

PROTECTION AGAINST RETALIATION POLICY	
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<b>Content Owner/s</b>	Ethics Advisor

## Table of Contents

1	Purpose.....	1
2	Application.....	2
3	Definitions .....	2
4	Roles and Responsibilities .....	3
5	Policy .....	3
6	Anti-Fraud Controls .....	10
7	Exceptions to the Policy.....	10
8	Other Provisions .....	10
9	Relevant documents.....	10

## 1 Purpose

- 1.1 Retaliation against Personnel who have reported Misconduct or Wrongdoing in good faith or who have cooperated with duly authorized audits or investigations is prohibited. Such Retaliation violates the fundamental obligation of all Personnel to uphold the highest standards of efficiency, competence and integrity as required by the United Nations Charter, and to discharge their functions and regulate their conduct with the interests of UN Women only in view. Personnel who have reported Misconduct or Wrongdoing in good faith or who have cooperated with duly authorized audits or investigations have the right to be protected against Retaliation.
- 1.2 The purpose of the Protection Against Retaliation Policy (“this Policy”) is to:
  - a) encourage Personnel to report Misconduct or Wrongdoing in good faith and/or fully cooperate with duly authorized audits or investigations, without fear of Retaliation;
  - b) establish a mechanism to enhance protection for Personnel who report Misconduct or Wrongdoing and/or cooperate with duly authorized audits or investigations; and
  - c) ensure that UN Women functions in a transparent, fair and accountable manner.
- 1.3 This Policy should be read in conjunction with the relevant provisions of the Legal Policy for Addressing Non-Compliance with UN Standards of Conduct.

## 2 Application

- 2.1 This Policy applies to all Personnel. It is of particular relevance to all those with roles and responsibilities in respect of its application in accordance with section 4.

## 3 Definitions

- 3.1 For the purposes of this Policy, the terms and phrases referred to herein have the following meaning:

**“Affiliate Personnel”** means those personnel engaged by UN Women to perform services for UN Women whose contractual relationships are not governed by letters of appointments subject to the Staff Regulations and Rules of the United Nations, including independent contractors (which include service contract holders, personnel services agreement holders and consultants), personnel engaged on a Non-Reimbursable Loan Agreement, United Nations Volunteers, fellows, and interns.

**“Complainant”** means personnel making a request for protection against Retaliation under this Policy.

**“Misconduct”** means the failure by a staff member to comply with their obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant.

**“Personnel”** Staff Members and Affiliate Personnel.

**“Protected Activity/Activities”** means one or more of the following: (a) a good faith report of Misconduct or Wrongdoing to the Office of Internal Oversight Services of the United Nations Secretariat (“OIOS”) or an immediate supervisor or other appropriate supervisor within the operating unit. Any report of Misconduct or Wrongdoing must contain information or evidence to support a reasonable belief that Misconduct or Wrongdoing occurred to be considered a Protected Activity; or (b) cooperation with a duly authorized investigation or audit.

**“Retaliation”** means any direct or indirect detrimental action that adversely affects the employment or working conditions of a member of Personnel, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or injuring a member of Personnel because that member of Personnel engaged in a Protected Activity.

**“Staff Member”** means a person who is working for UN Women whose employment and contractual relationship are defined by a letter of appointment subject to the Staff Regulations and Rules.

**“Staff Regulations and Rules”** means the Staff Regulations and Staff Rules of the United Nations.

**“Wrongdoing”** means conduct by any individual who is not a Staff Member that, if established, would be manifestly harmful to the interests, operations or governance of UN Women.

## 4 Roles and Responsibilities

- 4.1 The following personnel and/or functions have specific roles and responsibilities in respect to the implementation of this Policy:
- a) The Executive Director;
  - b) The Director, Division for Management and Administration (“DMA”);
  - c) The Director, Human Resources Division (“Director, HR”);
  - d) The Ethics Advisor; and
  - e) The Chief, Legal Office.

