

**Inter-Office Memorandum No. 043/2008**  
**Field Office Memorandum No. 045/2008**

**To/à:** All Staff Members at Headquarters and in the Field

**From/de:** The High Commissioner

**Ref./références:** ADM-01

**Date/date:** 15 September 2008

**Title/titre:** **UNHCR's policy on protection of individuals against retaliation**  
**(Whistleblower policy)**

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1. For the purpose of ensuring that UNHCR functions in an open, transparent and fair manner, with the objective of enhancing protection for individuals who report misconduct, provide information in good faith on alleged wrongdoing, or cooperate with, or participate in, a duly authorized audit, inspection, investigation or inquiry or the activities of the Office of the Mediator and, to maintain accountability, this inter-office memorandum/field-office memorandum sets out UNHCR's policy on protection against retaliation.
2. Reference is made to 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 1**

### **General**

- 1.1 It is the duty of staff members to report any breach of the Organization'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, shall be protected by the Organization against retaliation.
- 1.2 It is also the duty of staff members to cooperate with duly authorized audits, inspections, investigations and inquiries. An individual who cooperates in good faith with, or participates in, these activities has the right to be protected against retaliation. While resort to the Office of the Mediator is discretionary, not obligatory, staff who choose to contact or cooperate with this Office, or who participate in its activities, are also entitled to such protection.
- 1.3 Retaliation against individuals who have reported misconduct or who have cooperated with, or participated in, the above-mentioned activities, violates the fundamental obligation of all staff members to respect basic standards of ethics, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Organization in view.

- 1.4 Retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in an activity protected by the present policy. When established, retaliation is by itself misconduct.
- 1.5 The only body established to receive reports of retaliation is the UNHCR Ethics Office.
- 1.6 Except as provided in Section 5 below, reports of misconduct, other than retaliation, should be made through the established internal mechanisms<sup>1</sup>. It is the duty of the Administration to protect the confidentiality of the individual's identity and all communications through those channels to the maximum extent possible.

## **Section 2**

### **Scope of application**

- 2.1 Protection against retaliation applies to any person having a direct contractual link with UNHCR, including staff members, United Nations volunteers, consultants, as well as interns<sup>2</sup> who, in good faith:
  - (a) Reports the failure of one or more staff members 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, including any request or instruction from any staff member to violate the above-mentioned regulations, rules or standards; or
  - (b) Cooperates with, or participates in, a duly authorized audit, inspection, investigation or inquiry, or the activities of the Office of the Mediator.
- 2.2 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.

## **Section 3**

### **Reporting retaliation to the Ethics Office**

- 3.1 Individuals who believe they have been subjected to retaliation or a threat of retaliation because they engaged in a protected activity should inform the Director, Ethics Office. They should forward any information and documentation available to them to support their complaint. This should be done promptly and in any event no later than 90 calendar days from the date the retaliatory act becomes known to the complainant. The complaint may be made in person, by telephone, by mail, by e-mail or fax. It is the duty of the Director, Ethics Office and the Administration to protect the confidentiality of the individual's identity to the maximum extent possible.
- 3.2 The functions of the Ethics Office with respect to protection against retaliation are as follows:
  - (a) To receive complaints of retaliation;
  - (b) To keep a confidential record of all such complaints;

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<sup>1</sup> IOM/54/2005-FOM/54/2005 "The role, functions and modus operandi of the Inspector General's Office", 3 November 2005.

<sup>2</sup> Unless otherwise indicated the term "staff members" in this document is used inclusively to cover all the aforementioned categories of personnel.

