

UNRWA INVESTIGATION POLICY

DIOS TECHNICAL INSTRUCTION 01/2021, Effective 14 April 2021

investigations division

I. Introduction

1. This Policy provides the framework and establishes governing principles for the investigations of allegations of misconduct by UNRWA personnel. It is consistent with Organization Directive No. 14, the Charter of the Department of Internal Oversight Services (DIOS), and has been prepared in accordance with generally accepted investigation standards applicable to administrative investigations, as reflected in the Uniform Principles and Guidelines for Investigations (2nd edition).
2. The principles in this Policy outline and articulate both the rights and obligations of all UNRWA personnel in the conduct of misconduct investigations, including the rights and obligations of subjects of investigations. In case of a conflict between this Policy and UNRWA Staff Regulations, Staff Rules, Personnel Directives or a General Staff Circular, these latter instruments should prevail.
3. This Policy covers all misconduct investigations duly authorized by the Agency, whether conducted by DIOS investigators or by other UNRWA personnel specifically requested and authorized to conduct them, as well as to any external investigators retained by the Agency. The users of the Policy are referred to the UNRWA Guide to Conducting Investigations for practical guidance regarding some of the matters in this Policy.

II. Scope of Application

4. Misconduct at UNRWA is defined similarly as in other United Nations Organizations and Agencies as a failure by personnel to comply with the required standards of conduct.¹ These include, but are not limited to, fraud; corruption; theft; abuse of privileges and immunities; harassment; sexual harassment; abuse of authority/power; assault; sexual exploitation and abuse; violation of humanitarian principles, including neutrality; or failure to observe regulations, rules and policies. This Policy does not apply to managerial issues such as performance management issues and performance-related disagreements, to personal grievances arising from administrative decisions taken within the proper discretion of supervisors and management, or to complaints made by beneficiaries regarding access to services.

¹ GSC 05/2007 ("Misconduct includes any failure to comply with obligations under the Charter of the United Nations, UNRWA Staff Regulations and Staff Rules or other relevant administrative issuances, UNRWA Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service, including any request or instruction by any staff member to violate any of these rules or standards.")

5. An administrative investigation is a fact-finding analytical process designed to gather information to determine whether any misconduct occurred, and, if so, the persons responsible. In other words, it is an administrative process that concerns itself with the failure to observe the standards of conduct expected of international civil servants and serves as a basis for disciplinary or administrative proceedings. It differs from a criminal investigation, which serves as a basis for criminal prosecution, which is not within the Agency's scope of authority. Therefore, different standards and procedures, including different standards of proof, shall apply to the conduct of administrative investigations.
6. The decision whether to take any action against any personnel (i.e., the disciplinary process) is distinct process from the investigative one, and does not fall, therefore, within the purview of this Policy.

III. Investigation Process

A. Intake

7. Upon any staff member or personnel receiving an allegation of misconduct, they should forward the allegation and contact details of any complainant to the Central Intake Unit (CIU) of DIOS to ensure the matter is appropriately and consistently received and recorded by the Agency.
8. Before the opening of any formal investigation into an allegation of misconduct, the allegation must be assessed by the CIU or designate thereof, to ensure that the alleged behavior, if established, would constitute misconduct. All allegations, following CIU assessment, shall be reviewed by the relevant Intake Committee that then recommends to the authorized decision-maker a course of action.
9. The CIU conducts pre investigation preliminary assessments, the scope of these assessments is limited to securing any evidence that is at risk of loss and gathering sufficient evidence for the Intake Committee to make an informed decision to recommend the matter for investigation or for an alternative course of action.
10. In cases requiring immediate action without the chance for CIU assessment or the Intake Committee to meet, the decision-maker may initiate an investigation without consulting the Intake Committee, although this decision should be presented to the following session of the Intake Committee, via the CIU, for information and transparency.
11. For any new allegation, the recommendation by the Intake Committee, to either investigate or otherwise decline to investigate, based on a preliminary assessment by the CIU, should be as expedient and where possible within 35 days of the receipt of the initial complaint by the first Agency official it was reported to. The authorized decision-maker should endeavor to provide his/her response and/or comments within five days of receipt of the recommendation from the Intake Committee. Thus, a decision for every case should be made as soon as possible, preferably within 40 days of the receipt of any allegation by the Agency.
12. At the intake stage, the decision for action will be one of the following:
 - (i) Investigate: Where the facts alleged, if proved, would constitute misconduct and if the allegations are credible, material, and verifiable.

