the initial review of a complaint of retaliation over a period of 12 months following issuance of the policy. During such transition period, the maximum period to review a complaint will be 45 calendar days.

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DOCUMENT MANAGEMENT INFORMATION PAGE

Document Title	Whistle-blower protection against retaliation
Document Number	DHR/POLICY/2018-001
Effective Date	21 June 2018
Mandatory Review Date	21 June 2028
Responsible Business Owner	Director, DHR
Responsible Manager	Chief, PERCS
Document Summary	This policy sets out UNICEF's whistle-blower protection measures against retaliation for individuals who report misconduct, provide information in good faith on alleged wrongdoing, or cooperate with a duly authorized audit, inspection or other oversight activity.
Regulatory content the Document Replaces	CF/EXD/2007-005 Revision 2 of 6 February 2015
Topics Covered	Reporting misconduct through external and internal mechanisms; reporting retaliation to the Ethics Office; protection of persons who suffered retaliation; action against the person who engaged in retaliation; prohibition of retaliation against outside parties
Corporate Risk Area	
Reference / Links to Enabling Legislation and Background	UN Staff Regulations and Rules;
Links to Relevant Policy	ST/SGB/2005/21
Links to Relevant Procedure	
Links to Relevant Guidance	
Links to Relevant Training Materials	
Links to Other Knowledge & Information Resources	