## 5 Policy

### General

- 5.1 As international civil servants, Staff Members shall uphold the highest standards of efficiency, competence and integrity, consistent with the United Nations Charter. In accordance with Staff Rule 1.2(c), it is the duty of Staff Members to report any breach of UN Women’s policies and procedures to the officials whose responsibility it is to take appropriate action, and to cooperate with duly authorized audits and investigations.
- 5.2 Affiliate Personnel shall undertake their duties in the best interests of UN Women, uphold the highest standards of efficiency, competence and integrity, report Misconduct and Wrongdoing and cooperate with duly authorized audits and investigations.
- 5.3 Any Personnel who make a report of Misconduct or Wrongdoing in good faith or who cooperate with a duly authorized audit or investigation has the right to be protected against Retaliation.
- 5.4 This Policy is without prejudice to the legitimate application of UN Women’s policies and procedures, including those governing evaluation of performance, non-extension, or termination of appointment. Additionally, the legitimate application of UN Women’s policies and procedures or the expression of disagreement, criticism or a similar expression regarding work performance, conduct or related issues within a supervisory or similar relationship, does not constitute Retaliation under this Policy.
- 5.5 This Policy is limited in scope to address detrimental action that has been recommended, threatened or taken following and because Personnel engaged in a Protected Activity. Personnel who consider that they have been subjected to detrimental action but have not themselves engaged in a Protected Activity, may address their concerns in accordance with

the Prevention of Harassment, Sexual Harassment, Discrimination and Abuse of Authority Policy or the Legal Policy for Addressing Non-Compliance with UN Standards of Conduct, as may be appropriate.

### **Protected Activity**

- 5.6 Protection against Retaliation applies to currently serving Personnel who engage in a Protected Activity and former Staff Members where the early termination or non-renewal of their contract is claimed to be Retaliation and where the request is made within 30 days of the date of their separation from service.
- 5.7 While Personnel who cooperate in good faith with a duly authorized audit or investigation may seek protection against Retaliation, cooperation with an investigation will not excuse Personnel's own complicity in the underlying matter. Notwithstanding such cooperation, Personnel may face disciplinary or other appropriate action for their role in the matter under investigation. Neither the investigation, nor the imposition of any disciplinary or other appropriate measure resulting from the investigation, constitutes Retaliation.
- 5.8 The transmission or dissemination of unsubstantiated or false rumours, or the reporting of intentionally false or misleading allegations of Wrongdoing or Misconduct are not Protected Activities. Such acts may constitute Misconduct or Wrongdoing and may result in disciplinary or other appropriate action for Staff Members, or action taken pursuant to the terms and conditions outlined in the individual's contract for Affiliate Personnel, including termination.

### **Reporting Misconduct or Wrongdoing through Established Internal Mechanisms**

- 5.9 Except as provided in paragraph 5.11 below, in order to be protected against Retaliation, Personnel must report Misconduct or Wrongdoing to OIOS, or to their immediate supervisor or other appropriate supervisor within the division/office/section.
- 5.10 It is the duty of those who receive reports of Misconduct or Wrongdoing to protect the confidentiality of Personnel's identity and all communications through those established internal mechanisms to the maximum extent possible.

### **Reporting Misconduct through External Mechanisms**

- 5.11 Notwithstanding the obligations of Staff Members as outlined in Staff Regulation 1.2 (i), a report of Misconduct or Wrongdoing 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 may be considered a Protected Activity when:
  - a) Such reporting is necessary to avoid:
    - A significant threat to public health and safety; or
    - Substantive damage to UN Women's operations; or
    - Violations of national or international law; and
  - b) The use of internal mechanisms is not possible because the Personnel has previously reported the same information through the established internal mechanisms, and UN Women has failed within six months to acknowledge receipt of the report or, when the Personnel has requested a status update, UN Women has failed to inform the Personnel in writing of the status of the matter within six months of such request; and
  - c) The Personnel does not accept payment or any other benefit from any party for such

report.

### **Prevention Action**

- 5.12 If, during the course of an OIOS investigation, OIOS identifies that Personnel who has made a report of Misconduct or Wrongdoing to OIOS is at risk of Retaliation, OIOS will notify the Ethics Advisor in writing with the consent of the Personnel concerned. OIOS will provide the Ethics Advisor with all information necessary for the Ethics Advisor to engage in appropriate action to prevent Retaliation as set forth below.
- 5.13 When informed by OIOS that Personnel is at risk of Retaliation, the Ethics Advisor will consult with the Personnel on appropriate actions to be taken to prevent Retaliation. With the consent of the Personnel, such action may include engagement by the Ethics Advisor with the Director, HR to ensure monitoring of the Personnel's workplace situation by an appropriate manager with a view to preventing any retaliatory action against the Personnel as a consequence of their engaging in a Protected Activity for the duration of an OIOS investigation. OIOS will notify the Ethics Advisor when the investigation concerned has been completed and its outcome.

