

**DISCIPLINARY FRAMEWORK****Table of contents**

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## 1. INTRODUCTION

- 1.1 This policy document establishes the framework for discipline in UNFPA. It explains UNFPA's disciplinary procedures and the procedures for the imposition of disciplinary measures, as well as due process (i) during the Investigation process and (ii) the Disciplinary Process.
- 1.2 This document refers to Articles 97, 100 and 101 of the Charter of the United Nations, which pertain to the service of United Nations staff members; Article I of the United Nations Staff Regulations and Chapter I of the Staff Rules ("Duties, obligations and privileges"); and Article X of the Staff Regulations ("Disciplinary measures") and Chapter X of the Staff Rules ("Disciplinary measures and procedures"). Furthermore, the attention of all UNFPA staff members is drawn to the Standards of Conduct for the International Civil Service, adopted by the International Civil Service Commission in 2013, and to ST/SGB/2002/13 on the "Status, basic rights and duties of United Nations staff members".

## 2. DEFINITIONS

- 2.1 For the purpose of the present document:
- (a) "Executive Director" means the UNFPA Executive Director;
  - (b) "Director, DOS" means the Director, Division for Oversight Services, UNFPA. The term includes any officers of DOS appointed as investigators and persons to whom the Director, DOS, has otherwise delegated authority to undertake activities assigned to the Director, DOS, under this document;
  - (c) "Director, DHR" means the Director, Division for Human Resources, UNFPA;
  - (d) "Legal Adviser" means the Chief, Legal Unit, Office of the Executive Director, UNFPA. The term includes any officers assigned to the Legal Unit, UNFPA, and persons to whom the Chief, Legal Unit, or the Executive Director have delegated authority or provided power of attorney to undertake activities assigned to the Legal Adviser under this document;
  - (e) "OSLA" means the United Nations Office of Staff Legal Assistance;
  - (f) "Field Duty Station" shall have the meaning assigned to this term in the [Policies and Procedures Manual, Human Resources, Personnel of UNFPA, General Information, Glossary](#);
  - (g) "Manager of UNFPA Field Duty Station" shall have the meaning assigned to this

term in the [Policies and Procedures Manual, Human Resources, Personnel of UNFPA, General Information, Glossary](#);

- (h) “Manager” means (i) Managers of UNFPA Field Duty Stations and (ii) staff members in charge of a division, branch or office at Headquarters (*e.g.* division directors, branch chiefs);
- (i) “Misconduct” means the “[f]ailure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant” (Staff Rule 10.1). Such a failure can be deliberate (intentional act) or can result from either an extreme or aggravated failure to exercise the standard of care that a reasonable person would have exercised (“gross negligence”) or from a complete disregard for a risk, which is likely to cause harm (“recklessness”).
- (j) “Investigation” means a fact-finding process, *i.e.* a process by which evidence is sought capable of ascertaining facts to permit a determination whether or not Misconduct has occurred;
- (k) “Investigation Subject” or “Subject” means a staff member who is the focus of an Investigation either by virtue of an allegation made against him or her or as a result of evidence gathered during the course of an Investigation. (Persons who are not staff members and are the focus of an Investigation may be referred to as “non-staff member subjects”);
- (l) “Interview” means the questioning of a person who is believed to possess knowledge that is of official interest to the Director, DOS. The Interview may be conducted in person or by other means, including by telephone, video or questionnaire, as considered by the Director, DOS, to be appropriate or convenient;
- (m) “Investigation Dossier” means the collection of evidence assembled during an Investigation. The Investigation Dossier usually includes a report summarizing the Investigation findings, listing the evidence gathered and submitting recommendations and documentary evidence. The Investigation Dossier is signed by the Director, DOS, and transmitted to the Executive Director;
- (n) “Interlocutory Stage” means the stage of the process in which: a determination is made by the Administration as to whether it shall act upon the Investigation Dossier; further clarification may be requested by the Administration; the staff member is offered an opportunity to provide comments on the relevant parts of the Investigation Dossier; and/or a determination is made whether to issue Charges of Misconduct or whether there are no or insufficient grounds warranting disciplinary action;

- (o) “Charges of Misconduct” or “Charges” means the formal, written notification within the meaning of Staff Rule 10.3(a) notifying the staff member to whom it is addressed of the charges against him or her, his or her right to seek the assistance of counsel in his or her defense through OSLA or from outside counsel at his or her own expense, and by which the staff member is provided with a reasonable period of time to respond to the Charges in writing;
- (p) “Disciplinary Process” means the process initiated against a staff member pursuant to Staff Regulation 10.1(a), beginning with the issuance of Charges of Misconduct;
- (q) “Disciplinary Measure” means any of the measures enumerated in Staff Rule 10.2;
- (r) “Agreed Disciplinary Measure(s)” means one or more Disciplinary Measures mutually agreed upon, in writing, between the staff member and the Executive Director, and in respect of which the staff member agrees to waive his or her right to submit an application to the United Nations Dispute Tribunal challenging the imposition of the Disciplinary Measure(s).

### **3. EFFECTIVE DATE**

- 3.1 This document replaces the part of the UNFPA Policies and Procedures Manual on Accountability, Disciplinary Measures and Procedures. It takes effect on the date indicated below.

