

**ORGANIZATIONAL DIRECTIVE No. 36****UNOPS Legal Framework for Addressing Non-Compliance with United Nations Standards of Conduct****1. Introduction**

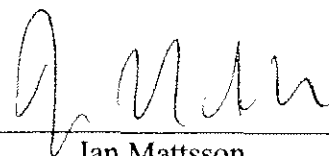
- 1.1. The Executive Director of UNOPS hereby establishes Organizational Directive No. 36 (OD 36) (attached).
- 1.2. While UNOPS recognizes that individuals (depending on his/her contractual status) are governed by different rules and procedures and therefore have certain rights and obligations arising from them, the purpose of OD 36 is to remind all individuals of their duty to abide by the highest standards of conduct according to their terms of appointments/engagements and UNOPS' prescriptive content. As such, OD 36, to the extent possible, provides the same rights to staff members and other personnel.
- 1.3. In particular, OD 36 serves the following purposes:
  - 1.3.1. defines the mechanisms that currently exist within UNOPS for reporting suspected wrongdoing, as well as what constitutes misconduct;
  - 1.3.2. clarifies the responsibilities of each individual involved in the investigation of suspected wrongdoing;
  - 1.3.3. explains the procedure following an investigation;
  - 1.3.4. outlines the disciplinary and non-disciplinary measures for staff members; and
  - 1.3.5. outlines the administrative measures for personnel other than staff members.

**2. Consequential changes**

- 2.1. OD 36 supersedes the interoffice memorandum UNOPS/ADM/97/01-A of 22 April 1997 entitled "Disciplinary and other measures relating to misconduct of staff while in the service of UNOPS" and all other previous UNOPS instructions regarding this issue.

**3. Final provisions**

- 3.1. The present OD shall enter into force on **1 September 2010**.
- 3.2. The General Counsel is hereby authorized to issue Administrative Instructions, guidance and/or tools that may be necessary to effect the implementation of this OD.



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Jan Mattsson  
Executive Director

**UNOPS LEGAL FRAMEWORK  
FOR  
ADDRESSING NON-COMPLIANCE  
WITH  
UN STANDARDS OF CONDUCT**

**1 September 2010**

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## INTRODUCTION

### Section 1. Purpose

1. All UNOPS personnel are required to adhere to the highest standards of efficiency, competence and integrity.
2. All UNOPS staff members are subject to the basic rights and duties set out in the Charter of the United Nations, the United Nations Staff Regulations and Rules and the policies issued pursuant thereto. UNOPS will not support relationships with those whose conduct is not up to such standards. Therefore, UNOPS requires the same ethical conduct of other personnel engaged by UNOPS, except to the extent such standards are inherently inconsistent with their status as independent contractors, interns and volunteers.
3. While UNOPS recognizes that individuals (depending on his/her contractual status) are governed by different rules and procedures and therefore have certain rights and obligations arising from them, the purpose of this document is to remind all individuals of their duty to abide by the highest standards of conduct according to their terms of appointments/engagements and UNOPS' prescriptive content. As such, this document, to the extent possible, provides the same rights to staff members and other personnel.
4. The present Organisational Directive (OD) serves multiple purposes:
  - (a) It defines the mechanisms that currently exist within UNOPS for reporting suspected wrongdoing, as well as what constitutes misconduct (Chapter I);
  - (b) It clarifies the responsibilities of each individual involved in the investigation of suspected wrongdoing (Chapter II);
  - (c) It explains the procedure following an investigation (Chapter III);
  - (d) It outlines the disciplinary and non-disciplinary measures for staff members (Chapter IV); and
  - (e) It outlines the administrative measures for personnel other than staff members (Chapter V).
5. The present OD supersedes the interoffice memorandum UNOPS/ADM/97/01-A of 22 April 1997 entitled "Disciplinary and other measures relating to misconduct of staff while in the service of UNOPS".

### Section 2. Definitions

6. For the purposes of the present document:
  - (a) **Assessment Office** means:
    - For all cases of suspected retaliation: the Ethics Office, represented by the UNOPS Ethics Officer;

- For all cases of suspected discrimination, harassment and suspected abuse of authority: HRPG, represented by its Director or such person(s) as he/she may designate;
  - For all cases: IAIG, represented by its Director or such person(s) as he/she may designate.
- (b) **Complainant** is a person or group of persons reporting, in good faith, suspected wrongdoing in accordance with this document.
- (c) **Disciplinary action** is the procedure initiated against a staff member pursuant to Staff Regulation 10.1, Chapter X of the Staff Rules, and Chapter IV of the present document.
- (d) **Duty of cooperation** is the obligation imposed on staff members (under Staff Regulation 1.2 (r) and Staff Rule 1.2 (c)) and the rest of UNOPS personnel to assist in an investigation, when requested to do so, by providing information in any form, including testimony, as relevant.
- (e) **Evidence** is any type of information which tends to establish or disprove a fact material to the case. It includes, but is not limited to, oral testimony of witnesses, including experts on technical matters, documents, electronic, audio, video records and photographs.
- (f) **Financial Regulations and Rules** refer to the UNOPS Financial Regulations and Rules.
- (g) **HRLO** is the Human Resources Legal Officer.
- (h) **HRPG** is the Human Resources Practice Group.
- (i) **IAIG** is the Internal Audit and Investigations Group.
- (j) **Individual contractors, interns and volunteers** refer to the persons described in Section 3, subsections 3.1.2.
- (k) **Investigation** is the formal process of collecting and examining evidence to determine the veracity of complaints of wrongdoing and if so, the person(s) or entities responsible.
- (l) **Investigation participant** is a person who is not the subject of an investigation but who cooperates with an investigation, for instance by being interviewed or by providing information.

- (m) **Investigator** is a member of the Internal Audit and Investigations Group (IAIG) or an investigator from the United Nations Department of Safety and Security (UNDSS) or from the United Nations Office of Internal Oversight Services (OIOS), or a person designated by IAIG to conduct an investigation related to cases of suspected wrongdoing. An investigator may also be a person designated directly by the Secretary-General or the Executive Director in certain cases to conduct an investigation into suspected wrongdoing.<sup>1</sup>
- (n) **LPG** is the Legal Practice Group.
- (o) **Manager** is a member of UNOPS personnel with a supervisory role including, but not limited to, the Regional Directors, Deputy Regional Directors, Operations Centre Directors, Project Centre Managers, Cluster Managers, Project Managers of Project Team Bases or Cluster Team Bases, project/portfolio managers, Headquarters Directors and Practice/Team Leaders.
- (p) **Misconduct** is:
- *In the case of staff members*: the failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and the Staff Rules, the Financial Regulations and Rules, the Standards of Conduct for the International Civil Service, or other relevant administrative issuances, including requesting or instructing any person to violate the above-mentioned regulations, rules, standards or administrative issuances; or
  - *In the case of personnel other than staff*: the failure of personnel other than staff (including, but not limited to, those engaged under the individual contractor agreement (ICA), interns, volunteers or United Nations Volunteer (UNV) contracts) to comply with the obligations under their applicable contractual relationship with the Organization including prescriptive content which is incorporated by reference in their contracts. Misconduct constitutes a material breach of the contractual terms and conditions governing personnel other than staff members.

Such a failure could be deliberate (intentional, or wilful, act), or result from an extreme or aggravated failure to exercise the standard of care that a reasonable person would have exercised with respect to a reasonably foreseeable risk (gross negligence) or from a complete disregard of a risk which is likely to cause harm (recklessness) (see Chapter I, Section 3).

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<sup>1</sup> In cases where the Secretary-General or the Executive Director decides to designate directly a person or persons to conduct an investigation, such individuals shall observe investigative procedures drawing from UN and/or UNOPS investigation procedures and/or international best practice.

- (q) **Personnel<sup>2</sup> other than staff** includes any person who is engaged by UNOPS under an individual contractor agreement, internship agreement or volunteer agreement, or through an employment agency, or through any other contractual arrangement, except persons listed in Section 3, Subsection 3.1.1 below.
- (r) **Preliminary assessment** is the process of collecting and evaluating evidence to determine whether the complaint, if true, constitutes wrongdoing and is accompanied by information specific enough to warrant investigation.
- (s) **Staff members** refer to the persons listed in Section 3, Subsection 3.1.1 below.
- (t) **Staff Regulations and Staff Rules** refer to the United Nations Staff Regulations and Staff Rules.
- (u) **Subject of an investigation** is a person who is the focus of the investigation, either by virtue of a complaint, or evidence gathered during the course of an investigation.
- (v) **Suspected wrongdoing** is factual information from which it can reasonably be believed that misconduct has occurred, and is usually communicated in the form of a complaint which can be in a written or verbal report.
- (w) **UNOPS personnel** refer collectively to staff members and personnel other than staff.

