

## POLICY FOR PROTECTION AGAINST RETALIATION

### For reporting misconduct or cooperating with a duly authorized audit or investigation



#### Policy Statement

It is the Policy of UNDP that Retaliation against individuals holding UNDP assignments/contracts (i.e., staff members, interns, UN Volunteers and contractors) who have, in good faith, properly reported allegations of misconduct, or who have cooperated with a duly authorized audit or investigation, is strictly prohibited. Such Retaliation violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity as required under the UN Charter, and to discharge their functions and regulate their conduct with the interests of UNDP only in view. Retaliation, as defined under this Policy, is itself misconduct and a staff member who commits Retaliation may be subject to disciplinary measures.

#### Objectives

In accordance with [ST/SGB/2017/2/Rev.1](#) UNDP has established this Policy and accompanying procedures and guidelines to:

- (a) encourage individuals to, in good faith, report misconduct and/or cooperate with a duly authorized audit or investigation, without fear of Retaliation or retribution;
- (b) establish a basis by which UNDP can effectively address such situations, manage risks and protect Individuals who make such good faith reports of Retaliation; and
- (c) foster an environment where UNDP functions in a transparent and accountable manner.

#### Section 1

##### Definitions

- 1.1 **Retaliation** (for purposes of this Policy) 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 "Protected Activity" as defined below. Retaliation is itself a separate act of misconduct and a violation of this Policy. For purposes of this Policy, 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.

If the individual did not engage in a Protected Activity, any detrimental action recommended, threatened or taken against him/her will not be considered Retaliation under this Policy. Claims concerning conduct not covered under this Policy should be addressed to the Office of Human Resources (OHR) as a potential management issue or, if appropriate, reported directly to the Office of Audit and Investigations (OAI).

- 1.2 **Prima Facie case (of Retaliation)** is established when the information available to the Ethics Office indicates that it is more likely than not that a causal connection exists between the Protected Activity (defined below) and the detrimental action that has been taken or threatened against the individual. When the Ethics Office has determined that a *prima facie* case is established, the matter will be referred to OAI for a full investigation.

- 1.3 **Protected Activity** is a good faith report alleging misconduct and made in accordance with the procedures set out in the [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct](#). Protected Activity also includes cooperating, in good faith, with a duly authorized audit or investigation.
- 1.4 **Ethics Panel of the United Nations**<sup>1</sup> consists of the heads of the Ethics Offices of the separately administered funds and programmes of the United Nations and the Ethics Office of the United Nations Secretariat, and is chaired by the head of the United Nations Ethics Office.

## Section 2

### Protected Reporting and Cooperation with a Duly Authorized Audit or Investigation

2.1 As international civil servants, UNDP staff members are required to adhere to the highest standards of efficiency, competence and integrity. It is the duty of staff members to report “any breach of the Organization’s regulations and rules and to cooperate with duly authorized audits and investigations” as provided for by [UN Staff Rule 1.2 \(c\)](#) and in accordance with the [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct](#) and the [UNDP Policy on Fraud and other Corrupt Practices](#). Our interns, UN Volunteers and contractors are expected to undertake their duties in the best interests of the UNDP. They are also expected to uphold and promote the highest standards of ethical and professional conduct, report misconduct and cooperate with audits and investigations. An individual who reports misconduct in good faith can seek protection against Retaliation, as provided in this Policy.

2.2 While an individual who cooperates in good faith with a duly authorized audit or investigation may seek Protection against Retaliation, cooperation with an investigation will not excuse an individual’s own complicity in the underlying matter. Notwithstanding his/her cooperation, an individual may face disciplinary or other appropriate action for his/her role in the matter under investigation. Neither the investigation, nor the imposition of any disciplinary or other appropriate measure resulting from an individual’s complicity in the underlying matter under investigation, constitutes retaliatory action.

2.3 The dissemination of unsubstantiated or false rumors, or the submission of intentionally false or misleading allegations of wrongdoing, are not Protected Activities under this Policy. These acts may constitute misconduct for which disciplinary or other appropriate measures, including summary dismissal or termination, may be imposed either in accordance with the UN Staff Regulations and Rules and administrative issuances (for staff members), or as are referenced within that individual’s contract. See Section 9 (*infra*)

2.4 UNDP management, including the Ethics Office, will strive to protect the identity of individuals who allege Retaliation and the confidentiality of all communications made by an individual who is requesting Protection against Retaliation in accordance with this Policy. However, exceptionally, the identity of the complainant and related information may be disclosed in whole or in part a) to persons with a legitimate need-to-know in order to resolve the complaint or assist in the investigation of the matter by OAI or other duly appointed investigative body; b) in circumstances where, as part of legal proceedings, the Ethics Office is required to make such disclosure or; c) when, in the discretion of the Ethics Office, disclosure of such confidential information is required in order to adequately address or remediate the situation alleged to be retaliatory or to attempt to prevent further misconduct. In all such instances, the complainant would be consulted prior to any disclosure being made. Similarly, UNDP management will not be bound to maintain confidentiality in situations where the individual requesting protection does not maintain confidentiality or acts in such a manner from which it may be reasonably inferred that the individual waives confidentiality.