### **4. PERSONAL SCOPE OF APPLICATION**

#### **4.1 To whom this document applies:**

- 4.1.1 This document applies to all UNFPA staff members, *i.e.* persons appointed by or on behalf of the Executive Director under the United Nations Staff Regulations.
- 4.1.2 Regarding staff members on inter-organization exchange, transfer, secondment or loan to or from UNFPA, the terms of the Inter-Agency Mobility Accord, the Inter Organization Agreement concerning Transfer, Secondment or Loan, and the relevant terms of this document shall apply.

#### **4.2 To whom this document does not apply:**

- 4.2.1 The present document does not apply to independent contractors, including: natural persons retained on special services agreements, individual consultant contracts or service contracts (“individual independent contractors”); corporate persons, such as contractors, suppliers, vendors, implementing partners or grant recipients; or any of their personnel or agents.

- 4.2.2 The foregoing paragraph notwithstanding, independent contractors are required to comply with the standards of conduct expected for business with the United Nations and with the standards and requirements of conduct made a part of their contract obligations, and they may be held liable for any breach of such standards or requirements in accordance with the terms of their contracts.
- 4.2.3 In the event of any dispute arising out of or in connection with any individual independent contractor agreement, the Director, DHR, and the Legal Adviser shall be contacted without delay for advice on appropriate action. Such disputes will be addressed in accordance with the provisions on dispute resolution included in the relevant agreement.

## 5. STANDARDS OF CONDUCT

### 5.1 Standards of conduct expected from UNFPA staff members:

- 5.1.1 Staff members 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 behavior of an international civil servant, including such qualities as honesty, truthfulness, impartiality and incorruptibility.
- 5.1.2 Staff members must comply with the standards of conduct contained in Article I of the Staff Regulations and Chapter I of the Staff Rules on “Duties, obligations and privileges” of staff members, the Standards of Conduct for the International Civil Service as adopted by the International Civil Service Commission in 2013, UNFPA’s Financial Regulations and Rules, as well as other applicable policies, instructions, administrative issuances and procedures.
- 5.1.3 All staff members are required to know and comply with their obligations. Lack of knowledge of any regulation, rule or applicable policy, instruction, administrative issuance or procedure is no excuse for, and does not amount to a defense for, Misconduct.

### 5.2 Additional standards of conduct expected from Managers:

#### 5.2.1 Managers shall, as part of their management responsibilities:

- (a) create and maintain a harmonious work environment, free of intimidation, hostility, offence and of any form of harassment or abuse of authority, and seek the informal resolution of interpersonal conflicts in the workplace, including, as appropriate, in accordance with the [UNFPA Policies and Procedures Manual, Harassment, Sexual Harassment and Abuse of Authority](#);
- (b) communicate the policies protecting the rights of staff members, such as the [UNFPA](#)

[Policies and Procedures Manual, Harassment, Sexual Harassment and Abuse of Authority](#), as well as the present Disciplinary Framework, to all staff members under their authority, and ensure that staff members are made aware of [ST/SGB/2002/13 on “Special measures for Protection from Sexual Exploitation and Sexual Abuse”](#), and have been informed where to turn in case they have concerns or want to make a report;

- (c) ensure that Managers, themselves, do not engage in Misconduct and do not create a harassing work environment and/or demonstrate partiality, unfairness or favoritism;
- (d) report allegations of Misconduct without delay to the Director, DOS, as soon as they are aware of such allegations;
- (e) ensure that all discussions, communications and actions relating to alleged or potential Misconduct are handled confidentially; and
- (f) ensure that no staff member is retaliated against.

5.2.2 Any failure by a Manager to fulfill the above described management responsibilities cannot be invoked by a staff member to excuse or mitigate his or her Misconduct.

## **6. MISCONDUCT**

### **6.1 Examples of Misconduct:**

#### **6.1.1 Misconduct 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 Chapter I of the Rules, and instructions implementing it;
- (b) unlawful acts (*e.g.* theft, fraud, embezzlement, abuse of trust, possession or sale of illegal substances, smuggling), wherever they occur, and whether or not the staff member was officially on duty at the time;
- (c) assault, harassment, sexual harassment, abuse of authority or threats to other staff members or third parties;
- (d) fraud, misrepresentation, forgery or false certification, including in connection with any official claim or benefit, including failure to disclose a fact material to that claim or benefit;
- (e) fraud, misrepresentation, forgery or false certification in connection with any travel claim;

- (f) misrepresentation and other wrongful activity in connection with implementing partners;
- (g) misuse or mishandling of official property, assets, equipment or files, including electronic files;
- (h) breaches, including infractions, circumvention or deviation, from financial regulations, rules and procedures, including inappropriate use of committing or verifying authority or of approval authority in accordance with the [UNFPA Policies and Procedures Manual, Internal Control Framework](#);
- (i) departures from the requirements established in the financial regulations and rules related to procurement and the [UNFPA Policies and Procedures Manual, Procurement Procedures](#);
- (j) mishandling of contract obligations and relations with third parties leading to loss of property or assets, or generating liability for the Organization;
- (k) failure to disclose an interest or relationship with a third party who might benefit from a decision in which the staff member takes part; favoritism in the award of a contract to a third party;
- (l) breach of fiduciary obligations vis-à-vis the Organization;
- (m) misuse of office; abuse of authority; breach of confidentiality; abuse of United Nations privileges and immunities;
- (n) exaction of funds, goods or services from a colleague or a third party in return for a favor or benefit;
- (o) failure to disclose promptly the receipt of gifts, remuneration or other benefits received by the staff member from an external source;
- (p) failure by a staff member to comply with professional and related ethical standards applicable to his/her profession;
- (q) failure to cooperate in a duly authorized audit or investigation;
- (r) acts or behavior that would discredit the Organization;
- (s) sexual exploitation and sexual abuse, which, in accordance with Staff Regulation 10.1(b), constitute serious Misconduct;

