

United Nations Development Programme

Sustainable human development



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To: All UNDP/UNFPA/UNOPS staff

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Subject: **Accountability, Disciplinary Measures and Procedures**

I - PURPOSE

1. Purpose

This revised circular provides the Administrator's guidelines and directives on the application of Staff Regulation X and chapter 10 of the Staff Rules relating to the above-mentioned subjects and outlines the basic requirements of due process to be afforded a staff member who is the subject of an allegation of unsatisfactory conduct, including cases involving accountability issues and recovery for losses caused to UNDP/UNOPS/UNFPA property and assets. This circular supersedes circular ADM/93/13 of 30 March 1993, and amends circular ADM/87/98 of October 1987, circular ADM/90/79 of 30 September 1990, and circular ADM/92/47 of 29 April 1992. This circular is subject to further clarifications and streamlining which may stem at a later date, from managerial and structural adjustments and from accountability guidelines issued from time to time by the Organization.

1.2 Scope of Application

- a) This circular applies to all staff members of the 100, 200 and 300 series, appointed by the Administrator, regardless of assignment. Where staff members so appointed are assigned or seconded to other agencies, including UNFPA and UNOPS, separate or additional procedures and requirements may apply. The Executive Directors and officials in charge of Personnel of UNFPA and UNOPS are consulted before any disciplinary decision is taken by the Administrator in relation to a staff member in their service.
- b) This circular also shall apply to staff members not appointed by the Administrator but on secondment with UNDP, subject to the disciplinary authority of the appointing agency.

1.3 Definitions

For the purpose of this circular, the words;

- (a) Organization” includes UNDP, UNFPA and UNOPS.
- (b) Disciplinary Committee” refers to the Committee constituted by the Administrator’s decision of
- (c) October 1987 (UNDP/ADM/87/98) which, henceforth is officially designated as the UNDP/UNFPA/UNOPS Disciplinary Committee.
- (d) Official in charge of personnel” includes OHR’s Director at UNDP, UNFPA’s Director Division of Finance, Personnel and Administration, and UNOPS’ Assistant Director, Policy and Contracts Division.

II - INVESTIGATION

2. Authority

2.1.a. The Organization shall investigate the circumstances of any losses, damage or apparent impropriety where no specific allegation of misconduct is reported or individual staff member(s) identified. Staff members must cooperate with any such investigation and should assist designated investigator(s) as required. Such investigations are administrative in nature and distinguished from disciplinary investigations initiated by a formal letter of allegation and where staff participating in or otherwise involved shall be accorded necessary due process protections.

2.1.b. Where there is reason to believe that a staff member has engaged in unsatisfactory conduct, including a situation where s/he should be held accountable for gross negligence and/or mismanagement, which according to the Staff Rules may warrant a disciplinary measure, an investigation is ordered by the respective UNDP head of office or other responsible UNDP officer according to requirements of this circular or as otherwise may be provided by UNFPA or UNOPS for cases of possible misconduct arising in connection with staff or activities under their authority. Where UNDP undertakes an investigation for another agency, the investigation shall be in accordance with UNDP provisions.

2.1.c. At UNDP, in cases involving accountability and recovery issues, the Head of Office or responsible officer may refer these cases directly for investigation and advice to the Division for Audit and Management Review and/or to BFA/ OHR . The Administrator may also submit such cases to the Standing Committee on Personal Responsibility and Financial Liability (ADM/93/69) or to the Management Review Oversight Committee, in connexion with acts committed by UNDP staff members. In UNFPA, the head of office or responsible officer may refer cases directly to the Division for Audit and Management Review and/or DFPA. At UNDP/UNFPA/UNOPS, cases involving discrimination and sexual harassment are referred for review to the Grievance Panel on Sexual Harassment (ADM/93/26 of 18 May 93).

2.2. Due Process

All procedures and actions relating to investigation must respect the rights and interest of the Organization and potential victims, as well as of any staff member subject to or implicated by an allegation of misconduct. Allegations, investigative activities and all documents relating to the action shall be handled in a confidential manner. If an allegation of misconduct is made, an affected staff member shall be notified in writing of all allegations and of his/her right to respond, provided with copies of all documentary evidence of the alleged misconduct and advised of his/her right to the advice of another staff member or retired staff member as counsel to assist in preparing his or her responses.