- (c) To conduct an initial review of the complaint to determine (if necessary, in consultation with the Division of Human Resources Management (DHRM) and the Inspector General's Office (IGO) whether:
  - (i) the complainant engaged in a protected activity;
  - (ii) the action alleged to be retaliatory did take place; and
  - (iii) there is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.
- 3.3 The Ethics Office will acknowledge the complaint within 5 working days of its receipt.
- 3.4 The Ethics Office will seek to complete the initial review within 45 calendar days of receiving the complaint of retaliation.
- 3.5 All offices and staff members shall cooperate at all times with the Ethics Office and provide access to all records and documents requested by it, except for medical records that are not available without the express consent of the staff member concerned and IGO records that are subject to confidentiality requirements.
- 3.6 If the Director, Ethics Office finds that there is a credible case of retaliation, he/she will refer the complaint in writing to the IGO for investigation and will immediately notify the complainant in writing that the matter has been so referred.
- 3.7 If the Director, Ethics Office, is of the opinion that there is an actual or potential conflict of interest in his/her reviewing a particular complaint or in order to avoid any undue pressure or influence, he/she shall refer the complaint to the Head of the UN Ethics Office<sup>3</sup>, and shall inform the complainant accordingly.
- 3.8 Pending the completion of the IGO investigation, the Director, Ethics Office, may recommend that the High Commissioner take appropriate measures to safeguard the interests of the complainant. Upon the request or with the consent of the complainant, such measures may include, but are not limited to, temporary suspension of the implementation of the action reported as retaliatory and temporary relocation or deployment of the complainant within or outside the complainant's office, or placement of the complainant on special leave with full pay.
- 3.9 If the IGO investigation finds that there is no credible case of retaliation, the case will be referred back to the Director, Ethics Office, for appropriate action which may include reference to the Mediator's Office for resolution of underlying personal issues.
- 3.10 If the IGO investigation finds that retaliation is established, the IGO will submit its report to the Director, DHRM, as required for cases of misconduct, and will at the same time inform the Director, Ethics Office, so as to enable him/her to recommend to the High Commissioner appropriate measures aimed at mitigating any negative consequences that may have been suffered by the staff member as a result of the established retaliatory action.
- 3.11 The Director, Ethics Office, shall inform the complainant in writing of the outcome of the IGO investigation.

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<sup>3</sup> Please refer to Secretary-General's Bulletin "United Nations system-wide application of ethics: separately administered organs and programmes" (ST/SGB/2007/11) of 30 November 2007.

## **Section 4**

### **Reporting misconduct outside of the established internal mechanisms**

4.1 Staff members are required to report misconduct to the IGO or to the United Nations Office of Internal Oversight Services (OIOS). Notwithstanding Staff Rule 102 (q), protection against retaliation will be extended to an individual who reports misconduct to an entity or an individual outside of the said established internal mechanisms (e.g. competent national authorities), where the criteria set out in sub-paragraphs (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) Harm to persons of concern to UNHCR or substantive damage to UNHCR's operations or premises; or
  - (iii) Violations of national or international law, particularly those which have immediate adverse impact on life or property; and
- (b) Reporting to the IGO or OIOS is not possible because at the time the report is made the individual has reasonable or demonstrable grounds to believe that
  - (i) he/she will be subjected to retaliation for making such a report; or
  - (ii) that evidence relating to the misconduct will be concealed or destroyed if such a report is made; or
  - (iii) the individual has previously reported the same information to the IGO and OIOS and has not been informed in writing of the status of the matter within six months of such a report; and
- (c) The individual does not accept any form of remuneration or personal benefit from any party for making such a report.

## **Section 5**

### **Informal resolution:**

5.1 Notwithstanding the above, a staff member who believes he/she is subjected to retaliation may, at his/her discretion, initially contact the Office of the Mediator to seek an informal resolution of the matter. The staff member may also request a staff member who is in a position to act as a third party to mediate. The deadline to report retaliation to the Director, Ethics Office, under paragraph 3.1 above, is suspended during the informal resolution process for up to six months, provided that the staff member has notified the Director, Ethics Office, that he/she has sought the informal resolution of the matter with confirmation by the Office of the Mediator or the third party to the Director of the Ethics Office.

## **Section 6**

### **Prohibition of retaliation against outside parties**

6.1 Any retaliatory measures against a contractor or its employees, agents or representatives, persons of concern to UNHCR, or persons deployed to UNHCR offices under agreements with third parties and any other individual engaged in any dealings with UNHCR because such person has reported misconduct by UNHCR staff members will be considered misconduct that, if established, will lead to disciplinary or other appropriate action.

## **Section 7**

### **Right to appeal the decision of the Ethics Office:**

- 7.1 The present inter-office memorandum/field-office memorandum is without prejudice to the rights of an individual who has suffered retaliation to seek redress through the internal appeal mechanisms in accordance with Article XI of the Staff Regulations and Rules.
- 7.2 In this regard, the present inter-office memorandum/field-office memorandum 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. Where the alleged retaliation is effected by means of an administrative action the burden of proof to the internal appeals mechanisms shall rest with the Administration, which must prove by clear and convincing evidence that it would have taken the same action even in the absence of the protected activity referred to in Section 2.1 (a) and (b) above.