- (t) direct or indirect use of official authority or influence of the staff member's position or office for the purpose of obstructing an individual from reporting allegations of Misconduct, or cooperating with an audit or an Investigation;
- (u) retaliation;
- (v) breach of the standards of conduct expected from international civil servants constitutes Misconduct;
- (w) aiding, abetting, conspiring in, concealing or attempting to commit any of the above actions.

## 6.2 Unsatisfactory performance does not constitute Misconduct:

- 6.2.1 Unsatisfactory performance does not constitute Misconduct and, therefore, does not fall within the scope of this document. Departures from the standards of performance are addressed through the applicable administrative mechanisms, including the UNFPA Performance Appraisal and Development ("PAD") system.

## 7. **ALLEGATIONS OF MISCONDUCT**

### 7.1 Obligation to report allegations of Misconduct:

- 7.1.1 Staff members must report allegations of Misconduct to the Director, DOS. This obligation shall be considered fulfilled:

- (a) by a report to DOS;
- (b) by a report to the staff member's Manager. The Manager shall forward the report to the Director, DOS, without delay.

- 7.1.2 Individual independent contractors are expected to report Misconduct to the Director, DOS, or to the applicable Manager.

- 7.1.3 In the event that the complainant believes that the allegation of Misconduct involves the Director, DOS, or any other staff member assigned to DOS, the allegation shall be reported to the Executive Director.

### 7.2 Allegations of Misconduct relating to harassment, sexual harassment and abuse of authority:

- 7.2.1 For the purpose of clarity, it is recalled that allegations of Misconduct in the form of workplace harassment, sexual harassment or abuse of authority, as such terms are defined in the [UNFPA Policies and Procedures Manual, Harassment, Sexual Harassment and](#)



Abuse of Authority, must be submitted in accordance with and subject to the specific requirements established in that document.

7.3 Other sources of allegations of Misconduct:

7.3.1 The Director, DOS, may operate reporting facilities for allegations of Misconduct (for, *inter alia*, internet, telephone and mail based reporting of allegations of Misconduct). A convenient, internet based reporting facility is available at <http://web2.unfpa.org/help/hotline.cfm>.

7.3.2 In addition, the following forms of allegations are receivable: allegations received from third parties, including, but not limited to, contractors, governments, implementing partners or NGOs; allegations received from other entities of the United Nations system; anonymous allegations; and allegations obtained or derived, directly or indirectly, from pro-active Investigations, audits, inspections, evaluations, or from open sources.

7.3.3 A dossier submitted by a third party to UNFPA may be treated as an allegation of Misconduct, as follows:

(a) If, in the opinion of the Director, DOS, the third party dossier is supported by sufficient evidence and the right to due process was respected, the Director, DOS, may endorse the third party dossier without taking further investigative action and transmit it to the Executive Director in accordance with section 12.4.1, accompanied, as appropriate, with additional recommendations issued by the Director, DOS. (This course of action may, in particular, be an option in cases of dossiers issued by oversight or investigation entities of the United Nations).

(b) If, in the opinion of the Director, DOS, the third party dossier requires further investigative activity, including activity to ensure the right to due process, the Director, DOS, shall conduct any further activities, at his or her discretion, in accordance with sections 12.3 through 12.6 of this document.

7.4 Acknowledgement of report of allegations of Misconduct:

7.4.1 Except when an allegation is made anonymously, the individual reporting an allegation will receive an acknowledgement from DOS.

**8. RETALIATION**

8.1 It is recalled that a person who is retaliated against because he or she submitted an allegation of Misconduct or cooperated with a duly authorized fact-finding activity, may seek the protection of the UNFPA Ethics Office in accordance with the provisions of the [UNFPA Policies and Procedures Manual, Protection against Retaliation for Reporting Misconduct or for Cooperating with an Authorized Fact-Finding Activity](#).

**9. SUMMARY OF OVERALL RESPONSIBILITIES**

## 9.1. The Executive Director:

- (a) receives the Investigation Dossier from the Director, DOS;
- (b) imposes Disciplinary Measures for Misconduct;
- (c) imposes reprimands, as applicable.

## 9.2. The Director, DOS:

- (a) receives allegations of Misconduct;
- (b) determines whether a matter warrants Investigation and if so, conducts the Investigation or outsources the matter to an outside investigation entity for Investigation;
- (c) may decide at any time during the Investigation that the matter does not warrant further Investigation and close the case;
- (d) provides audit and related expertise in support of Investigations and any subsequent Disciplinary Process;
- (e) issues the Investigation Dossier.