## **Section 3. Scope of application**

### **3.1 UNOPS personnel**

#### **3.1.1 Staff Members**

7. Staff members are persons who hold UNOPS letters of appointment issued pursuant to the Staff Regulations and Rules, including Junior Professional Officers (JPOs), regardless of whether their assignment is with UNOPS, or another Agency, Programme or Fund etc., (except in certain circumstances during the period of secondment or an inter-organization exchange governed by the receiving Organization's Rules) and staff members of other Organizations on secondment to UNOPS<sup>3</sup> or on an inter-organization exchange with UNOPS, for actions occurring during their secondment or exchange. In such a case, UNOPS shall inform the releasing Organization prior to charging a staff member with misconduct.
8. For holders of UNOPS letters of appointment who are subject to an inter-organization

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<sup>2</sup> The use of the term "personnel" does not give rise to any additional rights to any individual engaged by UNOPS other than those rights included in the individual's contract with UNOPS.

<sup>3</sup> A staff member on secondment to UNOPS from another Organization or entity has the same status as that of a UNOPS staff member on fixed-term appointment for the duration of the secondment, and the staff member's contractual relationship with the releasing Organization is suspended.

exchange pursuant to the Inter-Agency Mobility Accord, which governs staff movements as agreed between participating UN Organizations, the Memorandum of Inter-Organization Exchange shall determine the respective prerogatives of the releasing and the receiving Organization with regard to disciplinary action<sup>4</sup>.

9. This document does not apply to UNOPS staff members while they are on an inter-organization exchange to a UN agency for acts that occurred during their inter-organization exchange to that agency. However, disciplinary action under the present document may be initiated upon their return<sup>5</sup>.

### **3.1.2 Personnel other than staff**

#### **(a) Individual contractors**

10. Individual contractors are persons working with UNOPS under the individual contractor agreements.
11. UNOPS must ensure that the treatment of individual contractors is consistent with the Individual Contractor Agreement Policy<sup>6</sup>.
12. This document does not apply to individual contractors who are engaged by UNOPS to work for other entities.

#### **(b) Others**

13. This document also applies, but is not limited to, interns and volunteers working with UNOPS under internship agreements and volunteering agreements, respectively.
14. UNOPS must ensure that the treatment of interns and volunteers is consistent with the Internship Programme and the Volunteering Programme respectively.<sup>7</sup>

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<sup>4</sup> As a general rule, the respective prerogatives should be defined as follows: the receiving Organization may initiate disciplinary action against the staff member for facts occurring during the exchange. However, when the UNOPS staff member is dismissed or separated by the receiving Organization and returns to UNOPS, UNOPS may decide to initiate disciplinary action if the facts that prompted the dismissal or the separation call into question the standards of conduct expected from UNOPS staff members. UNOPS may also initiate disciplinary action against the staff member during the inter-organization exchange, if the allegations of wrongdoing relate to actions that occurred prior to the exchange or if allegations of wrongdoing for actions occurring during the exchange are raised after the exchange has ended.

<sup>5</sup> Pursuant to the Inter-Agency Mobility Accord, when a UNOPS staff member is seconded to another Organization, his or her contractual relationship with UNOPS is suspended until the expiry of the agreed period of secondment. Therefore, it is for the receiving Organization to initiate disciplinary action should a UNOPS staff member on secondment be charged with misconduct for facts occurring during the secondment.

<sup>6</sup> OD 21(Revision 2): "Individual Contractor Agreement (ICA) Policy" and AI/HRPG/2010/01: "Individual Contractor Agreement".

<sup>7</sup> In the case of UNVs, they are governed by the UNV Conditions of Service. In the case of allegations of wrongdoing raised against a UNV Volunteer, UNOPS shall contact UNV.

### **3.2 Institutional vendors/suppliers**

15. This document does not apply to institutional vendors and/or suppliers doing business with UNOPS. Sanctions against such vendors and/or suppliers are governed by the policy and procedures on vendor/supplier suspension or removal in the Procurement Manual.

## **Section 4. Overall authority**

### **4.1 The Executive Director**

16. In accordance with the delegation of authority from the Secretary-General, the Executive Director has the authority to take disciplinary actions regarding staff members. The Executive Director shall decide whether a staff member has committed misconduct, and, if so, which disciplinary measure(s) shall be imposed on him or her. The Executive Director shall decide also whether a member of personnel other than staff has committed misconduct and if so which administrative measure(s) shall be imposed on him or her. For the avoidance of doubt, the Executive Director may authorize exceptions to this document. The Executive Director shall receive advice from the UNOPS General Counsel in taking such decisions.

### **4.2 The Deputy Executive Director**

17. The Executive Director hereby delegates to the Deputy Executive Director the authority to decide whether:
  - (a) To place a personnel on administrative leave, and whether to extend it.
  - (b) To charge a member of UNOPS personnel with misconduct.
  - (c) To not charge a member of UNOPS personnel with misconduct due to insufficient evidence.
18. In taking such decisions, the Deputy Executive Director shall take advice from the Human Resources Legal Officer (HRLO). The HRLO is responsible for:
  - (a) Reviewing the investigation reports submitted by the Director, IAIG;
  - (b) Recommending the placement of personnel on administrative leave and any subsequent extension of the administrative leave;
  - (c) Recommending disciplinary/administrative action, closure of a case or other courses of action as appropriate (see Chapters IV and V);
  - (d) Assisting as appropriate in the recovery of the value of UNOPS assets and property lost as the result of misconduct (see Chapters IV and V);

- (e) Advising the complainants of the outcome of cases when the Director IAIG considers that the complaints are substantiated and accordingly submits an investigation report to the HRLO.

### **4.3 The Director, Internal Audit and Investigations Group (IAIG)**

19. The Director, IAIG, is responsible for:

- (a) Receiving reports of suspected wrongdoing (other than complaints of retaliation, discrimination, harassment and abuse of authority), including complaints of fraud and corruption irrespective of their source, including complaints from anonymous or confidential sources and where practical, acknowledging receipt of the complaint;
- (b) Managing the UNOPS hotline established for such reports (see Chapter I);
- (c) Deciding, upon receipt and review of a formal complaint (other than complaints of retaliation, discrimination, harassment and abuse of authority), whether the matter falls within the jurisdiction or authority of the office and warrants a preliminary assessment, an investigation or closure, or handling through informal resolution, including referral to HRPG;
- (d) Conducting preliminary assessments or requesting persons so designated by IAIG, such as the director/team lead/manager of the office/group concerned, to conduct the preliminary assessment on behalf of IAIG;
- (e) On the basis of the results of the preliminary assessment, determining whether there is a legitimate basis to warrant an investigation or to close the matter;
- (f) Conducting investigations into reports of suspected wrongdoing (see Chapter II), or designating persons to carry out such investigation;
- (g) Engaging external parties to assist in IAIG's investigations;
- (h) Submitting a final investigation report to the HRLO and responding to requests for clarification/verification/further investigation from the HRLO (see Chapter III);
- (i) Carrying out investigations into complaints of retaliation after the finding of a prima facie case by the Ethics Officer and providing the investigation report to the Ethics Officer (see UNOPS policy for "Protection against retaliation for reporting misconduct or cooperating with duly authorized fact finding activities"<sup>8</sup>);
- (j) Deciding, upon receipt and review of a referral from the Director, HRPG in accordance with UNOPS policy on "Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority"<sup>9</sup> and after considering the nature and gravity of the

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<sup>8</sup> Organisational Directive No. 35

<sup>9</sup> Organisational Directive No. 8

complaint, whether the matter should be investigated, referred immediately to the HRLO or handled through informal resolution;

- (k) Providing guidance and advice to investigators.

#### **4.4 The Director, Human Resources Practice Group (HRPG)**

20. The Director, HRPG, is responsible for:

- (a) Providing guidance on addressing work performance related issues revealed by the preliminary assessment or the investigation.
- (b) Informal resolution of interpersonal conflicts in the workplace, which may include alleged instances of workplace discrimination, harassment or abuse of authority, is strongly encouraged. The Human Resources Specialists, in all business units, or the Focal Point for Workplace Harassment, HRPG, may be contacted by personnel and managers to obtain support in respect of the informal resolution of such conflicts.
- (c) Receiving reports of suspected wrongdoing related to workplace discrimination, harassment and abuse of authority, as well as managing the UNOPS email account established for such reports (see Chapter I);
- (d) With regard to such reports:
- Deciding whether the matter warrants a preliminary assessment, dismissal/closure, or handling through informal resolution;
  - Conducting preliminary assessments or requesting other persons, such as the director/team lead/manager of the office/group concerned, to conduct the preliminary assessment on behalf of HRPG (always on the guidance of IAIG);
  - On the basis of the results of the preliminary assessment, referring the case to IAIG or HRLO or determining whether there is legitimate basis to close the matter; and
  - Advising the complainants of the outcome of the investigation if the matter has been closed.