2.3 Unsatisfactory Conduct/Negligence/Mismanagement

Under Staff Rule 110.1 unsatisfactory conduct may occur when a staff member fails “to comply with his or her obligations under the Charter of the United Nations, or with the staff regulations and staff rules or other administrative issuances” or fails “to observe the standards of conduct expected of an international civil servant.” Under United Nations Staff Rule 110.3, staff members may also be held liable for the recovery of losses resulting from their negligence and breach of regulation, rule or administrative instructions. Likewise, UNDP Financial Rule 103.2, UNFPA Financial Rule 103.2, and UNOPS Financial Rule 103.2, render staff members accountable for the regularity of their actions and they may be held financially liable and responsible for their violation of Financial Rules, instructions and procedures.

2.4. Publication of Disciplinary Decisions

The Administrator informs the UNDP/UNFPA Executive Board and publishes a circular on a semi-annual basis, of cases of unsatisfactory conduct which have been investigated and led to disciplinary sanctions. In Annex A are illustrations of faulty actions and omissions which, in previous circumstances, have led to disciplinary action.

2.5. Initial Findings of Misconduct

Where the investigation, as under paragraphs 2.1.b and 2.1.c above, appears to indicate that the report of misconduct is well founded, the head of office or the official responsible for the investigation shall make a recommendation for disciplinary action to the respective official at UNDP/UNFPA or UNOPS in charge of personnel, giving a full account of the facts that are known and attaching relevant documents.

2.6. Recommendation of Suspension

Where the conduct appears to be of such a nature and of such gravity, as specified above, that suspension may be warranted, the investigator or responsible officer shall make a recommendation to that effect to the official in charge of personnel, giving reasons.

2.7. Provisional measures

2.7.1 Suspension

As a general principle, suspension may be resorted to if the conduct in question might pose a threat to other staff members or to the organization's interest, or if there is a risk of evidence being tampered with or concealed and if redeployment of the staff member is not feasible. If the official in charge of personnel authorizes suspension, the staff member shall be informed of the reason for the suspension and of its probable duration and shall immediately surrender his or her grounds pass. Suspension under Staff Rule 110.2 (a) is normally with pay, unless exceptional circumstances warrant suspension without pay. In either case the suspension shall be without prejudice to the staff member's rights, shall not constitute a disciplinary measure and shall not normally exceed 3 months. A staff member on suspension may not enter the organization's premises without first obtaining a clear permission from the competent official. Such entry shall be under escort and in connection with the staff member's defence of the case or other valid reason warranting such entrance.

2.7.2 Custody and Recovery Actions

In cases involving responsibility for the loss of property or assets, where the fact-finding investigation concludes there is a prima facie liability by the staff member, the Director, official in charge of personnel, may adopt, in consultation with the head of office concerned, appropriate recovery or custody measures against the staff member's entitlements, pending final determination of the case.

III - PROCEDURES APPLICABLE TO INTERNATIONALLY RECRUITED STAFF AND GENERAL SERVICE STAFF AT HEADQUARTERS

3.1 Staff's Response

Within twenty (20) working days following receipt of the report of misconduct, the official in charge of personnel shall communicate a copy of it to the staff member and invite him/her to send his/her response within a reasonable period of time.

3.2 Exoneration of Misconduct

Where, following the initial investigation and review of the staff member's response, the official in charge of personnel, is satisfied that there are no grounds warranting disciplinary action, the latter shall close the matter, cancel the suspension or recovery action, if any,

and expunge related documents from the staff member's official status file. However, if the unsatisfactory conduct depicted in the report and the circumstances of the case have shown sub-standard performance and/or poor judgement on the part of the staff member, the head of the office concerned may, depending on the circumstances, issue a letter of warning or a reprimand and include the investigation report (or extracts therefrom) in the annual Performance Appraisal Review (PAR) of the staff member

3.3 Prima Facie Case

When the official in charge of personnel, after review of the staff member's response, and evidence, or in view of the lack thereof, is satisfied that a prima facie case of unsatisfactory conduct exists, the staff member shall be informed of the decision to refer the case to the Disciplinary Committee and, if found guilty as charged, of the sanction that it may entail in the light of current jurisprudence.

