

EXECUTIVE DIRECTIVE

CF/EXD/2007-005

Revision 2
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Protection against retaliation for reporting misconduct or for cooperating with duly authorized audits, investigations and other oversight activities. (UNICEF's Whistle-blower protection policy)

This Executive Directive sets out UNICEF's whistle-blower protection policy. This policy provides protection 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. This policy is based on the policy established by the Secretary-General for staff members of the United Nations Secretariat.¹

Section 1 General

2. All UNICEF staff members have a duty to report any breach of UNICEF's regulations and rules to 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.

3. UNICEF staff members are also obliged to cooperate with duly authorized audits and investigations and other oversight activities. An individual who does so, 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 audits or investigations or other oversight activities is prohibited. Such behaviour violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interest of the Organization only in view.

5. For the purposes of this policy, "retaliation" means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in an activity referred to in paragraphs 2 and 3. When established, retaliation in itself constitutes misconduct, for which appropriate action will be taken.

¹ Secretary-General's Bulletin "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations" (ST/SGB/2005/21), of 19 December 2005.

Section 2

Scope of application

6. Protection against retaliation applies to any UNICEF staff member who:

(a) reports the failure of one or more individuals 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 (2001) or other relevant administrative issuances, including any request or instruction from any staff member to violate those regulations, rules, standards or issuances.

(b) provides information in good faith on wrongdoing by one or more individuals; or

(c) cooperates in good faith with a duly authorized investigation or audit or other oversight activities.

7. The present Executive Directive is without prejudice to the legitimate application of 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 any UNICEF staff member, 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 above.

8. In order to receive protection as provided for in this Executive Directive, the individual must act in good faith and must have a reasonable belief that the activities reported did in fact occur. 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 administrative, disciplinary or other appropriate action.

Section 3

A. Reporting misconduct through established internal mechanisms

9. Except as provided in section 4 below, reports of misconduct should be made through the established internal mechanisms and following established guidelines. Depending on the nature of the allegations, this may include:

- (a) the head of the office or division concerned;²
- (b) the Director, Office of Internal Audit (OIA); or ³
- (c) the Focal Point appointed to receive reports of sexual exploitation and abuse.⁴

10. The identity of the individual reporting misconduct should remain confidential to the maximum extent possible, as should all communication with the UNICEF staff members in question relating to the report.

² See CF/EXD/2012-005 Disciplinary process and measure.

³ See CF/EXD/2013-008 Policy Prohibiting and Combatting Fraud and Corruption.

⁴ See CF/EXD 2003-029 of 30 December 2003- Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse.

B. Reporting misconduct through external mechanisms

11. Notwithstanding UN Staff Regulation 1.2(i)⁵, 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:

- (a) Such reporting is necessary to avoid:
 - (i) a significant threat to public health or safety; *or*
 - (ii) substantive damage to UNICEF's operations; *or*
 - (iii) violation of national or international laws with immediate adverse impact on life or property; **and**
- (b) The use of internal mechanisms is not possible because:
 - (i) 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*
 - (ii) it is likely that evidence relating to the suspected 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*
 - a. 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**
- (c) 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.

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

⁵ United Staff Regulation 1.2(i) provides: "Staff members shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. These obligations do not cease upon separation from service."

Section 4

Reporting retaliation to the Ethics Office⁶

13. Individuals who believe that retaliatory action has been taken against them because they have reported misconduct or have cooperated with a duly authorized audit or investigation or other oversight activity should forward all information and documentation available to them to support their complaint to the Ethics Office. This should be done promptly and in any event no later than 6 months after the alleged act or threat of retaliation has occurred. The complaint of retaliation may be made in person, by telephone, by mail, by e-mail or fax.

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

- (a) to receive complaints of retaliation;
- (b) to keep a confidential record of all such complaints;
- (c) to do an initial review of the complaint if:
 - (i) the complainant engaged in a protected activity (see paragraph 6);
 - (ii) the action alleged to be retaliatory or a threat of retaliation did take place; and
 - (iii) there is a prima facie case that the protected activity was a contributing factor in causing the action alleged to be retaliatory or a threat of retaliation.

15. Where the complainant can be contacted, the Ethics Office will send an acknowledgement of the complaint promptly upon having received it.

16. The Ethics Office will complete the initial review within 45 days of receiving the complaint of retaliation. If the Ethics Office does not formally consider the complaint within 45 days, the staff member may then refer the matter in writing to the Chairperson of the United Nations Ethics Committee⁷. Alternatively, if following a final determination by the Ethics Office of a matter referred to it by a staff member, the staff member wishes to have the matter reviewed further, he/she may refer the matter to the Chairperson of the Ethics Committee in writing. 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.⁸

17. All divisions, offices and staff members are required to cooperate at all times 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 staff member concerned.

⁶ In this document the Ethics Office refers to the UNICEF Ethics Office.

⁷ The United Nations Ethics Committee 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. The Committee is chaired by the Head of the Ethics Office of the United Nations Secretariat.

⁸ Secretary-General's Bulletin "United Nations system-wide application of ethics: separately administered organs and programmes" (ST/SGB/2007-011) of 30 November 2007.

18. If, in the opinion of the Ethics Office, there is a credible case of retaliation or threat of retaliation, it will refer the matter in writing to OIA for investigation and will immediately notify in writing the complainant that the matter has been so referred. OIA will seek to complete its investigation and submit its report to the Ethics Office within 90 days.

19. Pending the completion of the investigation, the Ethics Office, may recommend that the Executive Director takes appropriate measures to safeguard the interests of the complainant, including but not limited to temporary suspension of implementation of the action reported as retaliatory and, in consultation with the complainant, temporary reassignment of the complainant or placement of the complainant on special leave with full pay.

20. Once the Ethics Office has received the investigation report, it will inform the complainant of the outcome of the investigation in writing and make its recommendations on the case to the Executive Director. Such recommendations may include disciplinary actions to be taken against the retaliator.

21. If the Ethics Office finds that there is no credible case of retaliation or threat of retaliation, but finds that there is 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 Joint Ombudsperson.

22. Where, in the opinion of the Ethics Office, there may be a conflict of interest in OIA conducting the investigation as referred to in paragraph 18 above, the Ethics Office may recommend to the Executive Director that the complaint be referred to an alternative investigating mechanism.

Section 5

Protection of person who suffered retaliation

23. If retaliation against an individual 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.

24. The procedures set out in this directive are without prejudice to the rights of an individual who has suffered retaliation to seek redress through the internal recourse mechanisms. An individual may raise a violation of present policy in any such internal recourse proceeding.

Section 6

Action against the person who engaged in retaliation

25. Acts or threats of retaliation constitute misconduct which, if established, will lead to administrative or disciplinary action.

Section 7

Prohibition of retaliation against outside parties

26. Any retaliatory measures (including threats) against a contractor or its employees, agents or representatives, or any other individual engaged in dealings with UNICEF because such person has reported misconduct by UNICEF personnel will be considered misconduct that, if established, will lead to administrative and/or disciplinary action.

Section 8

Entry into force

27. The present Executive Directive shall enter into force on the date of its issuance.

(signed) Anthony Lake
Executive Director