#### **4.5 The Ethics Officer**

21. Pursuant to the UNOPS policy for “Protection against retaliation for reporting misconduct or cooperating with duly authorised fact-finding activities”<sup>10</sup>, the Ethics Officer is responsible for:

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<sup>10</sup> Organisational Directive No. 35

- (a) Receiving requests for protection against retaliation;
- (b) Keeping a confidential record of all such requests received;
- (c) Conducting a preliminary assessment of the request to determine if: (i) the complainant has submitted information or evidence to support a reasonable belief that he/she has engaged in a protected activity; and (ii) there is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation;
- (d) Referring the case to IAIG for investigation if the Ethics Officer determines that there is a prima facie case of retaliation or threat of retaliation;
- (e) Making recommendations for appropriate measures to be taken to safeguard the interests of complainant pending investigation, if needed;
- (f) Making recommendations to the Executive Director whether retaliation in respect of a protected activity has occurred, after considering the report of IAIG and such other evidence as is available to the Ethics Officer;
- (g) Recommending that the Executive Director takes such action as may be necessary and possible to reverse the negative consequences of the retaliatory action;
- (h) In cases where the Executive Director has determined that retaliation is proved to have been effected by specific UNOPS personnel, or in cases where the request has been rejected by the Executive Director on the basis that the complainant was acting maliciously or frivolously, recommending to the Executive Director that the file be referred to HRLO for consideration of disciplinary or administrative action;
- (i) Communicating with complainant throughout the process, including informing complainants of the Executive Director's determinations;
- (j) Considering whether, in any specific case, there has been spill over retaliation, and recommending to the Executive Director any action he/she deems necessary to deal with such a situation;
- (k) In cases where the Executive Director determines that no retaliation in respect of a protected activity has been proved, but that there is a managerial or inter-personal problem which has caused or contributed to the situation complained of, referring the matter to the relevant manager with the Ethics Officer's recommendations, and notify the complainant accordingly.

#### **4.6 Personnel with a supervisory role (“managers”)**

22. Managers, in addition to the obligation to adhere to the highest standards of efficiency, competence and integrity, are responsible for:
- (a) Reporting suspected wrongdoing in accordance with Chapter I, Section 4 below as

soon as they become aware of such suspected wrongdoing;

- (b) If requested by the Assessment Office: conducting a preliminary assessment related to suspected wrongdoing and reporting the results of the preliminary assessment to the Assessment Office;
- (c) If requested by IAIG: conducting an investigation (under the guidance of IAIG) and reporting the results of such investigation to IAIG;
- (d) If so instructed by the UNOPS Executive Director: issuing non-disciplinary measures (e.g., oral and written reprimands) to staff members or issuing any similar administrative measure (e.g. written censure) in respect of personnel other than staff. However, managers do not have authority to take any disciplinary measures against staff members or administrative measures against personnel other than staff or to place personnel on administrative leave;
- (e) Addressing work performance related issues indicated by the circumstances of a case in the Performance and Results Assessment (PRA) or Performance Evaluation Report (PER) or any other evaluation report;
- (f) Taking appropriate measures to remedy management issues of the personnel they supervise (see Chapter I, Section 2).

## CHAPTER I

### STANDARDS OF CONDUCT

#### Section 1. Standards of conduct expected from UNOPS personnel

23. UNOPS personnel shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity enshrined in the Charter of the United Nations includes all aspects of behaviour of an international civil servant, including such qualities as honesty, truthfulness, impartiality and incorruptibility. Integrity is the most important among the core values of the Organization, together with professionalism and respect for diversity.
- (a) In addition to the Charter of the United Nations and the United Nations Staff Regulations and Rules, staff members must abide by the Standards of Conduct for the International Civil Service (referred to as the ‘ICSC Standards of Conduct’) as adopted by the International Civil Service Commission in 2001 and by the standards defined in the Secretary-General’s Bulletin on “Special Measures for Protection from Sexual Exploitation and Sexual Abuse” (ST/SGB/2003/13).
- Staff members can also refer to the Secretary-General’s Bulletin “Status, basic rights and duties of UN Staff Members”, ST/SGB/2002/13. This document contains a commentary by the Secretary-General to assist staff members and management in better understanding the obligations applicable to staff conduct.
- (b) Although personnel other than staff working with UNOPS do not have the status of United Nations officials/staff members, while working on UNOPS-related activities, they shall comply with the standards of conduct required of UN civil servants except to the extent such standards are, in the opinion of UNOPS, inherently inconsistent with their status as independent contractors, interns and volunteers.

#### Section 2. Management standards

24. In addition to complying with the above, managers shall :
- (a) Create and maintain a harmonious working environment, free of intimidation, hostility, offence and of any form of discrimination, harassment and abuse of authority, and seek the informal resolution of interpersonal conflicts in the workplace, as appropriate, in accordance with the UNOPS policy on “Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”<sup>11</sup>;
- (b) Communicate the policies protecting the rights of UNOPS personnel, such as the UNOPS policy on “Prohibition of discrimination, harassment, including sexual

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<sup>11</sup> Organizational Directive No. 8.

harassment, and abuse of authority”<sup>12</sup>, as well as the present legal framework to all UNOPS personnel, and ensure that UNOPS personnel are aware of the contents of the Secretary-General’s Bulletin on “Special measures for Protection from Sexual Exploitation and Sexual Abuse”<sup>13</sup>, and know where to turn in case they have concerns or want to make a report;

- (c) Ensure that managers, themselves, do not engage in any wrongdoing and do not create an intimidating, belittling, harassing work environment and/or do not demonstrate partiality, unfairness or favouritism;
- (d) Report suspected wrongdoing in accordance with Chapter I, Section 4 below as soon as they are aware of such suspected wrongdoing;
- (e) Ensure that all discussions, communications and actions are handled with extreme sensitivity and utmost confidentiality; and
- (f) Ensure that no member of UNOPS personnel is retaliated against.

25. As UNOPS is committed to providing a harmonious working environment free of harassment, intimidation and favouritism, managers are expected to exhibit exemplary behaviour in their supervision of others. While issues of management style may not constitute misconduct warranting disciplinary or administrative action, it is the responsibility of supervisors overseeing those managers found to be deficient in their treatment or supervision of people<sup>14</sup> to take appropriate action. In particular, supervisors shall:

- (a) Take measures to coach or train managers in appropriate people management skills;
- (b) Reflect management issues in the annual Performance and Results Assessment (PRA), Performance Evaluation Report (PER) or other evaluation reports;
- (c) As appropriate, issue letters of reprimand, take other non-disciplinary measures or administrative measures;
- (d) Take other action as appropriate.

26. Supervisors will be held accountable for their failure to take appropriate action towards those managers whose management of others is found to be unsatisfactory.

### **Section 3. Misconduct**

27. Misconduct is defined in paragraph 6(p) above. Misconduct may include, but is not limited to, the following categories whether wilful, reckless or grossly negligent:

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<sup>12</sup> Organizational Directive No. 8

<sup>13</sup> ST/SGB/2002/13

<sup>14</sup> Advice of the Ombudsman or HRPG should be sought in connection with such issues.