## 9.3. The Director, DHR:

- (a) imposes administrative leave pending Investigation and the Disciplinary Process, and, at the end of the initial period of administrative leave and as applicable, extends such leave;
- (b) issues the Charges of Misconduct;
- (c) closes the case where there are no or insufficient grounds warranting disciplinary action and, as necessary, re-integrates the staff member;
- (d) may recommend the imposition of Disciplinary Measures and of reprimands.

## 9.4. The Legal Advisor:

- (a) provides legal support and advice, and makes recommendations to the Administration, on matters falling within the scope of this document;

- (b) represents the Executive Director before the United Nations Dispute Tribunal in any matters arising under this document;
- (c) supports the United Nations Office of Legal Affairs in its representation of the Secretary-General before the United Nations Appeals Tribunal;
- (d) may assign outside counsel or counsel from another United Nations entity to represent UNFPA in any matter arising under this document;
- (e) takes the necessary actions for recovery or in connection with referrals to United Nations member states for the enforcement of any criminal accountability of staff members.

9.5. UNFPA staff members:

- (a) shall report allegations of Misconduct to the Director, DOS, or as otherwise authorized in this document;
- (b) if so requested by the Director, DOS, conduct or assist in the Investigation and report the results to the Director, DOS, in accordance with the standards established herein and with such additional standards or requirements imposed by the Director, DOS.

9.6 UNFPA Managers:

- (a) following a recommendation by the Director, DHR, consider issuing a reprimand, and inform the Director, DHR, of the action taken. (For the sake of clarity, it is re-emphasized that Managers do not have the authority to impose any Disciplinary Measure or to place a staff member on administrative leave pending Investigation or the Disciplinary Process.)

**10. RIGHTS OF SUBJECTS DURING INVESTIGATION, INTERLOCUTORY STAGE AND DISCIPLINARY PROCESS**

10.1 An Investigation Subject has the right to due process.

10.2 Due process during Investigation:

10.2.1 The scope of a Subject's right to due process during Investigation is as follows, provided his or her whereabouts are known and he or she can be contacted:

- (a) The Investigation Subject shall be informed in writing about the scope of the allegation(s). Such information shall be furnished to the Subject prior to the

initiation of any Subject Interview;

- (b) The Investigation Subject shall be required to participate in an Interview and shall be afforded the opportunity to state his or her account of the matter;
- (c) Should an allegation of Misconduct arise or be received during an ongoing Investigation that relates to a witness in the ongoing Investigation, or should evidence be gathered which, *prima facie*, incriminates an Investigation witness, then the person concerned shall be informed in writing of his or her new status as an Investigation Subject as well as of the scope of the allegation(s). In the event that the person in question was previously interviewed as a witness, he or she shall be required to participate in a new Interview in his or her capacity as an Investigation Subject and shall be afforded the opportunity to state his or her account of the matter;
- (d) If, as a result of additional evidence gathered during the Investigation, new allegations arise against the Investigation Subject, the Subject shall be informed in writing prior to any further Interview of the additional scope of the allegations. Thereafter, he or she shall be required to participate in a new Interview and shall be afforded the opportunity to state his or her account of the matter;
- (e) The Investigation Subject shall have a reasonable opportunity to respond to the allegation(s) in any Subject Interview. This requires that the Subject shall be informed of the scope of the allegation(s) with sufficient detail so as to permit meaningful responses to the allegation(s);
- (f) The Investigation Subject has the right to offer exculpatory evidence. He or she shall do so on a timely and expeditious basis during the Investigation. All evidence offered by the Subject shall be given reasonable consideration by the Director, DOS. In the event that an Investigation Subject refuses or fails to participate in the Investigation, including in any Interview, the matter shall nevertheless proceed.

### 10.3 Due process during the Interlocutory Stage:

10.3.1 The Investigation Subject shall be given an opportunity to provide comments on the Investigation Dossier within a reasonable time frame. This requires disclosure of the relevant sections of the Investigation Dossier.

### 10.4 Due process during the Disciplinary Process:

10.4.1 During the Disciplinary Process, the Subject has the right, in accordance with Staff Rule 10.3, to:

- (a) provide a written response to the Charges of Misconduct within a reasonable time

frame;

- (b) know the evidence on which the Charges are based and to present countervailing evidence; and
- (c) be advised of his or her right to the assistance of counsel as his/her representative, either from OSLA or from outside counsel at his or her expense.

## **11. OBLIGATIONS OF ALL STAFF MEMBERS DURING INVESTIGATION, INTERLOCUTORY STAGE AND DISCIPLINARY PROCESS**

11.1 The obligations of all UNFPA staff members, including but not limited to Subjects of Investigation, include:

- (a) to cooperate with any Investigation, answer questions, provide documentary evidence in their possession or which should reasonably be expected to be in their possession, and to assist the Director, DOS, as required, in accordance with Staff Regulation 1.2(r);
- (b) not to interfere with any Investigation, and, in particular, not to withhold, destroy or tamper with evidence, and not to influence or intimidate the complainant and/or potential witnesses;
- (c) to treat matters relating to allegations of Misconduct confidentially. This includes that information concerning allegations of Misconduct, Investigation and any subsequent Disciplinary Process shall be shared on a “need-to-know” basis;
- (d) not to condition their cooperation in Investigations on the confidential treatment of their identity.