### **Requesting Protection against Retaliation**

- 5.14 Personnel 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 Advisor via the [Protection against Retaliation Request Form](#) by email to [ethics@unwomen.org](mailto:ethics@unwomen.org). Personnel should forward all information and documentation available to support their request to the Ethics Advisor as soon as possible.
- 5.15 Requests for protection against Retaliation must be submitted to the Ethics Advisor no later than six months after the date on which Personnel knew, or in the opinion of the Ethics Advisor should have known, that the alleged retaliatory action was taken. This deadline may be extended in the Ethics Advisor's sole discretion in exceptional circumstances.

### **Preliminary Review by the Ethics Advisor**

- 5.16 Upon receipt of a completed [Protection against Retaliation Request Form](#), the Ethics Advisor will promptly acknowledge receipt and conduct a preliminary review of the request 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.
- 5.17 Direct or indirect detrimental action that adversely affects the employment or working conditions of Personnel may include, but is not limited to: (a) harassment, sexual harassment, abuse of authority, or discrimination (as such terms are defined in the Prevention of Harassment, Sexual Harassment, Discrimination and Abuse of Authority Policy), (b) unsubstantiated negative performance reviews, (c) unjustified contractual changes (such as non-extension or termination of appointment, demotion, reassignment, or transfer), (d) unjustified modification of duties, and (e) unjustified non-authorization of leave.
- 5.18 At the preliminary review stage, the Complainant is responsible for providing evidence or verifiable information to support the request for protection against Retaliation.

- 5.19 UN Women encourages the informal resolution of interpersonal conflicts. Personnel who believe that they have been subjected to Retaliation may, at their discretion, contact the Office of the Ombudsman for the United Nations Funds and Programmes or UN Women’s Workplace Relations Advisor to seek informal resolution of their concern. If informal resolution is sought, the time period for filing a request for protection against Retaliation with the Ethics Advisor as set forth in paragraph 5.15 may be suspended for up to 120 days, provided that the Personnel notifies the Ethics Advisor in writing that they have sought informal resolution of the matter. After 120 days, the Personnel will inform the Ethics Advisor whether additional time is necessary to conclude informal resolution and the Ethics Advisor may extend the suspension.
- 5.20 The Ethics Advisor will endeavour to protect the identity of Complainants and the confidentiality of all communications received from Complainants in accordance with this Policy. Complainants may authorize the Ethics Advisor to contact any division/office/section or Personnel to obtain additional information and records related to their request for protection.
- 5.21 However, the Ethics Advisor may be required to disclose the identity of the Complainant and related information in whole or in part: (a) to Personnel who legitimately need-to-know the information in order to facilitate the Ethics Advisor’s preliminary review, resolution of the request for protection, assist in the investigation of the matter by OIOS, or to ensure the implementation of recommended measures under this Policy; (b) in circumstances where, as part of internal legal proceedings, the Ethics Advisor is required to make such disclosure; (c) when, at the discretion of the Ethics Advisor, disclosure of such confidential information is required in order to adequately address or remediate the alleged retaliatory action or to attempt to prevent further Misconduct; or (d) to the Staff Counsellor or to the UN Medical Services Division in the interest of safeguarding the safety and welfare of the Complainant or other Personnel. In all such situations, the Complainant would be consulted prior to any disclosure being made. UN Women management will not be required to maintain the degree of confidentiality required by this Policy in situations where the Complainant does not maintain confidentiality or acts in a manner where a reasonable person could infer that confidentiality has been waived.
- 5.22 All divisions/offices/sections and Personnel shall cooperate with the Ethics Advisor and provide access to all records and documents requested by the Ethics Advisor, except for medical records, records of a Staff Counsellor or records of the Office of Staff Legal Assistance that are not available without the express consent of the Complainant, OIOS records that are subject to confidentiality requirements, and communications of the Office of the Ombudsman for the United Nations Funds and Programmes.
- 5.23 The Ethics Advisor will seek to complete the preliminary review within 30 days of receiving all information requested concerning a request for protection against Retaliation. Where the Ethics Advisor fails to issue a determination within 45 days from the date all information requested has been received, the Complainant may request in writing, review by the Chair of the Ethics Panel of the United Nations (“EPUN”).
- 5.24 If the Ethics Advisor determines that there is no prima facie case of Retaliation, the Complainant will be notified in writing and provided a summary of the reasons for the determination. Should the Ethics Advisor determine in such cases that there is an interpersonal problem within a particular division/office/section, they may additionally advise

the Complainant of the mandate of the Office of the Ombudsman for the United Nations Funds and Programmes, or of the existence of other informal mechanisms for conflict resolution in UN Women.