- (a) Acts or omissions in conflict with the general obligations of staff members set forth in Article I of the Staff Regulations, Chapter I of the Staff Rules and other administrative issuances as applicable; failure to comply with the standards of conduct expected from international civil servants, including those set out in the ICSC Standards of Conduct;
- (b) Acts or omissions in conflict with the general obligations of personnel other than staff set forth in their applicable contractual relationship with the Organization and other administrative issuances as applicable;
- (c) Unlawful acts (e.g. theft, fraud, smuggling, possession or sale of illegal substances or objects, etc.) wherever it occurs, and whether or not the personnel was on official duty at the time;
- (d) Assault, workplace harassment, including sexual harassment, or threats to other personnel or third parties (see the UNOPS policy on “Prohibition on discrimination, harassment, including sexual harassment, and abuse of authority”<sup>15</sup>);
- (e) Sexual exploitation and sexual abuse as defined in the Secretary-General’s Bulletin “Special measures for Protection from Sexual Exploitation and Sexual Abuse”<sup>16</sup>;
- (f) Misrepresentation, forgery, or false certification, such as, but not limited to, in connection with any official claim or benefit, including failure to disclose a fact material to that claim or benefit (for the purposes of this document, a benefit provided by any government or insurer or other entity to a person because a person is a member of UNOPS personnel shall be considered to be a benefit provided by UNOPS);
- (g) Misuse or mishandling of official property, assets, equipment or files, including electronic files or data;
- (h) Action or omission to avoid or deviate from Financial Regulations and Rules and procedures, including inappropriate use of authorizing, approving, committing or verifying authority;
- (i) Mishandling of contract obligations and relations with third parties leading to loss of property or assets, or generating liabilities for the Organization;
- (j) Failure to disclose an interest or relationship with a third party who might benefit from a decision in which the personnel takes part; favouritism in the award of a contract to a third party;
- (k) Breach of fiduciary obligations vis-à-vis the Organization;
- (l) Misuse of office, abuse of authority; breach of confidentiality; abuse of United Nations privileges and immunities, including misuse of the United Nations Laissez-Passer (if

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<sup>15</sup> Organizational Directive No. 8

<sup>16</sup> ST/SGB/2003/13

applicable);

- (m) Exaction or acceptance of funds from a colleague or a third party in return for a favour or benefit;
  - (n) Failure to disclose promptly the receipt of gifts, remuneration or other benefits received from an external source by the personnel in connection with his or her official duties;
  - (o) Retaliatory action against a complainant or an investigation participant, or other action in violation of the UNOPS policy for “Protection against retaliation for reporting misconduct or cooperating with duly authorized fact finding activities”<sup>17</sup>;
  - (p) Making false accusations and disseminating false rumours;
  - (q) Direct or indirect use of, or attempt to use, official authority or influence of the personnel’s position or office for the purpose of obstructing an individual from reporting suspected wrongdoing, or cooperating with an audit or an investigation;
  - (r) Action or omission that will bring the Organization into disrepute, except for reporting in good faith suspected wrongdoing pursuant to this document;
  - (s) Aiding, abetting, concealing or conspiring in any of the above actions;
  - (t) Attempting any conduct which, if successful, would constitute misconduct.
28. It must be remembered that disciplinary proceedings are not of a criminal nature, but rather are administrative proceedings. UNOPS personnel must thus always bear in mind that a finding of misconduct in disciplinary proceedings is not a finding of guilt for criminal law purposes.
29. Unsatisfactory work performance, when it does not come to the level of gross negligence or recklessness, does not constitute misconduct and thus does not fall within the scope of the present document. Performance-related issues are to be addressed through the Performance and Results Assessment (PRA), the Performance Evaluation Report (PER) or other evaluation reports, in accordance with the appropriate procedure.

#### **Section 4. Reporting suspected wrongdoing**

30. All UNOPS personnel have a duty to report suspected wrongdoing. They may report such suspected wrongdoing to IAIG, or to their immediate supervisor or other appropriate supervisor within the operating unit. The personnel’s supervisor shall report the matter to IAIG, HRPG or Ethics Officer as stated below. In the event that a member of personnel reports suspected wrongdoing to IAIG, he or she may do so anonymously by sending an e-mail to the following address: [fraudhotline@unops.org](mailto:fraudhotline@unops.org).

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<sup>17</sup> Organisational Directive No. 35

31. In the event that the member of personnel believes that there is a conflict of interest on the part of the person to whom the suspected wrongdoing is to be reported, he or she may report the suspected wrongdoing to the next higher level of authority.
32. In the event that the member of personnel fears retribution or retaliation after reporting suspected wrongdoing, or cooperating with an audit or investigation, he or she may report the matter to the Ethics Officer at the following email address: [ethicsofficer@unops.org](mailto:ethicsofficer@unops.org). The UNOPS policy for “Protection against retaliation for reporting misconduct or cooperating with duly authorized fact finding activities”<sup>18</sup> applies in these cases. Other cases of retaliation that do not fall within the mandate of the Ethics Officer as described in the said policy for protection against retaliation for reporting misconduct or cooperating with duly authorized fact finding activities, may be reported to IAIG.
33. If the suspected wrongdoing relates to workplace discrimination, harassment and abuse of authority, the UNOPS policy on “Prohibition of discrimination, harassment, including sexual harassment and abuse of authority”<sup>19</sup> applies. Such suspected wrongdoing should be reported to HRPG at the following email address: [harassment@unops.org](mailto:harassment@unops.org). However, in accordance with the said policy, no anonymous complaints of workplace discrimination, harassment or abuse of authority shall be accepted.
34. Personnel who become aware of information related to the Organization that concerns internet-based fraud, or misuse of the Organization database or technology resources, whether such information relates to sources within the Organization or externally, shall report the matter. In such an event, the matter may be reported at the following email address: [fraudhotline@unops.org](mailto:fraudhotline@unops.org) or to IAIG.
35. Except when a complaint is made anonymously, the individual reporting the suspected wrongdoing will receive an acknowledgement from the Assessment Office to which the complaint is reported, where practical.

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<sup>18</sup> Organisational Directive No. 35

<sup>19</sup> Organisational Directive No. 8

## CHAPTER II

### INVESTIGATION

36. In conducting its investigations, UNOPS is guided by the '*Uniform Guidelines for Investigations*' presented by the Conference of International Investigators as broadly adopted by the United Nations. The general principles for investigations, from the '*Uniform Guidelines for Investigations*', include:
- (a) Investigation is a professional activity requiring the highest personal integrity.
  - (b) Those responsible for the conduct of any investigation shall demonstrate competence.
  - (c) Investigators shall maintain objectivity, impartiality and fairness throughout the investigative process and disclose in a timely manner any conflicts of interest to supervisors.
  - (d) Investigators shall endeavor to maintain both the confidentiality and, to the extent possible, the protection of witnesses.
  - (e) The conduct of the investigation shall demonstrate the investigator's commitment to ascertaining the facts of the case.
  - (f) Investigative findings shall be based on substantiated facts and related analysis, not suppositions or assumptions.
  - (g) Recommendations shall be supported by the investigative findings.
37. An investigation may involve the following parties:
- (a) The complainant(s);
  - (b) The subject of an investigation;
  - (c) The investigation participant(s);
  - (d) The investigator(s).
38. The present Chapter II focuses on the rights, responsibilities and obligations of the subject of an investigation in Section 1, the investigation participants in Section 2, the investigators in Section 3 and on the different phases of the investigation in Section 4.
39. In the case of personnel other than staff, their contracts or agreements may be terminated before completion of investigative procedures when the Executive Director determines that such action is warranted and in the interest of UNOPS.

## **Section 1. Rights, responsibilities and obligations of the subject of an investigation**

### **1.1. Rights of the subject of an investigation**

40. The subject of an investigation shall be advised of the complaint against him or her, with the time and manner of disclosure to be made keeping in mind the fairness to the subject of an investigation and rules of the Organization. If the subject of an investigation has been placed on administrative leave (see Subsection 1.3 below), this notification may happen prior to the commencement of the investigation.
41. The subject of an investigation shall be given an opportunity to explain his or her conduct and present information on his or her behalf (see Subsection 4.2 below).
42. If, during the course of the investigation, IAIG discovers new facts giving rise to the possibility of suspected wrongdoing on the part of an investigation participant, IAIG will notify the investigation participant, as soon as practicable, that he or she has become a subject of an investigation.
43. In the event that, in the course of the investigation, other instance(s) of suspected wrongdoing by the subject of an investigation are found, the investigators will inform the subject of these new instances in the same manner as the earlier instance(s).
44. In addition, the Deputy Executive Director, upon advice of the HRLO, after analysing the findings contained in the IAIG investigation report, may decide that some facts as established by the investigation, though not initially raised as part of the original complaint of suspected wrongdoing, may constitute misconduct. The fact that the subject of an investigation was not informed of this at the time of investigation cannot be considered a violation of due process provided the subject is given the opportunity to comment on the new charges levelled against him/her, and on the investigation report (see Chapter III, Section 1, subsection 1.1).
45. The identity of the subject of an investigation should remain confidential to the extent possible within the legitimate needs of the investigation.

### **1.2. Responsibilities and obligations of the subject of an investigation**

46. The subject of an investigation must fully cooperate with an investigation, answer questions and comply with requests for information.
47. The subject of an investigation shall not interfere with the investigation and shall abstain from withholding, destroying or tampering with evidence, and from influencing, coaching or intimidating the complainant and/or witnesses. The subject of an investigation must not discuss or disclose the investigation or their testimony to anyone except the investigators. In no case shall a subject of an investigation discuss with the investigation participant(s) and/or complainant(s) and/or witness(es) the nature of the evidence requested or provided, or testimony given to the investigators .