<sup>1</sup> Created by [ST/SGB/2007/11](#) and [ST/SGB/2007/11/Amend.1](#): United Nations system-wide application of ethics: separately administered organs and programmes.

2.5 All UNDP offices and staff members shall cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office, except for medical records that should not be disclosed without the express consent of the individual concerned, and the records of OAI and the Office of the Ombudsman, which are subject to confidentiality requirements.

2.6 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:

- (a) Such reporting is necessary to avoid:
  - (i) A significant threat to public health and safety; or
  - (ii) Substantive damage to UNDP's operations; or
  - (iii) Violations of national or international law; and
- (b) The use of internal mechanisms is not possible because:
  - (i) 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
  - (ii) 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
  - (iii) The individual has previously reported the same information through the established internal mechanisms, and UNDP 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 accept payment or any other benefit from any party for such report.

## Section 3

### Time Frame for Seeking Protection against Retaliation

3.1 In order for a request for Protection against Retaliation to be considered valid, the Protected Activity must have taken place within two (2) years prior to the staff member's request for protection.

3.2 Further, the individual's request for protection must be submitted to the Ethics Office no later than six (6) months after the date on which the individual knew, or in the opinion of the Ethics Office should have known, that the alleged Retaliation was threatened or taken.

3.3 These time limits may be extended where, in the opinion of the Director of the Ethics Office, it is in the interest of UNDP to do so or is otherwise necessary to give effect to the overall intent and purpose of this Policy.

## Section 4

### Scope of Application

4.1 The Protection against Retaliation Policy applies to:

- (a) All staff members holding UNDP letters of appointment, including Junior Professional Officers (JPOs), regardless of whether their assignment is with UNDP, or another Fund, Agency Programme or Department.
- (b) All other individuals holding a UNDP appointment or contract including:
  - (i) Staff members of other organizations on secondment to UNDP or on an inter-organization exchange with UNDP, for actions occurring while they are with UNDP, unless the secondment

or exchange agreement provides otherwise. UNDP shall inform the releasing organization prior to charging a staff member with misconduct.

- (ii) United Nations Volunteers (UNVs) and interns serving in UNDP.
- (iii) UNDP Individual Contractors (formerly SSAs) and Service Contractors (SCs) - however Protection against Retaliation may be limited to give effect to the terms of the contract under which the contractor is operating including any other prescriptive content incorporated into their contract directly or by reference.

4.2 This Policy *does not apply* to UNDP staff members on a secondment or on an inter-organization exchange to another UN agency, where the secondment or exchange is governed by the receiving organization's rules, with respect to acts that occur during the period of the staff member's exchange to that agency.

## Section 5

### How to Submit a Request for Protection against Retaliation to the Ethics Office

5.1 Individuals who believe that retaliatory action has been threatened or taken against them because they engaged in a Protected Activity may report their concern and request protection by contacting the Ethics Office as soon as possible (but not later than the time frames noted in Section 3), and submitting a formal written (or email) request for protection; the Ethics Office has created a [UNDP Protection from Retaliation form](#) to facilitate such requests. Please include all available supporting information and documentation, and refer to Section 3 above for the specific deadlines and time frames for submission of such request for protection. The Ethics Office is located at One United Nations Plaza, New York, NY, 10017, and can also be reached by telephone +1(212-909-7840), e-mail ([ethicsoffice@undp.org](mailto:ethicsoffice@undp.org)) or fax +1(212-906-6153).

5.2 UNDP encourages the informal resolution of conflicts. Therefore, notwithstanding any other provisions of this Policy, an individual who believes he/she may have been subjected to, or is threatened with, Retaliation may, at his/her discretion, initially contact the Office of the Ombudsman to seek an informal resolution of the underlying matter (i.e., the issue that has given rise to the concern about Retaliation). While pursuing informal resolution via the Ombudsman, the time period for filing a complaint of Retaliation with the Ethics Office, as specified under Section 3 above, may be suspended by the Ethics Office for a maximum of 120 days, *provided that* the individual a) notifies the Director of the Ethics Office, in writing, that he/she has sought informal resolution of the matter, and b) includes written confirmation from the Office of the Ombudsman that said office is involved in such informal resolution process.