- (ii) Decline: The case is declined on the basis that the complaint does not relate to an allegation of misconduct or could amount to misconduct but is considered of a minor nature that could be handled via other resolution mechanisms such as, informal management intervention or administrative actions that are not disciplinary measures. A complaint may also be declined because there is insufficient information to take any action or does not relate to a known staff member or Agency entity.
- (iii) Record for Information: Where the facts alleged may constitute misconduct, but following preliminary assessment, the complaint lacks sufficient detail and/or investigative steps could not be pursued. The receipt of additional information at a later stage may result in the re-opening of such allegations, in which case the Intake Committee may recommend a different course of action.
- (iv) Suspend: Where there is an existing ongoing investigation or other exceptional circumstances where the conduct of an immediate investigation or any other immediate intake decision may not be in the best interests of the Agency. Any such suspension decision should be revisited regularly by the Intake Committee to determine whether another response option is now suitable. No case should be suspended for more than six (6) months, absent of exceptional circumstances such as the criminal detention of a staff member.
- (v) Refer to DIOS: An Intake Committee of a Field Office may also refer a matter that it feels should be investigated by DIOS because of its sensitivity, the gravity of the alleged offence, or because senior staff are involved. The DIOS Intake Committee will then review the matter and decide to investigate the matter or refer it back to the Field Office.

B. Formal Investigation

13. The investigation phase is the collection of all evidence available, both inculpatory and exculpatory, which will either substantiate or refute the allegation under investigation. The investigation findings and conclusions are based solely on the facts gathered and the evidence collected, and reasonable inferences to be derived therefrom. All relevant evidence must be presented in a report of investigation, along with the analysis upon which the findings are made and conclusions reached, however, the investigation report shall not make any legal determination about the established facts.
14. All investigations should be completed as quickly as possible and whenever possible within six months of when the initial complaint was received by the first Agency official it was reported to. In allocating existing resources to the conduct of investigations, priority should be given to those allegations where the misconduct is the most serious, taking into account financial, security and/or reputational risks to the Agency.

C. Reports of Investigation

15. A substantiated report of investigation is produced when the facts alleged, following investigation, indicate that the subject(s) conduct may constitute misconduct, based on a preponderance of evidence. The appropriate Agency officials (legal and management), in accordance with the relevant policy including PD 10 (Disciplinary measures and procedures), subsequently make the determination as to whether the facts constitute misconduct and whether the conclusions of the investigation is established

based on preponderance of evidence, or demonstrate 'clear and convincing evidence' in case of potential sanction of dismissal. At the disciplinary stage the subject will be afforded a summary of the allegations against them and invited to an opportunity to reply.

16. Reports which substantiate allegations of possible misconduct shall be submitted to the Agency official with authority to initiate disciplinary proceedings against the relevant subject. If appropriate, the report, including annexes such as witness statements, audio recordings of interviews and/or transcripts, should also be uploaded on the Central Case Management System. The CIU should be notified of all completed cases for recording purposes, and so it may raise any investigation matters with the concerned Intake Committee.
17. All investigation reports are strictly confidential, their contents may not be disclosed further, other than to comply with the disciplinary process or before UN administrative tribunals. Disclosure under any other circumstances is permitted only with the approval of either the Director, DIOS, or the Field Office Director in case of investigations conducted at the field level.
18. In cases where the investigation substantiates facts which are likely to constitute a crime, the Director, DIOS, shall consider recommending to the Commissioner-General to refer the matter, in consultation with the Department of Legal Affairs, to the competent national law enforcement authorities for criminal investigation and, as appropriate, prosecution.

D. Closure Reports

19. Reports which do not substantiate the allegation shall be submitted to the person who authorized the investigation and if duly authorized for closure, uploaded on the Case Management System for potential DIOS review. All parties who were informed of the identity of the subject of the investigation, e.g. witnesses, complainants who are also victims and any subjects who had been notified of their status as a subject, should usually be informed that the allegation was not substantiated.