48. A lack of cooperation and/or undue interference with the investigation may constitute misconduct and may result in disciplinary or other appropriate administrative action(s).

### **1.3. Administrative leave**

49. Pursuant to Staff Rule 10.4, a staff member may be placed on administrative leave by the Deputy Executive Director at any time from the moment complaints of suspected wrongdoing are reported or detected, pending or during an investigation and until the completion of the disciplinary process. Personnel other than staff member may also be placed on administrative leave by the Deputy Executive Director at any time from the moment suspected wrongdoing is reported or detected, pending or during an investigation and until the completion of the administrative process.
50. As a general principle, administrative leave may be contemplated in cases where:
- (a) The conduct in question and/or the continued presence of the personnel on UN premises poses or may pose a security risk, or a threat to other UN personnel or to the Organization's best interest;
  - (b) The personnel is unable to continue performing his or her functions effectively, in view of the ongoing investigation or proceedings, and the nature of his or her functions; and/or
  - (c) There is a risk of evidence being tampered with or concealed, or of interference with the proceedings.
51. Requests for placement of personnel on administrative leave at either the preliminary assessment stage or the investigation stage shall be addressed to the Deputy Executive Director. On the basis of the evidence presented, the Deputy Executive Director may decide that administrative leave is justified. Managers and the Executive Director of the other Organization to which the UNOPS personnel are assigned do not have the authority to place UNOPS personnel on administrative leave.
52. Exceptionally, if the manager considers that the circumstances require immediate action, he or she may decide to place the personnel on special leave with full pay (SLWFP); he or she cannot place the personnel on special leave without pay (SLWOP). In such a case, he or she shall, within 48 hours if possible of his or her decision to place the personnel on SLWFP, inform the Deputy Executive Director of his or her decision, and provide all the relevant evidence documenting why he or she deemed that placement on SLWFP was urgently required and could not wait for the authorization of administrative leave to be granted. After review of the case, the Deputy Executive Director shall determine whether administrative leave is justified:
- (a) If the administrative leave is warranted, the decision to place the personnel on administrative leave signed by the Deputy Executive Director shall supersede the personnel's placement on SLWFP;

- (b) If the administrative leave is not warranted, the Deputy Executive Director shall revoke the decision to place the personnel on SLWFP.
53. Managers shall be held accountable if he or she improperly places a member of personnel on administrative leave or SLWFP or SLWOP, or does not report his or her action in this respect within the prescribed timeframe.
54. If the Deputy Executive Director authorizes the placement of a member of personnel on administrative leave, the individual shall:
- (a) Be notified in writing of the reason(s) for being placed on administrative leave, of its probable duration and of its conditions;
  - (b) Immediately surrender his or her grounds pass and/or United Nations Laissez-Passer (if applicable); and
  - (c) Immediately surrender any UNOPS property or assets he or she may have, when requested.
55. Placement of personnel on administrative leave is normally with pay, unless exceptional circumstances warrant administrative leave without pay. In either case, the administrative leave shall be without prejudice to the personnel's rights, shall not constitute a disciplinary or administrative measure and shall not, so far as practicable, exceed three months. The Deputy Executive Director may, after consulting the HRLO, extend the administrative leave for a further defined period.
56. Personnel placed on administrative leave shall not ordinarily be allowed to enter the Organization's office premises without first obtaining written permission from the manager. Such entry shall be under escort and in connection with the personnel's defence of the case or other valid reason justifying such entrance. Normally, the personnel placed on administrative leave shall not be precluded from remaining at, or returning to, the duty station. Special consideration shall be made for personnel residing in the Organization's compound. Should the personnel placed on administrative leave request or, under exceptional circumstances, be requested to leave the duty station, he or she shall provide contact details so that he or she may be contacted during the investigation. The personnel placed on administrative leave have a duty to remain available for the investigation.
57. The personnel placed on administrative leave may request the Deputy Executive Director to be granted access to files, provided that he or she justifies that they are relevant to his or her case. The Deputy Executive Director will decide in each case whether the personnel placed on administrative leave will or will not be given access to e-mail.

## **Section 2. Rights, responsibilities and obligations of the investigation participants**

### **2.1. Responsibilities of the investigation participants**

58. Participants in an investigation must fully cooperate with an investigation, answer questions and comply with requests for information.

### **2.2. Confidentiality of participants**

59. Information received by the investigators shall be protected from unauthorized disclosure. The identities of those who make complaints to UNOPS shall be protected from unauthorized disclosure.
60. Investigation participants must not discuss or disclose the investigation or their testimony to anyone except the investigators. In no case shall an investigation participant discuss with the subject of an investigation and/or complainant and/or witness the nature of the evidence requested or provided, or testimony given to the investigators.
61. In certain cases (e.g. workplace discrimination, harassment and abuse of authority), the identity of the complainant and/or other investigation participants may need to be shared with the subject of an investigation for purposes of due process.

### **2.3. Protection against retaliation**

62. Any individual who cooperates in good faith with an investigation is entitled to protection from retaliation in accordance with the UNOPS policy for “Protection against retaliation for reporting misconduct or cooperating with duly authorized fact finding activities”<sup>20</sup>.
63. However, cooperation with the investigation does not excuse the individual’s own possible culpability in the underlying matter. Notwithstanding his or her cooperation, a member of UNOPS personnel may face disciplinary or administrative proceedings for his or her part in the matter about which he or she is cooperating with the investigators, and such proceedings may result in the imposition of disciplinary or administrative measures. Neither such investigation, institution of disciplinary or administrative proceedings, nor such bona fide imposition of disciplinary or administrative measures for his or her complicity in the underlying matter about which the member of personnel is cooperating, constitute retaliatory action.

## **Section 3. Rights, responsibilities and obligations of the investigators**

64. All investigators or persons designated to conduct a preliminary assessment or an investigation, shall maintain objectivity, impartiality and fairness throughout the investigative process, and conduct their activities competently and with the highest level of integrity. They shall perform their duties independently from those responsible for or

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<sup>20</sup> Organisational Directive No. 35

involved in operational activities and from those liable to be the subject of an investigation and shall be free from improper influence and fear of retaliation.

65. Investigations shall be launched only after the Director IAIG establishes that the complaint, if true, constitutes misconduct and is accompanied by information specific enough to be investigated.
66. In carrying out investigations, investigators are to be guided by the IAIG Investigation Guidelines. However, these guidelines are neither binding nor mandatory and allegations by a subject of an investigation or participant of the failure to observe these guidelines and practices do not necessarily constitute a due process violation. The only failure that necessarily constitutes a due process violation is a failure to provide a subject of an investigation with the opportunity to comment on evidence and other information that UNOPS relies on.
67. Investigators may not be the subject of a complaint of discrimination, harassment or abuse of authority, except where there are reasonable grounds to believe that they have not acted in good faith.

#### **Section 4. Investigative process**

68. Complaints brought to the attention of an Assessment Office shall be reviewed and evaluated to determine whether they fall within the jurisdiction or authority of the Assessment Office.
69. If an Assessment Office itself discovers suspected misconduct, it shall prepare a note for its files, and said note shall be deemed to be a complaint.
70. The investigative process may comprise two phases: a preliminary assessment and an investigation. In all instances, the Assessment Office determines whether the complaint/matter warrants a preliminary assessment. Except in the case of suspected retaliation, the Director IAIG determines whether the matter should be investigated. In the case of suspected retaliation, the Director IAIG must investigate after the finding of a prima facie case by the Ethics Officer in accordance with UNOPS policy for “Protection against retaliation for reporting misconduct or cooperating with duly authorized fact finding activities”<sup>21</sup>.
71. Except in the case of suspected retaliation, decisions on which complaints should be pursued and on which investigative activities are to be utilized in a particular case rests with the Director IAIG and includes whether there is a legitimate basis to warrant an investigation and commit the necessary resources. In the case of suspected retaliation, decisions on which complaints should be pursued rests with the Ethics Officer. However, the decisions on which investigative activities are to be utilized rests with the Director IAIG.