## **12. INVESTIGATION**

12.1 Phases of Investigations:

12.1.1 The Investigation may comprise two phases: a preliminary assessment phase and an Investigation phase. In all instances, the Director, DOS, retains the prerogative to determine when circumstances warrant a preliminary assessment and/or an Investigation phase.

12.2 The preliminary assessment phase:

12.2.1 The purpose of preliminary assessment is to:

- (a) record and establish the basic facts;

- (b) preserve or secure basic evidence, whether written or electronic (such as checks, invoices, written statements, or other relevant documents, records or data) that might otherwise be lost and that may be necessary for the determination as to whether an Investigation is justified;
- (c) identify any inconsistencies or outstanding questions; and
- (d) analyze the evidence in order to determine whether further investigative activities into the reported allegations of Misconduct are justified.

12.2.2 Managers should, on their own initiative, take the necessary steps to safeguard and preserve relevant documentation and similar evidence, or otherwise do so as requested by the Director, DOS, and provide such evidence to the Director, DOS, without delay.

12.2.3 Where, in the view of the Director, DOS, the information obtained during preliminary assessment (i) does not give rise to a reasonable indication that Misconduct occurred, or (ii) would not otherwise merit the conduct of an Investigation, the Director, DOS, may close the case and inform the complainant accordingly.

12.2.4 Should the information obtained during preliminary assessment indicate that the Director, DOS, or any other staff member assigned to DOS may have committed Misconduct, a summary of the initial research shall be addressed to the Executive Director.

### 12.3 The Investigation phase:

12.3.1 The purpose of the Investigation phase is to seek and collect evidence capable of ascertaining facts to permit a determination whether or not Misconduct has occurred.

12.3.2 The Director, DOS, may conduct the Investigation or may, at his or her discretion, outsource the Investigation or any part thereof to an appropriate outside investigation entity for Investigation.

12.3.3 Investigations conducted in cooperation between DOS and an outside investigation entity shall follow such procedures as agreed upon between the Director, DOS, and the Head of the outside investigation entity.

### 12.3.4 Procedures for Investigations conducted by UNFPA:

- (a) The procedures described hereunder shall apply to Investigations conducted by UNFPA, without prejudice to any Investigation Subject's right to due process of law (section 10).

- (b) The Director, DOS, may issue more detailed Investigation guidelines.

*Access to evidence:*

- (c) Without any need for prior clearance, the Director, DOS, has full, free and unrestricted access to any and all movable and immovable property of UNFPA or property in the possession of UNFPA, including but not limited to: premises, assets, offices, work space, physical properties, vehicles, servers, desk top and portable computers, laptops and tablets, hard drives, movable data storage devices, goods, equipment, reproductive health and other supplies and commodities, records, files, file areas, electronic or paper based documents, electronic and, in particular, all Atlas data and data records, intellectual property, email, facsimile, letters, memoranda, land based or cellular telephones, telephone records, including calling and billing records (collectively “UNFPA property”); and full, free and unrestricted access to all UNFPA personnel. The Director, DOS, may request the support or assistance of any staff member or independent contractor in gaining access to UNFPA property.
- (d) A corollary of this authority is the duty of all personnel to collaborate with duly authorized Investigations, which may include, *inter alia*, having to provide information orally or in writing to the Director, DOS, or to grant, provide or facilitate access for the Director, DOS, to any UNFPA property.
- (e) The Director, DOS, shall ensure that UNFPA property that is privileged shall enjoy adequate protection as required by the particular circumstances underlying each matter.

*Evidence subject to collection by DOS:*

- (f) The Director, DOS, may collect all necessary evidence, including:

*Testimonial evidence:*

- (i) Witnesses and Subjects may be required to provide information to the Director, DOS, during the course of Interviews. Interviews shall be recorded by the Director, DOS, in written form (either summary or verbatim). Interviews may be audio or video recorded, at the discretion of the Director, DOS. The Interview participant, whether witness or Subject, shall be offered an opportunity to review the record of his or her Interview and to confirm that the Interview record is an accurate reflection of what was said or written down at the Interview, by affixing his or her signature on the interview record, by sending an email confirmation of its accuracy, or by other suitable means. If the Interview participant refuses to sign the record or refuses to confirm its accuracy by other means, the Director, DOS, shall reflect such refusal in the written document or in a supplementary document thereto.

*Documentary evidence:*

- (ii) The Director, DOS, may collect and obtain any documentary evidence. UNFPA personnel shall provide any documentary evidence, in original form or as copies, or access thereto without delay and as requested by the Director, DOS.

*Physical evidence:*

- (iii) The Director, DOS, may collect and obtain any physical evidence. UNFPA personnel shall provide any physical evidence to the Director, DOS, without delay.