E. Monitoring and Reporting

20. DIOS will prepare quarterly reports on the status of investigations which it will share with the Advisory Committee on Internal Oversight (ACIO), based on the information contained in the case management database and information provided by Field Offices. Quarterly reports will also be shared with the Commissioner-General, the Deputy Commissioner-General and all Management Committee members and will contain, at a minimum: (i) statistics on allegation received during the quarter; (ii) statistics to present new cases, and closed cases during the quarter, including those where disciplinary action was recommended; (iii) statistics to present currently open cases; and (iv) the distribution of cases by Field Offices, category, and aging.
21. DIOS will bi-annually enquire with the relevant legal departments and human resources personnel about the determination and disposal status of all Agency Misconduct cases. A summary of outstanding DIOS cases will be provided in the quarterly report.

IV. Governing Principles

A. Rights and Obligations of all UNRWA Personnel

22. All authorized investigators under paragraph 3 of this Policy shall have unrestricted, unlimited, direct and prompt access to all UNRWA records, property, officials, staff and other personnel, as well as all UNRWA premises, with the exception of: (i) medical records held by the Health Department; (ii) records held by the Ethics office; (iii) records held by personnel legal assistance officials of UNRWA, which generally require prior written consent from the concerned staff member or other personnel. Access to electronic information such as email correspondence and information stored on UNRWA computers and other UNRWA electronic devices should be subject to approval by the Director, DIOS, upon request by the Chief of Investigations Division, DIOS.
23. UNRWA personnel have a duty to cooperate unreservedly with any investigation activities, including but not limited to making themselves available for interviews and responding promptly and fully to any requests for information. Failure to cooperate with an investigation, or attempt to impede, obstruct, or improperly influence an investigation, may constitute misconduct, and could lead to disciplinary action. Personnel are protected from any retaliation for having cooperated with an investigation, in accordance with the Agency's regulatory framework.
24. All UNRWA personnel who become aware of an investigation following a request for information, records or an interview are obligated to keep the contents of the interview and/or the request for information confidential, including from their supervisors, who may be informed only of the need for the individual to attend an interview. Failure to do so may constitute misconduct and lead to disciplinary action.
25. Investigators must also keep information related to an investigation confidential, and such information can only be used in making findings and reaching conclusions in the context of the investigation. In particular, the initial source of a report of misconduct shall not be divulged, except for cases where failure to provide this information will make it impossible for the subject to fully respond to the allegations (e.g., in some cases of harassment, sexual harassment or abuse of power/authority). The investigators should take necessary steps to respect the choice of complainants or witnesses to remain anonymous, .The investigators shall also take into account any concerns expressed by witnesses/complainants regarding the information they provide, and may not disclose the identity of any witnesses if the circumstances warrant it, bearing in mind particular sensitivities with respect to sex, sexual orientation, gender identity, culture, age, disability, legal status and other individual factors that may lead to increased vulnerability.
26. Investigators shall inform the complainant and/or relevant witnesses of the possibility that their identity could become known during the investigation and may also be disclosed post-investigation by officials involved in the disciplinary process, or at the request of the UNRWA Dispute Tribunal, to fulfil the due process rights of a subject. In this regard, investigators shall not guarantee that the identity of a complainant and/or relevant witnesses will remain confidential.
27. All witness interviews must be recorded either in the form of a statement signed by the witness or through an audio or video recording, in which case either a signed statement may be prepared, or a

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summary or transcript of the interview may serve *in lieu* of a signed statement. All interviews with subjects, or interviews with complainants in cases of harassment, retaliation, sexual harassment, or abuse of power/authority should be audio or video recorded.

B. Rights and Obligations of Complainants

28. UNRWA personnel are protected from retaliation for reporting, in good faith, any activity that may constitute misconduct. However, deliberately making false allegations, or providing information that is known to be false, or that recklessly disregards the accuracy of the information may constitute misconduct and lead to disciplinary action.
29. Complainants who are also victims of the reported misconduct, and victims who are not complainants (e.g., victims of harassment, sexual harassment, sexual exploitation and abuse, assault, or theft) have the right to be periodically informed of the status of the investigation of their complaint. They shall also be informed of the outcome of the investigation, and whether the allegation was substantiated. Where the allegations are not substantiated, complainants who are also victims should be provided sufficient information that would reasonably allow them to make an informed decision as to whether to contest the decision. Complainants who are not victims of the reported misconduct, but who report misconduct based on their obligation to do so, have no formal right to be informed of the outcome of the investigation.
30. Vulnerable complainants and victims may request to have a third-party observer present during their interviews; or, for example, child witnesses should have a parent or a legal guardian present during their interview. The observer must undertake, prior to the interview, and confirm on the audio or video recording wherever utilized, not to disclose the contents of the interview. The observer must be available at the time scheduled for the interview and should not be connected to the investigation. The third-party observer may only provide support to the complainant, he/she shall not interfere with the interview, and may be asked to leave by the investigator if the integrity of the interview is being jeopardized by his/her actions.