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<sup>21</sup> Organisational Directive No. 35

#### **4.1. Preliminary assessment**

72. A manager shall contact the Assessment Office as soon as possible when he or she is aware of suspected wrongdoing (whether in the form of specific allegations, facts or circumstances suggesting wrongdoing has occurred, loss/damage to property or any other manner). Upon receipt of such information, the Assessment Office may:
- (a) Request for clarification and/or information from any person(s);
  - (b) Determine that the information received does not indicate that wrongdoing has occurred, close the case, and inform HRLO, who in turn will inform the Deputy Executive Director and the complainant accordingly, where practical; and/or
  - (c) Conduct a preliminary assessment into the matter.
73. The purpose of a preliminary assessment is to determine whether there is a legitimate basis to warrant an investigation. A preliminary assessment may include the following activities:
- (a) Evaluating the complaint to determine its credibility, materiality and verifiability;
  - (b) Collecting and recording readily-available facts;
  - (c) Preserving or securing readily-available evidence; and
  - (d) Analyzing all of the above to determine whether an investigation into the suspected wrongdoing is warranted.
74. The Assessment Office may obtain the assistance of such persons as they consider appropriate to conduct the preliminary assessment.
75. Where the preliminary assessment does not generate sufficient information to indicate that wrongdoing has occurred, the Assessment Office will close the case, and inform HRLO, and through the HRLO, the Deputy Executive Director and the complainant accordingly, where practical.

#### **4.2. Investigation**

76. Unless the Assessment Office closes the case, the Assessment Office will decide whether to refer the case to IAIG (in the case of suspected retaliation and after the finding of a prima facie case by the Ethics Officer, for investigation, and in any other cases, for IAIG to determine whether an investigation should be conducted) or to the HRLO immediately (in which case the preliminary assessment report shall be deemed to be the investigation report).
77. All investigations must be conducted under the overall supervision of the Director IAIG. The Director IAIG may refer the matter to persons he or she designates, depending on the nature of the complaints and the complexity of the case, including personnel from HRPG.

78. When IAIG designates investigators outside IAIG, they must obtain guidance from IAIG as to the conduct of the investigation.
79. Investigative activity includes the collection and analysis of documents, video, audio, photographic, electronic information and other material, interviews with investigation participants and observations of the investigators and such other techniques as the investigators may in good faith deem appropriate. The investigators may electronically record their interviews with the investigation participants. A record of the interview will be made by the investigators, a copy of which will be given to the investigation participant, who will be invited to sign it. In addition, investigation participants may choose to provide a signed statement containing any clarification on their statements during the interviews; however they cannot change their statements as recorded by the investigator(s)' recording device(s).
80. Investigative activity and critical decisions should be documented in writing and reviewed with the Director, IAIG.
81. Investigative activity shall require an examination of all evidence, inculpatory and exculpatory.
82. Subject of an investigation shall be interviewed in the course of the investigation. The investigators may electronically record the interview with the subject of an investigation. A record of the interview will be made by the investigators, a copy of which will be given to the subject of an investigation, who will be invited to sign it (for the rights of the subject of an investigation during the interviews, see Chapter II, Section 1, Subsection 1.1). In addition, subject of an investigation may choose to provide a signed statement containing any clarification on his/her statements during the interviews; however he/she cannot change his/her statements as recorded by the investigator(s)' recording device(s).
83. Subjects of an investigation, and complainants in cases relating to suspected sexual exploitation or sexual harassment, may request to be accompanied to their interview by an observer who is either a member of UNOPS personnel or an immediate family member, provided that the observer is readily available and not involved in the investigation, as determined by IAIG. The observer must agree to respect the confidentiality of the investigation and sign a confidentiality statement. The observer may not interrupt, prevent or delay the interview, and is not allowed to speak during the interview. If the investigator considers the presence of the observer disruptive, the observer may be asked to leave and the interview will proceed without the observer. Considering the cultural context, gender, and other elements of the case, the investigator may also select an observer (e.g. field security officer, etc.) to attend the interview. Subjects of an investigation and participants have no right to the presence of counsel during interviews.

### **4.3. Investigation findings**

84. At the conclusions of an investigation, the investigators will prepare a written report to record the process, results and conclusions for submission to the Director IAIG.

85. If the Director IAIG considers there is insufficient information to substantiate the complaint, he/she will document such findings, close the investigation and notify the relevant parties.
86. If the Director IAIG considers that there is sufficient information to substantiate the complaint:
- a) *For investigations into alleged retaliation by UNOPS pursuant to cooperation with an authorized fact-finding body or the reporting of misconduct (i.e. cases referred to IAIG by the Ethics Officer under the provisions of Organisational Directive No. 35):* the Director IAIG shall provide the investigation report (together with his/her comments, if any) to the Ethics Officer. The Ethics Officer shall forward the investigation report, with his/her recommendations, to the Executive Director.
  - b) *For investigations other than for alleged retaliation:* the Director IAIG shall provide the investigation report (together with his/her comments, if any) to the HRLO.
87. Where the investigation findings indicate that a person made a complaint knowing that the allegation is false, the Assessment Office may, where appropriate, refer the matter to the HRLO for further action consistent with UNOPS' rules, policies and procedures. However, the mere fact that an investigation concluded that there was insufficient evidence does not necessarily mean that said person knew the complaint was false.
88. Where the investigation findings indicate that there was a failure to comply with an obligation under the investigation process by a witness or subject, the Assessment Office may refer the matter to the HRLO for further action consistent with UNOPS' rules, policies and procedures.

#### **4.4. Sufficient information to substantiate complaint**

89. Upon receipt of the investigation report from the Director IAIG (as per paragraph 86(b) above), HRLO shall share such investigation report with the subject of an investigation, and request that the subject of an investigation provide his or her comments on the factual findings and conclusions of the report, and produce additional countervailing evidence, if any<sup>22</sup>.
90. HRLO should request that the subject of an investigation respond within a reasonable period of time, normally between ten (10) and thirty (30) working days depending on the seriousness and complexity of the matter. An extension may be exceptionally granted by HRLO, if the subject of an investigation makes a written request, giving convincing reasons why he or she is unable to comply with the deadline. Further extensions shall not normally be granted. If no response is submitted within the time limit, the matter shall nevertheless proceed.

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<sup>22</sup> The complainant is not entitled to receive a copy of the investigation report concerning allegations of wrongdoing against the subject of an investigation.

91. HRLO will consider the comments of the subject of an investigation on the investigation report, including any additional evidence he or she provides in support of those comments, and determine whether any additional steps are required. HRLO is not obligated to obtain comments on the investigation report from the subject of an investigation more than once, but may, at his/her discretion, revert to the subject of an investigation for clarification regarding the comments and evidence he or she presented in response to the investigation report. The HRLO may also request that IAIG provide further clarification or verification or re-open the investigation prior to making a recommendation on the next course of action.
92. Once HRLO considers that no further steps are warranted with respect to the investigation report, including the response(s) from the subject of an investigation and/or clarification/verification/further investigation from IAIG, HRLO shall provide the investigation report, together with the comments of the subject of an investigation and any evidence he or she may have provided, to the Director, HRPG for comments. The Director, HRPG, will normally provide his/her written comments (if any) within 5 working days after the investigation report is presented to him/her by the HRLO.
93. If the subject of an investigation resigns or otherwise separates from UNOPS service prior to the completion of the investigation report, such investigation report may be finalised at IAIG's and HRLO's discretion notwithstanding the subject's resignation or separation:
  - (a) Should the investigation report be finalised, it shall be sent to the former member of personnel for his or her comments. These comments shall be reviewed in accordance with the present document, and the Deputy Executive Director will place a letter in the former personnel's file indicating whether, if he or she had remained employed: (1) a recommendation would have been made for charges of misconduct to be initiated against him or her, or (2) whether the matter would have been dealt with from a work performance standpoint, and if so how (e.g. via a letter of reprimand). The letter shall also indicate whether the former member of personnel resigned while under investigation, or whether his or her contract expired while under investigation. The former member of personnel shall be invited to comment on the letter and the letter and his or her comments will be placed in his or her file.
  - (b) Should the investigation report not be finalised, the Deputy Executive Director shall place a letter in the former personnel's file, indicating that he or she: (1) resigned or, (2) his or her contract expired while under investigation. In both instances, the former member of personnel shall be given an opportunity to present comments, and the letter and his or her comments shall be placed in his or her file.