3.4 Serious Misconduct

In the case where evidence of serious misconduct has been sufficiently corroborated in the report and/or admitted to by the staff member or has led to a conviction by a national Court of Justice, the official in charge of personnel, in consultation with the head of office concerned, will determine whether the nature of the misconduct warrants summary dismissal and should be referred to the Administrator for decision (see paragraph 5 below).

3.5 Waiver of Disciplinary Proceedings

A referral to the Disciplinary Committee may be waived under Staff Rule 110.4 (b) (i) by mutual agreement of the staff member concerned and the official in charge of personnel. A waiver means that the staff member agrees to forgo Disciplinary Committee proceedings and to accept the Administrator's decision regarding the disciplinary measure which the Administrator may choose to impose under the provisions of Staff Rule 110.3 (a).

3.6 Submission to the Disciplinary Committee

In the absence of such mutual agreement, the official in charge of personnel shall charge the staff member and the Chief of OHR's Legal Section will file the case and relevant documentation to the Disciplinary Committee. A copy is sent to the staff member, informing him or her of his/her right to be assisted by counsel chosen from staff ranks or retirees.

3.7 Disciplinary Committee Proceedings

The proceedings of the Disciplinary Committee and its rules of procedure shall be consistent with due process, the fundamental requirements of which are that the staff member concerned has the right to know the allegations against him or her; the right to see or hear the evidence against him or her; the right to rebut the allegations and the right to present countervailing evidence and any mitigating factors. If the Committee decides to hear oral testimony, both parties and counsel should be invited to be present, and no witnesses should be present during the testimony of other witnesses. If the Chairperson decides that the Committee or one of its members should take testimony by deposition,

telephone, or other means of communication, such testimony shall be shared with the parties concerned for comment or rebuttal. At all times, the quorum of a Disciplinary Committee constituted to hear a case shall not be less than 3 members, plus the secretary.

3.8. The Chairperson shall declare the opening and closing of the meeting; direct the discussion; enforce time-limits; accord the right to speak; rule on points of order; rule on relevance; and be responsible for the timely completion of the report.

3.9. *The report of the Disciplinary Committee should contain:*

- (a) The allegations of misconduct;
- (b) The staff member's response;
- (c) A statement of the proceedings;
- (d) A synopsis of the evidence and the Committee's evaluation thereof;
- (e) The findings, indicating which of the allegations, if any, appear to be supported by the evidence;
- (f) Any aggravating or mitigating factors that might be relevant;
- (g) Dissenting or separate opinion, if any;
- (h) The advice of the Disciplinary Committee to the Administrator as to what sanction if any, should be applied under Staff Rule 110.3.

**IV- INVESTIGATION PROCEDURES APPLICABLE TO
LOCALLY-RECRUITED STAFF IN UNDP COUNTRY OFFICES**

4.1 *Basic Principles*

Sections I, II and III above are generally applicable to cases of misconduct involving locally-recruited staff members in country offices. When the Resident Representative becomes aware of misconduct on the part of a staff member, s/he immediately informs the Director, Office of Human Resources, and initiates an investigation under either paragraph 2.1.b or 2.1.c, in order to establish the facts. If the misconduct is of such a serious nature as to warrant suspension, the Resident Representative shall convey that view to the Director, Office of Human Resources, for a decision on the suspension of the staff member. The investigation may be conducted by the Resident Representative, or by an investigator or a panel appointed by the Resident Representative. Such investigation must endeavor to retrieve the best and most direct evidence available. It shall include statements from witnesses, signed or certified by them, but excluding uncorroborated hearsay evidence.

4.2 *UNFPA and UNOPS Country Representative*

For the purpose of Section IV, in country offices where UNFPA or another agency has appointed its own country representative, the latter shall assume the Resident Representative's responsibilities for staff members working under his/her supervision and shall report to his/her respective official in charge of Personnel.

4.3 Allegations and Initial Response

The staff member is informed in writing, of the allegations of unsatisfactory conduct which caused the investigation, with a request to give his or her version of the matter, to suggest other persons of whom inquiry might be made and to call witnesses on his or her behalf, if so desired. The staff member may request that the allegations be translated. Unless circumstances make it clearly impossible to do so:

- a) the staff is interviewed in person;
- b) the staff member's statement is taken down in writing and signed;
- c) the staff member is given a copy of the statement.

4.4 Report

A report is prepared by the investigator or investigation panel along the lines of paragraph 3.9 (a to g).