C. Rights and Obligations of Subjects of Investigations

31. The subject of investigation shall be given a full and fair opportunity to respond to the allegations against him/her.
32. A fair summary of the evidence collected during the investigation, especially key inculpatory evidence, shall be relayed to the subject, during his/her interview, for him/her to provide his/her comments/response (subject to paragraph 25). The interview shall be conducted in the language preferred by the subject (Arabic or English), and audio or video-recorded, with a copy of the transcript of the interview made available to the subject if such a transcript has been prepared or a copy of the audio/video recording if practical. The subject may also agree to a summary statement of the interview being prepared for his/her review and signature once he/she agrees that it accurately summarizes what was said in the interview.
33. Prior to the interview, the investigator shall notify the subject of the allegations against him/her, generally describing the facts that are alleged to have occurred and the provisions of the regulatory

framework that the subject is alleged to have violated. The notice should also include the rights and obligations of the subject of an investigation (in addition to their obligations as a staff member) as specified in this policy, in summary:

- As personnel, the subject must unreservedly comply with the investigation including making themselves available for interview, this includes providing the investigators with truthful information.
 - As personnel, they have a duty to maintain the confidentiality of the investigation.
 - All staff are entitled to protection from retaliation for cooperating with an investigation, and the subject should refrain from actions that may be or perceived to be retaliatory toward any party involved in the investigation.
 - The notice referred to in paragraph 33 shall explain who may accompany the subject to their interview (see paragraph 34).
 - The subject has a chance to volunteer information, or witness details, which they believe may assist the investigation, and may do so for up to ten days after their interview for consideration within the investigation report.
 - The subject may review and comment upon the summary record or transcript of any interview (see paragraph 32).
34. Notifications referred to in the precedent paragraph shall not occur less than 24 hours before the interview, unless there are exceptional reasons to believe that such advance notice would jeopardize the integrity and/or effectiveness of the investigation. Any waiver of such advanced notice should be cleared by the Chief, Investigations Division, DIOS, or be waived by the subject in writing before or at the commencement of the interview.
35. The subject of investigation has no right to the presence of Counsel during interviews. However, the subject may be accompanied to the interview by a third-party observer to provide emotional support to the subject. The observer shall be there strictly in a personal capacity, shall not be allowed to intervene or interrupt the interview, and may be asked to leave the interview if she/he does so. The observer must undertake, prior to the interview, and confirm on the audio or video recording wherever utilized, not to disclose the contents of the interview. He/she must be available at the time scheduled for the interview and should not be connected to the investigation. The presence of a third-party observer to any interview remains at the discretion of the investigator.

V. Conflicts of Interest

36. In case of allegations of misconduct against the Commissioner-General or Deputy Commissioner-General, the Director, DIOS, shall refer them to the United Nations Office of Internal Oversight Services (OIOS).
37. DIOS shall investigate any allegations against members of the Senior Management Team (SMT) other than the Commissioner General or Deputy Commissioner General. In case of allegations of misconduct

against DIOS personnel, the Director, DIOS shall conduct or commission a preliminary assessment and seek the advice of the ACIO on how to proceed further.

38. In case of allegations of misconduct against the Director, DIOS, the Commissioner-General shall inform the ACIO and seek the ACIO's advice on how to proceed.
39. In cases where the investigation is entrusted to an external investigative entity, the investigation shall be conducted in accordance with the Uniform Principles and Guidelines for Investigations and, with the UNRWA Regulatory Framework, including this Policy. In the case of conflict, the provisions of the UNRWA Regulatory Framework shall prevail.

VI. Entry into Effect and review

40. This Policy takes effect as of 14 April 2021 and should be reviewed at least every four years.