## CHAPTER III

### PROCEDURES FOLLOWING INVESTIGATION

#### Section 1. Actions following receipt of the final investigation report by HRLO

94. On the basis of a review of the final investigation report, the comments and evidence presented by the subject of an investigation thereon, as well as any additional clarification or verification or further investigation by IAIG, and the comments by the Director, HRPG, the HRLO, may recommend the following actions to the Deputy Executive Director:

#### 1.1. Charges of misconduct

95. If the HRLO considers that the facts indicate that misconduct occurred, he or she shall recommend to the Deputy Executive Director that the personnel be formally charged with misconduct. The Deputy Executive Director may decide to accept all, part or none of the HRLO's recommendation. Unless the Deputy Executive Director decides that there is insufficient evidence to support any charge, the Deputy Executive Director shall issue a charge letter.
96. The charge letter initiates the disciplinary proceedings (for staff members) and administrative proceedings (for personnel other than staff). In that letter (which should attach the final investigation report and the comments of the subject of an investigation on the investigation report, including any additional evidence he or she may have provided), the personnel is notified in writing of the formal charges (which at his or her request may be translated into the working language of his or her duty station), and be given a specified period of time (normally at least ten (10) working days) to answer the charges and produce countervailing evidence, if any. The personnel shall also be notified of his or her right to counsel to assist in his or her defence. (Staff members may also be informed as to how to obtain the assistance of the Office of Staff Legal Assistance (see Chapter IV, Section 4)). The individual may present a request to the HRLO, that he or she be granted access to files, provided that he or she justifies that they are relevant to his or her response.
97. A copy of the charge letter signed by the Deputy Executive Director may be given for information to the managers or the Executive Head of the other Organization to which the personnel is assigned.
98. The Deputy Executive Director or the HRLO may, on an exceptional basis, grant an extension to the personnel to respond to the charges of misconduct. Any request by the personnel shall be accompanied by specific reasons for such an extension.

#### 1.2. Disciplinary/administrative action not warranted

99. If the HRLO considers that the complaint is not substantiated or the facts do not warrant disciplinary or administrative action, he or she shall recommend to the Deputy Executive Director:

- (a) That the personnel be notified in writing that the matter/case has been closed; IAIG and the managers, or the Executive Head of the other Organization to which the personnel is assigned, shall be informed of such notification;
  - (b) If the personnel was placed on administrative leave, that the administrative leave be discontinued and that the personnel be authorized to resume his or her duties; and
  - (c) That documents related to the investigation be expunged from the personnel's file, except those referred to in Chapter III, section 1, Subsection 1.3 below.
100. The member of personnel shall be notified in writing as soon as practical of the decision of the Deputy Executive Director concerning his or her case.

### **1.3. Work performance related issues**

101. While the HRLO may recommend that the case be closed, he or she may determine that the conduct depicted in the investigation report and the circumstances of the case have shown unsatisfactory performance and/or poor judgement not amounting to misconduct on the part of the member of personnel. In such a case, the HRLO may recommend to the Deputy Executive Director that:
- (a) A letter of reprimand<sup>23</sup> be issued by a manager or other responsible officer concerned, including HRP; and/or
  - (b) The investigation report (or extracts thereof) with the personnel's comments thereon, be included in the annual Performance and Results Assessment (PRA), the Performance Evaluation Report or other evaluations reports; and/or
  - (c) An appropriate training course is undertaken by the personnel.

## **Section 2. Timeframe**

102. To the extent possible, depending on the complexity of a case, member of personnel who is the subject of an investigation will be notified as soon as possible, without delay, whether the case is closed or that charges will be brought against him or her.

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<sup>23</sup> Pursuant to Staff Rule 10.2 (b), a reprimand does not constitute a disciplinary measure.

## CHAPTER IV

### **DISCIPLINARY AND NON-DISCIPLINARY MEASURES** (THIS CHAPTER APPLIES ONLY TO STAFF MEMBERS)

103. If following the staff member's response to the charges, the Deputy Executive Director, after consulting the Director HRPG and the HRLO, considers that the staff member's conduct constitutes misconduct within the meaning of Staff Rule 10.1, he/she shall make a recommendation to the Executive Director through the General Counsel as to the appropriate disciplinary or non-disciplinary measure(s) to be imposed on the staff member, taking into account, *inter alia*, relevant case law and precedents.
104. The Executive Director may decide to impose non-disciplinary measures and/or disciplinary measures. The Executive Director may, subject to the UN Staff Regulations and Rules, also direct that other actions be taken.

#### **Section 1. Disciplinary measures<sup>24</sup>**

105. In accordance with Staff Rule 10.2 (a), the disciplinary measure or measures which the Executive Director may impose on a staff member, depending on the nature and gravity of the misconduct in which the staff member has engaged, include one or more of the following:
- (a) Written censure;
  - (b) Loss of one or more steps in grade;
  - (c) Deferment, for a specified period, of eligibility for salary increment;
  - (d) Suspension without pay for a specified period;
  - (e) Fine;
  - (f) Deferment, for a specified period, of eligibility for consideration for promotion;
  - (g) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;
  - (h) Separation from service, with notice or compensation in lieu of notice, notwithstanding Staff Rule 9.7, and with or without termination indemnity pursuant to Annex III (c) to the Staff Regulations;
  - (i) Dismissal.
106. Annex I to the present document describes the effects of each of the above-mentioned

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<sup>24</sup> As to holders of 300-series letters of appointment which continue in force pursuant to Chapter XIII of the Staff Rules until 31 December 2010, the following disciplinary measures may be imposed pursuant to Staff Rule 310.1 (e): written censure; suspension without pay; fine; separation from service, with or without notice or compensation in lieu thereof; summary dismissal.

measures.

107. The Executive Director's decision to impose disciplinary measure(s) shall be notified in writing to the staff member; IAIG and managers, or the Executive Head of the other Organization to which the staff member is assigned, shall be informed of such notification.

### **Section 2. Non-disciplinary measures**

108. In accordance with Staff Rule 10.2 (b), the non-disciplinary measure or measures which the Executive Director may impose on a staff member, depending on the nature and circumstances of the case, include one or more of the following:
- (a) Written or oral reprimand;
  - (b) Recovery of monies owed to the Organization;
  - (c) Administrative leave with or without pay pursuant to Staff Rule 10.4.
109. In addition, a staff member may be requested to undertake a specific training to improve or further develop certain skills. This does not constitute a disciplinary measure.
110. The recovery for any financial loss attributable to the staff member's misconduct, including gross negligence or recklessness pursuant to Staff Rule 10.1 (b), may be pursued in addition to the imposition of disciplinary measures (see Chapter IV, section 5, and subsection 5.3)).

### **Section 3. Appeal against a disciplinary measure to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal**

111. Within ninety (90) calendar days of being informed of the decision taken in his or her case, a staff member against whom a disciplinary or non-disciplinary measure has been imposed may submit an application to the United Nations Dispute Tribunal, in accordance with Chapter XI of the Staff Rules.
112. A staff member or the Organization may appeal against a decision or judgement of the United Nations Dispute Tribunal to the United Nations Appeals Tribunal within forty-five (45) calendar days following receipt of the decision or judgement, on grounds set out in Staff Rule 11.5.

### **Section 4. Counsel to staff member**

113. Representation by Counsel is permitted when the staff member is charged with misconduct and during disciplinary proceedings.

#### **4.1. Office of Staff Legal Assistance, United Nations**

114. A staff member who wishes to obtain the assistance of the Office of Staff Legal Assistance may contact this Office at e-mail: [osla@un.org](mailto:osla@un.org), or telephone number: (1) 212- 963-3957.

#### **4.2. External counsel**

115. Alternatively, a staff member may choose to secure counsel from outside the Office of Staff Legal Assistance, at his or her own expense (see Staff Rule 10.3 (a)).

### **Section 5. Miscellaneous**

#### **5.1. Publication of disciplinary decisions**

116. In the interests of transparency, the Executive Director may inform the UNDP/UNFPA Executive Board of disciplinary decisions taken in the course of the preceding year, and publish an annual report of cases of misconduct (without the individuals' names) that have resulted in the imposition of disciplinary measures. The Executive Director may choose to not disclose a case at his or her discretion. Any such report shall be made available to all personnel.

#### **5.2. Local authorities**

117. Any decision taken under the present document is without prejudice to the Organization's right to refer matters to local authorities for legal recourse in accordance with applicable national law.
118. Personnel shall not report any matters to local authorities except in the case of compelling emergency/danger, after which the matter shall be immediately reported to the General Counsel. Bringing a matter to the attention of local authorities requires the concurrence of the UN Office of Legal Affairs (UN/OLA) since it, *inter alia*, involves issues of privileges and immunities.

#### **5.3. Recovery for Loss of Property or Assets**

119. Under Staff Rule 10.1 (b), "Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be willful, reckless, or grossly negligent."
120. Pursuant to that Rule, UNOPS will pursue recovery for any financial loss attributable to the staff member's misconduct (fraud, theft), or gross negligence, or recklessness, in the management of funds.

121. Such recovery action does not constitute a disciplinary measure (see Staff Rule 10.2 (b)) and is distinct from any disciplinary action being considered or undertaken.