- 5.25 If the Ethics Advisor determines that there is no prima facie case of Retaliation but considers there to be a managerial problem relating to a particular division/ office/section, the Ethics Advisor will advise the Director, DMA and, if appropriate, the Director, HR and/or the Executive Director.
- 5.26 If the Ethics Advisor is of the opinion that there is an actual or potential conflict of interest in reviewing a request for protection against Retaliation, the Ethics Advisor shall not review the request but shall refer the request to an alternative reviewer, including the alternate Chair of EPUN, which determination may be further reviewed as provided in paragraph 5.27 by the Chair of EPUN.

#### **Further Review of Ethics Advisor's Determination that there is no Prima Facie Case of Retaliation**

- 5.27 If, following a determination by the Ethics Advisor or an alternative reviewer under paragraphs 5.24 or 5.26 that there is no prima facie case of Retaliation, the Complainant wishes to have the matter reviewed further, the Complainant may, within 30 days of notification of the determination, request in writing, further review by the Chair of EPUN in accordance with ST/SGB/2007/11.

#### **Ethics Advisor Action if a Prima Facie Case Exists**

- 5.28 If the Ethics Advisor considers that the Complainant has presented a prima facie case that the Protected Activity was a contributing factor in causing the alleged Retaliation, the Ethics Advisor will refer the matter in writing to OIOS for investigation and will promptly notify the Complainant in writing that the matter has been so referred. The Ethics Advisor will also undertake such action if it is recommended by the Chair of EPUN in their further review pursuant to paragraph 5.27 above. OIOS will seek to complete its investigation and submit its report to the Ethics Advisor within 120 days.
- 5.29 Following the Ethics Advisor's determination that the Complainant has presented a prima facie case of Retaliation and referral for investigation, the burden of proof shifts to UN Women management to demonstrate by clear and convincing evidence that it would have taken the same action absent the Complainant's Protected Activity or that the alleged retaliatory action was not taken for the purpose of punishing, intimidating or injuring the Personnel who engaged in the Protected Activity. The investigation will gather evidence to assist the Ethics Advisor in making a final determination as to whether Retaliation has occurred or not, as outlined in paragraph 5.31. OIOS will decide whether the prima facie case referred by the Ethics Advisor also warrants further investigation in accordance with the Legal Policy for Addressing Non-Compliance with UN Standards of Conduct and the Prevention of Harassment, Sexual Harassment, Discrimination and Abuse of Authority Policy.
- 5.30 Pending completion of the investigation and the final determination by the Ethics Advisor, the Ethics Advisor may recommend to the Director, HR, copying the Executive Director, appropriate interim measure(s) to safeguard the interests of the Complainant, including, but not limited to: monitoring of the Complainant's workplace situation by an appropriate manager with a view to preventing any further retaliatory action; 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, for Staff Members, placement of the Complainant on special leave with full pay. For Affiliate Personnel, such interim measure(s) shall not include reinstatement or extension of an engagement beyond its original date of completion.

- 5.31 Upon receipt of the investigation report and the supporting documents, the Ethics Advisor 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 UN Women management 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.
- a) If, in the view of the Ethics Advisor, this burden of proof is not met by UN Women management, the Ethics Advisor will consider that Retaliation has occurred.
  - b) If the burden of proof is met by UN Women management, the Ethics Advisor will consider that Retaliation has not occurred.

In all cases, the Ethics Advisor will inform the Complainant in writing of its determination, including its recommendations, and will make its recommendations to the Director, DMA, copying the Executive Director. Such recommendations may include that the Director, DMA consider appropriate administrative action or any other action that may be warranted as a result of the determination and/or that the Director, DMA consider referring the matter to the Chief, Legal Office to consider disciplinary procedures.

- 5.32 If the Ethics Advisor considers that there has been Retaliation against a Complainant, it may, after taking into account any recommendation(s) made by OIOS or other concerned office(s) and after consultation with the Complainant, recommend to the Director, DMA appropriate remedial measure(s) 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 relevant decision, including reinstatement, or, if requested by the Complainant, transfer to another division/office/section and/or function and/or change of reporting lines. For Affiliate Personnel, such remedial measures shall not include reinstatement or extension of an engagement beyond its original date of completion.
- 5.33 Subject to all relevant due process rights, including rights under chapter X of the Staff Regulation and Rules, the Ethics Advisor's recommended remedial measures may also include temporary or permanent transfer of the person who allegedly engaged in Retaliation to another division/office/section or function for which they are qualified.
- 5.34 Where, in the opinion of the Ethics Advisor, there may be a conflict of interest in sending recommendations to the Director, DMA, the Ethics Advisor shall make its recommendations directly to the Executive Director.
- 5.35 The Director, DMA, or where applicable, the Executive Director, shall consider the recommendations of the Ethics Advisor, and provide a written decision to the Complainant and the Ethics Advisor 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. Following the written decision, the Director, DMA, or where applicable, the Executive Director, will seek to implement the recommended remedial measure(s) and commence the disciplinary

process (if applicable) within 90 days and shall notify the Ethics Advisor in writing when the measure(s) has/have been implemented.