5.3 Pursuit of informal resolution of a matter, grievance or interpersonal problem that may form the basis of a complaint of Retaliation may not prevent or preclude the independent and eventual institution of disciplinary or other administrative action against the alleged retaliator, if appropriate.

## Section 6

### Addressing Complaints (or Threats) of Retaliation, and Requests for Protection against Retaliation

6.1 The role of the Ethics Office under this Policy is:

- (a) to receive complaints of Retaliation or threats of Retaliation, and requests for Protection against Retaliation from complainants;
- (b) to keep a confidential record of all such complaints;

- (c) to conduct a preliminary assessment of allegations of Retaliation to determine if:
  - (i) the complainant engaged in a Protected Activity;
  - (ii) the action alleged to be retaliatory or 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 or threat alleged to be retaliatory.

6.2 The Ethics Office will promptly send the complainant an acknowledgement of receipt of the complaint and seek to complete its preliminary assessment within 30 days of receiving all information requested concerning the request for Protection against Retaliation submitted. If the Ethics Office does not formally consider the request within said 30 days, the complainant may then refer the matter in writing to the Chairperson of the Ethics Panel of the United Nations<sup>2</sup>.

6.3 If the Director of the Ethics Office is of the opinion that there may be a potential conflict of interest associated with his/her review of a particular complaint, or in order to avoid even the appearance of any undue pressure or influence, the Director may refer the complaint to the Chairperson of the Ethics Panel of the United Nations for advice and guidance regarding selection of an alternate body to conduct said review. The Director shall also immediately inform the UNDP Administrator of such referral.<sup>2</sup>

6.4 If the Director of the Ethics Office determines that the documentation and evidence reviewed supports a *prima facie* case of Retaliation or threat of Retaliation, the Director will refer the matter in writing to OAI for investigation and will immediately notify the complainant in writing. OAI will seek to complete its investigation and submit its Investigation Report to the Ethics Office within 120 days of such referral.

6.5 Where, in the opinion of the Director of the Ethics Office, there may be a conflict of interest or other extenuating circumstances in relation to the conduct of the investigation by OAI, the Ethics Office may recommend to the Administrator that the complaint be referred to an alternate body to conduct the investigation. If so referred, upon the conclusion of the investigation, the investigator shall issue a final Investigation Report to the Ethics Office.

6.6 The investigation will gather evidence to provide to the Ethics Office to aid in its independent evaluation of whether Retaliation actually took place or was threatened. However, the burden of proof shall rest with the Administration, which must prove by clear and convincing evidence that it would have taken the same action absent the Protected Activity. As such, the present Policy is without prejudice to the legitimate application of UN and UNDP regulations, rules and administrative procedures, including those governing evaluation of performance and non-extension or termination of appointment, employment or contract.

6.7 Both during the preliminary review stage and pending the completion of the investigation after a *prima facie* finding, the Ethics Office may make recommendations to the local management and/or the Administrator for interim measures to be taken to safeguard the interests of the complainant, including but not limited to, temporary suspension of implementation of the allegedly retaliatory action and/or, in consultation with the complainant, temporary reassignment of the complainant or placement of the complainant on special leave with pay. Temporary reassignment or placement on special leave with pay can only be recommended where the complainant is a UNDP staff member. In cases involving an individual who is not a staff member of UNDP (e.g., contractor) remedies may be limited to those available in that person's particular contractual arrangement with UNDP.

6.8 Once the Ethics Office has received the Investigation Report, it will:

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<sup>2</sup> [ST/SGB/2007/11](#), Section 4 (see also [ST/SGB/2007/11/Amend.1](#))

- (a) Determine whether the investigation supports the allegations of Retaliation and, if so, the Ethics Office will refer the case to the Director of LO/BMS for a determination whether disciplinary proceedings should be initiated against the retaliator in accordance with the provisions of the [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct](#); and
- (b) Advise the complainant of the outcome of the investigation and whether a finding of Retaliation is supported.

6.9 (a) If the Ethics Office determines that Retaliation against an individual is established following its consideration of the Investigation Report, the Ethics Office may also recommend to the Administrator appropriate measures aimed at correcting any negative consequences threatened or suffered by the individual as a result of the retaliatory action. In the case of a staff member, such measures may include, but are not limited to, rescission of the retaliatory decision/action, reinstatement, and, if appropriate and after consultation with the staff member, transfer to another office or function for which the staff member is qualified. Subject to all relevant due process rights, including rights under Chapter X of the [Staff Regulations and Rules of the United Nations](#), recommended measures may also include temporary or permanent transfer of the alleged retaliator. In the case of other personnel, appropriate measures will, as far as possible, aim at giving effect to the terms and conditions of the contract or the conditions of service of the individual.