## CHAPTER V

### ADMINISTRATIVE MEASURES

(THIS CHAPTER APPLIES ONLY TO PERSONNEL OTHER THAN STAFF MEMBERS)

122. If following the personnel other than staff's response to the charges, the Deputy Executive Director, after consulting the Director HRPG and the HRLO, determines that the personnel other than staff's conduct constitutes misconduct within the meaning of this OD and/or a breach of his/her contractual agreement with UNOPS, he/she shall make a recommendation to the Executive Director through the General Counsel as to the appropriate administrative measure(s) to be imposed on the personnel other than staff, taking into account, *inter alia*, relevant case law and precedents.
123. The Executive Director's decision to impose an administrative measure or measures shall be notified in writing to the personnel other than staff; IAIG and the relevant manager or the Executive Head of the other Organization to which the personnel other than staff is assigned, shall be informed of such notification.

#### Section 1. Administrative measures

124. Administrative measures which the Executive Director may impose on personnel other than staff member, depending on the nature and gravity of the misconduct and/or breach of his/her contractual agreement with UNOPS, in which the personnel other than staff member has engaged, include one or more of the following:
- (a) Recovery of monies owed to the Organization;
  - (b) Recovery for any financial loss attributable to the personnel other than staff's misconduct (fraud, theft), or gross negligence, or recklessness, in the management of funds;
  - (c) Written censure;
  - (d) Suspension without pay for a specified period;
  - (e) Termination of contract.

#### Section 2. Appeal against an administrative measure

125. Within ninety (90) calendar days of being informed of the decision taken in his or her case, a personnel other than staff member against whom administrative measure(s) has been imposed may refer the case to arbitration.

#### Section 3. Counsel to personnel other than staff

126. Representation by Counsel is permitted when the personnel other than staff is charged with misconduct and during administrative proceedings. If a member of personnel other than staff chooses to secure Counsel, it shall be at his or her own expense.

#### **Section 4. Local authorities**

127. Any decision taken under the present document is without prejudice to the Organization's right to refer matters to local authorities for legal recourse in accordance with applicable national law.
128. Personnel other than staff shall not report any matters to local authorities except in the case of compelling emergency/danger, after which the matter shall be immediately reported to the General Counsel. Bringing a matter to the attention of local authorities requires the concurrence of the UN Office of Legal Affairs (UN/OLA) since it, *inter alia*, involves issues of privileges and immunities.

## ANNEX I:

### **EFFECTS OF IMPLEMENTATION OF DISCIPLINARY MEASURES (only applicable to staff members)**

The following disciplinary measures may be taken into account when assessing the staff member's performance.

#### **1. Written censure**

- A written censure is a letter indicating that the staff member has committed wrongdoing. The written censure is placed in the staff member's official status file and becomes part of his or her permanent record.<sup>25</sup>

#### **2. Loss of one or more steps-in-grade**

- Loss of steps-in-grade means that the staff member's level within grade is reduced by the number of steps specified in the decision. As a result, the staff member loses any accrued period of service within the year the decision is implemented. He or she shall be eligible for subsequent in-grade increments on the anniversary date of the implementation of the disciplinary decision.
- In the event that the number of steps to be lost is greater than the staff member's current step, he or she is placed at the lowest step on the salary scale for his or her grade, and remains at that step for the number of years by which the decision exceeds the number of steps available before receiving the next increment on the scale.

#### **3. Deferment, for a specified period, of eligibility for salary increment**

- Deferment of eligibility for salary increment means that for the stated time period of the deferment, the staff member's step is frozen, and, for that period, he or she does not accrue any time to be credited towards eligibility for the next salary increment. In this instance, the anniversary date upon which the staff member would be eligible for the next salary increment is postponed for a period of time corresponding to the length of the deferment, and all future anniversary dates upon which the staff member becomes eligible for salary increments will change accordingly. Any period of service occurring between the date of the staff member's last salary increment and the implementation date of the deferment measure will be credited towards the staff member's next salary increment.

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<sup>25</sup> A written censure is distinguished from a letter of reprimand, which is issued by either a staff member's supervisor, Headquarters Director or the Executive Director. A letter of reprimand is not a disciplinary measure and may contain a specified period of time, after which it will no longer be considered part of the staff member's record.

#### **4. Suspension without pay for a specified period**

- Suspension without pay means that the staff member is not permitted to serve for a specified period of time, which normally does not exceed six months, during which his or her salary and allowances are withheld and any contribution which UNOPS is paying in respect of medical insurance and pension is discontinued.

#### **5. Fine**

- The staff member is assessed a monetary penalty, the amount of which is determined in proportion to his or her annual remuneration. The fine is either paid directly by the staff member or deducted from his or her emoluments in a lump-sum or schedule of payments.
- A fine shall be taken into account when assessing whether a staff member's performance has been satisfactory during the period in question.

#### **6. Deferment, for a specified period, of eligibility for consideration for promotion**

- Deferment of eligibility for consideration for promotion means that for the stated time period of the deferment, the staff member cannot be considered for promotion to any posts.

#### **7. Demotion with deferment, for a specified period, of eligibility for consideration for promotion**

- Demotion means a reduction in grade, normally the grade immediately below that of the staff member's, unless the decision provides for a demotion by more than one grade. Demotion is implemented like a reverse promotion. As a result, the staff member is placed at the closest step in the grade below his or her present grade, which provides a decrease in net base salary to at least the amount that would have resulted from the granting of two steps at the higher grade. If the demotion is effective in the month in which an increment at the higher step is due, such increment is implemented, and the above subtraction is effected on the basis of the new step.
- The demotion decision shall specify the period of time during which the staff member shall not be eligible and considered for promotion.
- The date of the next salary increment at the lower level becomes the anniversary date of the demotion.

#### **8. Separation from service, with notice or compensation in lieu of notice, notwithstanding Staff Rule 9.7, and with or without termination indemnity pursuant to Annex III (c) to the Staff Regulations**

- The decision shall specify whether the separation from service is:
  - with notice or compensation in lieu thereof, and
  - with or without termination indemnity.
- The termination notice or compensation in lieu thereof shall not be less than three months for permanent appointments and continuing appointments, not less than thirty (30) days for fixed-term appointments, and not less than fifteen (15) days for temporary appointments, or such period as may be stipulated in the letter of appointment.
- In lieu of the serving of the notice period, the UNOPS Executive Director may authorize payment of compensation on the basis of the salary and allowances which would have been payable if the date of termination had been at the end of the notice period. In such a case, all salaries, allowances and other benefits which the staff member would have received had he or she served the period of notice, are taken into account, including post adjustment, dependency allowances, special post allowances, education grant, etc. The period is counted in the calculation of terminal payments, but annual leave does not continue to accrue. The salary paid in lieu of notice is not pensionable and the period is not counted as contributory service. Unless the staff member requests that it be excluded, any contribution which UNOPS is paying in respect of medical insurance is continued during the period of notice.
- If the staff member is granted termination indemnity, this indemnity does not exceed half of the amount calculated pursuant to Annex III to the Staff Regulations.
- Subject to the conditions of eligibility, a staff member separated from service is entitled to repatriation grant.
- A staff member separated from service for misconduct shall be banned from any future employment and contractual opportunities with UNOPS.

## **9. Dismissal**

- Dismissal means immediate separation from service.
- A staff member who is dismissed is neither entitled to termination notice or compensation in lieu thereof, nor to any termination indemnity pursuant to Annex III to the Staff Regulations, nor to repatriation grant pursuant to Staff Rule 3.18.
- A staff member who is dismissed shall be banned from any future employment and contractual opportunities with UNOPS.

The relevant documents cited in the UNOPS Legal Framework for Addressing Non-compliance with UN Standards of Conduct can be accessed through the following links:

- [Standards of Conduct for the International Civil Service](#)
- Secretary-General’s Bulletin on “Status, basic rights and duties of UN Staff Members” ([ST/SGB/2002/13](#))
- Secretary-General’s Bulletin on “Special Measures for Protection from Sexual Exploitation and Sexual Abuse” ([ST/SGB/2003/13](#))
- UNOPS policy on “Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority” ([Organisational Directive No. 8 \(rev.1\)](#))
- “UNOPS Policy to Address Fraud” ([Organisational Directive No. 10 \(rev.2\)](#))
- UNOPS policy on “Protection against Retaliation for Reporting Misconduct or Cooperating with Duly Authorised Fact Finding Activities” ([Organisational Directive No. 35](#))
- [Performance and Results Assessment \(PRA\) Guidelines](#)