- 5.36 Should the Ethics Advisor not be satisfied with the response from the Director, DMA or with the timeliness of the implementation of the remedial measures, it may refer the matter to the Executive Director. The Executive Director will provide a new or revised written decision on the matter to the Complainant, the Ethics Advisor and the Director, DMA within 30 days.
- 5.37 While the Ethics Advisor can recommend remedial actions aimed at correcting the negative consequences of Retaliation, the avenues of recourse set forth in this Policy are without prejudice to the rights of Personnel who have suffered Retaliation to seek redress through other internal recourse mechanisms.
- 5.38 Complainants will be informed on a confidential basis of any disciplinary sanctions imposed for the Retaliation.

#### **Safety and Well-Being of the Complainant**

- 5.39 If the Ethics Advisor becomes aware of an immediate risk to the safety and security of the Complainant or their family related to the request for protection against Retaliation, the Ethics Advisor shall either notify the UN Women Security & Safety Services with the consent of the Complainant or urge that the Complainant do so directly. UN Women Security and Safety Services will determine the most appropriate measures to be taken in order to secure the personal safety and well-being of the Complainant and/or their family members.
- 5.40 UN Women recognizes that engaging in a Protected Activity and requesting protection against Retaliation are inherently stressful situations. All Personnel engaged in these exercises are encouraged to use the available mental health and well-being resources, including access to Staff Counsellors.

#### **Review of Administrative Decisions under Chapter XI of the Staff Regulations and Rules**

- 5.41 The action, or non-action, of UN Women management on a recommendation from the Ethics Advisor under paragraphs 5.31-5.38 above will constitute a contestable administrative decision under chapter XI of the Staff Regulations and 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 the Staff Regulations and Rules.
- 5.42 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 Regulations and Rules. Such recourse must comply with the deadlines specified under the Staff Regulations and Rules.
- 5.43 Recommendations of the Ethics Advisor and the Chair of the Ethics Panel under this Policy do not constitute administrative decisions and are not subject to challenge under chapter XI of the Staff Regulations and Rules.

#### **Prohibition of Retaliation Against Outside Parties**

- 5.44 If established, any retaliatory action against a contractor or its employees, agents or representatives or any other individual engaged in any dealings with UN Women because such person has reported Misconduct or Wrongdoing may lead to disciplinary or other appropriate action.

## 6 Anti-Fraud Controls

- 6.1 UN Women is committed to preventing, detecting and responding to all acts of fraud and other proscribed practices. Fraud prevention and detection measures are an important component of the organization's anti-fraud and enterprise risk management frameworks. Effective fraud prevention and detection measures safeguard the organization's resources and support the integrity of the organization while protecting its reputation and shall be contained in respective policies and procedures.

## 7 Exceptions to the Policy

- 7.1 Exceptions to this Policy are strongly discouraged, are permitted only in very limited circumstances and require pre-approval by the Executive Director. The process to be followed in the unlikely event that an exception to this Policy is required is outlined in paragraph 5.9 of the Policy, Procedure and Guidance Framework Procedure.
- 7.2 A deviation from this Policy that has not been pre-approved by the Executive Director will be classified as a post-facto case and is not permitted.
- 7.3 It is not acceptable under any circumstance for personnel to take any action that is inconsistent with this policy as this could lead to reputational, financial, governance and other types of risks.
- 7.4 Personnel who do take any action that is inconsistent with this Policy will be held accountable for their actions.
- 7.5 Monitoring and reporting on exceptions: The content owner of this Policy has an obligation to monitor the validity and application of all approved exceptions to this Policy and the related procedures (where granted), and to report to the Internal Policy Management Team on a quarterly basis, on the validity of these exceptions.

## 8 Other Provisions

- 8.1 This Policy supersedes the Protection Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations Policy dated 31 August 2018.

## 9 Relevant documents

- 9.1 Protection against Retaliation Request Form
- 9.2 Legal Policy for Addressing Non-Compliance with UN Standards of Conduct
- 9.3 Prevention of Harassment, Sexual Harassment, Discrimination and Abuse of Authority Policy