*Electronic evidence:*

- (iv) The Director, DOS, may collect any electronic evidence. Electronic evidence exists primarily in a digital form, although electronic evidence may also take other forms. The term encompasses, *inter alia*, e-mail, data on hard drives or electronic memory on any device. It also may include video and/or audio recordings, whether digital or analogue.
- (v) UNFPA retains all rights in information and communication technologies (“**ICT**”) resources and ICT data, and in any work product of an authorized user using ICT resources and ICT data. All use of ICT resources and ICT data may be subject to monitoring and Investigation. The Director, DOS, has full and unrestricted access to all ICT resources and ICT data, including data files, word processing, e-mail messages, LAN records, Intranet/Internet access records, computer hardware and software, telephone services and any other data accessible to or generated by users. The Director, DOS, may authorize others, *i.e.* staff members or independent contractors providing services to UNFPA, to access ICT resources and ICT data and/or may request them to provide technical support services for that purpose. Access to file servers and/or shared drives or other types of shared resources shall be provided without any particular formality. Access to ICT resources or ICT data which requires seizure of equipment assigned to an individual requires written notice, which may be delivered at the time of the seizure if the staff member is present or affixed to the equipment seized or to the piece of office furniture where it was installed or stored, if the individual is not present at the time of the seizure. In cases such as the latter, a supervisory official, UNFPA or UNDSS security officer or similarly suitable person shall be present.

*Forensic evidence:*

- (vi) The Director, DOS, may collect any forensic evidence. Forensic evidence is a



general category of evidence that could include fingerprints, deoxyribonucleic acid (“DNA”) trace material and scientific analysis of items to establish certain properties or sources. It has, therefore, an element of analysis or interpretation that requires special handling and explanation, which physical and electronic evidence may not have.

*Storage of evidence:*

- (g) Evidence collected during Investigation shall be stored securely and shall be incorporated into an inventory of evidence. To preserve the integrity of evidence, the inventory shall be managed in a manner that can be used for authentication and attribution through a chain of custody. “Chain of custody” means the paper trail showing the collection, custody, control, transfer, analysis, and disposition of a given piece of evidence.

12.3.5 Procedures of outside Investigation entities:

- (a) Investigations by outside investigation entities to which DOS has outsourced the conduct of an Investigation will be carried out in accordance with their own regulations, guidelines, policies, procedures and practices, to the extent they are generally similar to those described in this document. Investigations conducted by an outside investigation entity shall respect the right to due process.
- (b) The outside investigation entity shall issue an Investigation Dossier in such form and format as agreed between DOS and the outside Investigation entity.

12.4 Investigation Dossier:

- 12.4.1 The Director, DOS, shall issue the Investigation Dossier to the Executive Director.

12.5 Case closure:

- 12.5.1 If, in the view of the Director, DOS, the information obtained during Investigation (i) does not give rise to a reasonable conclusion that Misconduct occurred or (ii) would not otherwise merit the continuation of an ongoing Investigation, the Director, DOS, may close the case, recording the reasons in writing, and inform the complainant accordingly.

12.6 Notifying the complainant within six months:

- 12.6.1 In accordance with the terms of the [UNFPA Policies and Procedures Manual, Protection against Retaliation for Reporting Misconduct or for Cooperating with an Authorized Fact-Finding Activity](#), paragraph 7(b)(iii), the Organization is required to inform the complainant of the status of the matter within six months. Accordingly, the Director, DOS, will notify the complainant within such time frame, provided that the individual

disclosed his or her identity and accurately indicated the way he or she can be contacted. Such notification is required only with regard to the status of the matter. There exists, therefore, no obligation on the part of DOS to disclose the details of any Investigation.

- 12.7 Nothing in this section 12 shall preclude the right of the Director, DOS, to issue Investigation Dossiers, reports or notes to the Administration containing management or performance related observations at any time if such observations, in his or her view, are warranted.

### **13. INTERLOCUTORY STAGE**

- 13.1 The Executive Director or his or her designee may refer the matter to the Director, DHR, with copy to the Legal Adviser.
- 13.2 The Director, DHR, shall communicate a copy of the relevant parts of the Investigation Dossier to the staff member who, in light of the available evidence, appears to be responsible for the alleged Misconduct, and invite him or her to submit comments on the factual findings described in the Investigation Dossier, in writing and within a reasonable period of time, if he or she desires to do so. If the staff member does not provide comments within the time limit, the matter shall nevertheless proceed. Exceptionally, the Director, DHR, may grant a request for an extension of the period of time to provide comments.
- 13.3 As necessary, the Director, DHR, may request clarifications or additional evidence from the Director, DOS. The Director, DOS, will accommodate such a request as he or she deems appropriate.

### **14. ADMINISTRATIVE LEAVE PENDING INVESTIGATION AND THE DISCIPLINARY PROCESS**

- 14.1 The Director, DHR, is delegated the authority to place a staff member on administrative leave pending or during Investigation and/or the Disciplinary Process, in accordance with the provisions of Staff Rule 10.4. Examples of cases in which such administrative leave may be contemplated are as follows:
- (a) The conduct in question and/or the continued presence of the staff member on official premises poses or may pose a security risk or a threat to himself, other personnel of the Organization or to the Organization's interests;
  - (b) There is a risk of evidence being tampered with, concealed or destroyed, or witnesses intimidated (including, but not limited to a risk of retaliation), or any other type of interference with the process;
  - (c) There is a risk of a repetition or continuation of the alleged act(s) of Misconduct; or