(b) While the Ethics Office can recommend to the Administrator certain corrective actions as noted above, the procedures set out in the present Policy are without prejudice to the rights of an individual who has suffered Retaliation to seek redress through such other internal recourse mechanism as provided under the Staff Regulations and Rules or other administrative policies.

6.10 If the Ethics Office determines that there is no *prima facie* case of Retaliation or threat of Retaliation, but finds that the issue arose from other factors, (e.g., an interpersonal problem within a particular office or manager), it may advise the complainant of other options to resolve or remediate the situation including referral to the Office of the Ombudsman and other informal mechanisms for conflict resolution at UNDP.

## Section 7

### Safety and Well-Being of Complainant

If the Ethics Office becomes aware of an immediate risk to the safety and security of the complainant or his/her family related to the request for Protection against Retaliation, the Ethics Office shall either notify the UNDP Security Office/BMS or urge that the complainant do so directly. The UNDP Security Office will determine the most appropriate measures to be taken in order to secure the personal safety and well-being of the complainant and/or members of his/her family.

## Section 8

### Action against the person who engaged in Retaliation

8.1 Retaliation against an individual because he/she engaged in a Protected Activity itself constitutes misconduct which, if established, may lead to administrative action or disciplinary sanctions against the retaliator. As noted in Section 6.8(a) above, where Retaliation is established, the Ethics Office will refer the case to the Director of LO/BMS for consideration as to what disciplinary proceedings, if any, should be initiated against the alleged retaliator. In such a case the procedure outlined in the [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct](#) shall apply.

8.2 A staff member may be subject to disciplinary proceedings for Retaliation, notwithstanding the fact that the individual against whom the Retaliation was allegedly committed or threatened did not apply for protection

under this Policy, pursuant to the procedure outlined in the [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct](#) shall apply.

## Section 9

### Action against Individual Falsely or in Bad Faith Requesting Protection

Where, pursuant to section 6 above, it is established that an individual reporting Retaliation a) provided information in bad faith, or transmitted or disseminated unsubstantiated or false rumors, or made allegations which he/she knew or should reasonably have known were false or misleading, or b) violated any UN Staff Regulations or Rules in the course of reporting allegations of misconduct or Retaliation, such individual may be subject to disciplinary proceedings, or other administrative action, in accordance with the [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct or other administrative issuance](#).

## Section 10

### Request for Review by Ethics Panel of the United Nations<sup>3</sup>

If, following the notification of a determination by the UNDP Ethics Office on a staff member's complaint of Retaliation, he/she wishes to have the matter reviewed further, he/she should refer the matter in writing to the Chairperson of the Ethics Panel of the United Nations, as provided in [ST/SGB/2007/11 and ST/SGB/2007/11/Amend.1](#).

## Section 11

### Prohibition of retaliation against outside parties

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

## Section 12

### Background and Context

This Policy should be read in conjunction with the relevant provisions of the [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct](#) and [the OAI Investigation Guidelines](#).

The UNDP Administrator, as the custodian of the Protection against Retaliation Policy, approves this Policy, supports the independence of the Protection against Retaliation function as provided by Section 1.2 of [ST/SGB/2007/11 \(and ST/SGB/2007/11/Amend.1\)](#) (United Nations system-wide application of ethics: separately administered organs and programmes), and requires full compliance with the provisions of this Policy to ensure that UNDP functions in an open, transparent and fair manner in protecting persons from Retaliation.

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<sup>3</sup> Requests for review to Ethics Panel of the United Nations is available to staff members only

## Section 13

### Entry into force

The present Policy (and procedures/guidelines) supersedes the UNDP Policy for Protection against Retaliation of January 2010, and shall enter into force on the date on which it is adopted by the Administrator. It shall be reviewed at least every two years following the date of adoption.

### Links to Documents

The relevant documents cited in the Protection against Retaliation Policy can be accessed through the following links:

- [UNDP Protection from Retaliation form](#)
- [UN Staff Regulations and Rules](#)
- [UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct](#)
- [Standards of Conduct for the International Civil Service](#)
- United Nations system-wide application of ethics: separately administered organs and programmes ([ST/SGB/2007/11](#) and [ST/SGB/2007/11/Amend.1](#))
- [UNDP Policy on Workplace Harassment and Abuse of Authority](#)
- [OAI Investigation Guidelines](#)
- [HR Service Contract User Guide](#)
- [HR POPP](#)