4.5 Staff Member's Comments on the Report

The above report is communicated to the staff member, who is allowed a reasonable period of time, specified in advance, taking into account the circumstances of the case, to make any answer in writing to the panel's report and charges or any further submission he or she may wish to be considered prior to a decision on the case. Within the specified time for reply, the concerned staff member may request in writing additional time to prepare the reply. Such request will have to be justified and a reasonable delay will be granted.

4.6 Submission of the Final Country Office Report

The Resident Representative shall forward copies of these documents together with his or her recommendation to the Director, Office of Human Resources and the case will be processed therefrom in accordance with paras. 3.1 to 3.9 above.

V - SERIOUS MISCONDUCT

5. Summary Dismissal

In the event that the Administrator is satisfied, following a report prepared under paragraph 3.4, that the serious nature of the misconduct committed by a staff member warrants an immediate separation from service, the Administrator may summarily dismiss

the staff member without prior referral to the Disciplinary Committee, in accordance with Staff Regulation 10.2.

VI - REVIEW AND FINAL APPEAL

6.1 Review of a Summary Dismissal

A staff member who is dissatisfied with the Administrator's decision of summary dismissal may, within two months after having received such written notification, request the Administrator to submit the case to the Disciplinary Committee for review. The Committee will then follow the procedures of paragraphs 3.7 to 3.9.

6.2 Appeal of the Administrator's Final Decision

When the Administrator's decision is taken after a full review by the Disciplinary Committee, a dissatisfied staff member shall submit his or her application for a final appeal directly to the United Nations Administrative Tribunal. The procedure and time limits to do so are outlined in the statute of the Administrative Tribunal, a copy of which may be obtained from the Executive Secretary of the United Nations Administrative Tribunal at United Nations Headquarters, Room N. S-3294, telephone: 212-963-5528, fax: 212-963-3685.

VII - PANEL OF COUNSEL

7. A staff member who wishes to obtain the assistance of a member of the Panel of Counsel, may request information from the Coordinator of the Panel of Counsel at United Nations Headquarters, Room No. DC2-404, telephone: 212-963-3954, fax: 212-963-0252.

ANNEX A

EXAMPLES OF UNSATISFACTORY CONDUCT WHICH HAVE BEEN INVESTIGATED AND LED TO DISCIPLINARY ACTIONS

1. Unsatisfactory conduct of a staff member which may be investigated and for which disciplinary measures may be imposed includes, but is not limited to:
 - (a) acts or omissions in conflict with the general obligations of staff members set forth in Article I of the Staff Regulations and Rules;
 - (b) an unlawful act (e.g. theft, fraud, possession or sale of illegal substances, smuggling) wherever it occurs, and whether or not the staff member was on official duty at the time;

- (c) misrepresentation, forgery, or certification in connection with any official claim or benefit, including failure to disclose a fact material to that claim or benefit;
- (d) assault, harassment, or threats affecting other staff members or third parties;
- (e) misuse of official property, assets, equipment or files, including electronic files;
- (f) misuse of office; abuse of authority; breach of confidentiality; abuse of United Nations privileges and immunities;
- (g) acts or behavior that would discredit the Organization;
- (h) gross negligence, wanton disregard or reckless mishandling of property and assets leading to a loss for the organization;
- (i) premeditated action or omission to avoid or to deviate from Financial Regulations, Rules and Procedures, including inappropriate use of certification or approval authority;
- (j) gross mishandling of contract obligations and relations with third parties leading to loss of property/assets, or generating liabilities for the organization;
- (k) breach of fiduciary obligations vis-a-vis the organization;
- (l) failure to disclose an interest or relationship with a third party benefitting from a decision in which the staff member takes part and/or favoritism in the award of a contract to a third party;
- (m) failure to disclose promptly the receipt of gifts, remuneration or incentive payments or other benefits received by the staff member from an external source;
- (n) exaction of funds from a colleague or a third party related to the organization;
- (o) failure by a staff member to comply with professional and related ethical standards applicable to his/her profession.
- (p) abetting, concealing or conspiring in any of the above actions.

2. For the purpose of paragraphs (h) to (k) above, the conduct of the staff member is culpable where failures in his/her performance are of such extreme dimension, or where gross negligence involves an extreme and reckless failure to act as a reasonable person would with respect to a reasonably foreseeable risk, regardless of whether intent was involved or not in the commission of the act or that the staff member benefitted from it.