- (d) The staff member 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.
- 14.2 As a general principle, administrative leave pending or during Investigation and/or the Disciplinary Process may be contemplated only if redeployment or temporary reassignment of the staff member is not feasible, reasonable or desirable under the circumstances.
- 14.3 The staff member shall be informed in writing of the reason for the administrative leave, of its probable duration and of its conditions, and shall immediately surrender his/her grounds pass and any UNFPA property or assets he or she may have, when requested.
- 14.4 Administrative leave pending Investigation and the Disciplinary Process is normally with pay unless exceptional circumstances warrant administrative leave without pay. In either case, the placement on administrative leave shall be without prejudice to the staff member's rights, shall not constitute a Disciplinary Measure, and should not, so far as practicable, exceed three months. If the reasons for the administrative leave continue to apply or if new or further reasons for administrative leave have emerged, the Director, DHR, may extend the administrative leave for a further defined period.
- 14.5 A staff member on administrative leave pending Investigation or the Disciplinary Process shall not be allowed to enter the Organization's premises without first obtaining written permission from the Director, DHR. Such entry shall be under escort and in connection with the staff member's defense in the case or other valid reason warranting such entrance. The staff member's access to the Organization's electronic applications will be limited or suspended as appropriate.
- 14.6 Unless the staff member in question is reassigned or redeployed, he or she shall not normally be precluded from remaining at, or returning to, the duty station. Should the staff member placed on administrative leave request or, under exceptional circumstances, be requested to leave or not return to the duty station, he or she shall provide contact details where he or she may be reached.
- 14.7 The Director, DOS, shall be informed of staff members placed on administrative leave.
- 14.8 A staff member who was placed on administrative leave pending Investigation and the Disciplinary Process may challenge the decision to place him or her on such leave in accordance with Chapter XI of the Staff Rules.

## **15. PROCEDURES FOLLOWING INVESTIGATION AND INTERLOCUTORY STAGE**

- 15.1 On the basis of a review of the Investigation Dossier and the staff member's written

comments, if any, as well as any clarifications or additional evidence or the absence thereof, the Director, DHR, shall take any of the following actions:

15.2 Disciplinary Process:

15.2.1 If the Director, DHR, is satisfied that the facts indicate that Misconduct occurred, he or she shall:

- (a) issue Charges of Misconduct to the staff member (which at his or her request may be translated into the working language of his or her duty station);
- (b) give the staff member a specified, reasonable period of time to answer the Charges of Misconduct and produce any countervailing evidence;
- (c) notify the staff member of his or her right to counsel from OSLA or from outside counsel at his or her own expense to assist in his or her defense and to represent him or her, and inform him or her on the contact details of OSLA;
- (d) inform the releasing organization if he or she issues Charges of Misconduct to a UNFPA staff member on inter-organization exchange or secondment to UNFPA.

15.3 No grounds warranting disciplinary action:

15.3.1 If the Director, DHR, is satisfied that there are no or insufficient grounds warranting disciplinary action, he or she:

- (a) shall notify the staff member and the concerned Manager or the executive head of the organization to which the staff member is assigned as a result of inter-organization exchange, secondment or loan, in writing;
- (b) shall cancel any administrative leave and integrate the staff member;
- (c) may, if the conduct depicted in the Investigation Dossier and the circumstances of the case demonstrate a departure from the standards of performance and/or poor judgment on the part of the staff member, recommend to issue a reprimand and/or use or refer the Investigation Dossier, or extracts therefrom, for performance related action (which may include requiring the staff member to undertake specific training to improve or further develop certain skill);
- (d) may request that documents related to the Investigation be expunged from the staff member's official personnel file, except those referred to in sub-paragraph (c).

15.4 Resubmitting the Investigation Dossier for further investigative activity:

15.4.1 If the Director, DHR, considers that the staff member's reply to the Charges of Misconduct and/or any evidence submitted by the staff member merit further investigative activity, he or she may refer the matter to the Director, DOS, requesting clarifications or further inquiries. The Director, DOS, will accommodate such a request as he or she deems appropriate.

## **16. TIMEFRAME**

16.1 To the extent possible, and depending on the complexity of the matter, the period between the date on which the staff member was informed that he or she is an Investigation Subject and the date on which he or she is either issued Charges of Misconduct or informed that the case is closed, should not under normal circumstances exceed six months.

## **17. FINAL DECISION**

17.1 If the Director, DHR, following the staff member's reply, if any, to the Charges of Misconduct, considers that the staff member committed Misconduct, he or she may recommend to the Executive Director that one or more Disciplinary Measures proportionate to the nature and gravity of the staff member's Misconduct be imposed on him or her.

17.2 The authority to impose a Disciplinary Measure rests with the Executive Director. In accordance with Staff Rule 10.2, the Executive Director may impose on the staff member one or more of the following Disciplinary Measures, which shall be proportionate to the nature and gravity of the staff member's Misconduct:

- (a) Written censure;
- (b) Loss of one or more steps in grade;
- (c) Deferment, for a specified period, of eligibility for within-grade 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.

- 17.3 In accordance with Staff Rule 10.2(b), written or oral reprimand, recovery of moneys owed to the organization, and administrative leave pending Investigation or the Disciplinary Process, are not considered to be Disciplinary Measures.
- 17.4 In the case of a staff member on inter-organization exchange, secondment or loan from UNFPA to a receiving organization, or from a releasing organization to UNFPA, the executive head of the releasing or receiving organization, as the case may be, shall be informed of the imposition of the disciplinary measure.
- 17.5 If the Director, DHR, is satisfied, on the basis of the staff member's response to the Charges of Misconduct, that there are no or insufficient grounds warranting disciplinary action, he or she shall proceed in accordance with section 15.3.

## **18. CONTESTING DISCIPLINARY MEASURES**

- 18.1 According to Staff Rule 11.4, a staff member who wishes to formally contest an administrative decision taken to impose a Disciplinary or non-disciplinary Measure pursuant to Staff Rule 10.2 following the completion of a Disciplinary Process shall submit an application alleging non-compliance with his or her contract of employment or terms of appointment to the United Nations Dispute Tribunal under conditions as further prescribed in its statute and rules (see Staff Regulation 11.1 and Chapter XI of the Staff Rules).
- 18.2 The statute and rules of procedure of the United Nations Dispute Tribunal are available on the website of the United Nations Office of Administration of Justice at <http://www.un.org/en/oaj/>.

## **19. MISCELLANEOUS**

### **19.1 Organization's responsibility:**

- 19.1.1 In enforcing this policy, UNFPA shall act consistently and undertake the investigative and disciplinary action required without regard to the Subject's position, title or relationship with UNFPA.

### **19.2 Staff member's counsel:**

- 19.2.1 A staff member who wishes to obtain the assistance of counsel may request further information from OSLA. Information about and contact details of OSLA are available at <http://www.un.org/en/oaj/legalassist/index.shtml>.

19.2.2 If a staff member chooses to secure counsel from outside OSLA such counsel will be at his or her own expense (Staff Rule 10.3(a)).

19.3 Admission of responsibility:

19.3.1 When determining the proportionality of any Disciplinary Measure to be imposed, due consideration shall be given to an admission of responsibility for Misconduct made by a staff member so long as such admission is made prior to the expiration of the period of time to reply to the Charges of Misconduct.

19.4 Imposition of Agreed Disciplinary Measure:

19.4.1 The Executive Director may impose an Agreed Disciplinary Measure. The agreement between the staff member and the Executive Director on the imposition of an Agreed Disciplinary Measure shall be made in writing and contain an account of the staff member's conduct.

19.4.2 In the interest of economy of process, as part of the agreement on the imposition of an Agreed Disciplinary Measure, the staff member may, in writing, waive his or her right to process under Staff Rule 10.3(a), including: (i) as applicable, the completion of any unfinished Investigation; (ii) to be notified, in writing, of the Charges of Misconduct; and (iii) to have an opportunity to respond to those Charges with the assistance of counsel in his or her defense through OSLA, or from outside counsel at his or her own expense.

19.5 Responsibility for/ reimbursement of financial loss:

19.5.1 In accordance with 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 Executive Director to constitute Misconduct, such staff member may be required to reimburse UNFPA or the United Nations either partially or in full for any financial loss suffered by UNFPA or the United Nations as a result of his or her actions, if such actions are determined to be willful, reckless, or grossly negligent.

19.5.2 Pursuant to that Rule, UNFPA will pursue recovery for any financial loss following a determination that a staff member's willful, reckless, or grossly negligent action constituted Misconduct. Such recovery action does not constitute and is distinct from a Disciplinary Measure.

19.6 Recovery; referral to member states:

19.6.1 Any decision taken or measure imposed under this document is without prejudice to the Organization's right to pursue legal action in outside courts or tribunals for recovery, or to refer a matter to a member state for consideration of a criminal Investigation or

prosecution. The Legal Adviser will coordinate all necessary activity with the United Nations Office of Legal Affairs as this involves, *inter alia*, issues relating to the privileges and immunities of the United Nations. Staff members shall not report any official matter to local authorities except in case of compelling emergency or danger, after which the matter shall be immediately reported to the Director, DOS.

19.7 Resignation submitted during Investigation or Disciplinary Process:

19.7.1 Should the Investigation Subject or a staff member against whom a Disciplinary Process has been initiated submit his or her resignation before the Organization has had the opportunity to determine whether his or her actions constitute Misconduct, UNFPA may, in accordance with the UNFPA Policies and Procedures Manual, Separation, decide to enforce the notice period established in Staff Rule 9.2(b) and may require the resignation to be submitted in person in order to be acceptable, as provided in Staff Rule 9.2(c). Moreover, should there be reason to believe that the conduct of the staff member resulted in financial loss for the Organization, any payment due to the staff member in connection with his or her resignation may be withheld until a proper determination has been made, provided that it does not exceed six months from the staff member's last day on duty.

19.8 Future employment:

19.8.1 Staff members who have been separated from service or dismissed for Misconduct may not be appointed as staff members at a later time or retained as independent contractors. This also applies to persons who were separated or dismissed for Misconduct by another organization, agency or subsidiary organ of the United Nations system.

19.9 Departures:

19.9.1 Departures from the terms of this document are permissible provided such departures are necessary for the fair and expeditious administration of justice, without prejudice to the staff member's right to due process.

19.10 Publication of Disciplinary Measures:

19.10.1 The Director, DHR, shall from time to time publish circulars of cases of Misconduct that have been investigated and have led to the imposition of a Disciplinary Measure.

19.10.2 The Director, DOS, will include in its activity report to the Executive Board information on the disposition of Investigation cases.