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Criminal accountability of United Nations officials and experts on mission

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraph 30 of General Assembly resolution [74/181](#). Section II contains information on the policies and procedures of the United Nations Secretariat, funds and programmes and other entities regarding credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission. Section III concerns the relevant policies and procedures of the specialized agencies and related organizations. Section IV contains a reiterated recommendation to help to ensure that such policies and procedures are coherent, systematic and coordinated throughout the United Nations system.

* [A/75/150](#).



I. Introduction

1. The present report has been prepared pursuant to resolution [74/181](#), in which the General Assembly requested the Secretary-General to report on any updates to policies and procedures relating to the reporting, investigation, referral and follow up of credible allegations revealing that a crime may have been committed by United Nations officials or experts on mission and to develop recommendations to help to ensure that the relevant policies and procedures are coherent, systematic and coordinated throughout the United Nations system. The report is also to be read in conjunction with other relevant reports under this agenda item.¹

2. The present report complements the previous reports of the Secretary-General submitted to the General Assembly pursuant to its resolutions [71/134](#) ([A/72/121](#)), [72/112](#) ([A/73/155](#)) and [73/196](#) ([A/74/142](#)). In its resolution [71/134](#), the Assembly requested the Secretary-General to submit a report setting out all relevant existing United Nations policies and procedures of the United Nations system regarding: (a) credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission that are brought to the attention of the States against whose nationals such allegations are made; and (b) information with respect to investigations or prosecutions of crimes allegedly committed by United Nations officials or experts on mission of which States notified the United Nations. In its resolutions [72/112](#) and [73/196](#), the Assembly subsequently requested the Secretary-General to submit and keep updated the report setting out such policies and procedures and to develop recommendations to help to ensure that the policies and procedures are coherent, systematic and coordinated throughout the United Nations system.

3. By a letter dated 10 January 2020, the Secretary-General drew the attention of the relevant units of the United Nations Secretariat, funds and programmes, as well as specialized agencies and related organizations, to General Assembly resolution [74/181](#) and requested them to submit relevant information and recommendations.

4. The present report contains a summary of the information received regarding relevant policies and procedures, submitted pursuant to the request for information sent in 2020. The report also contains replies by specialized agencies and related organizations that have not previously submitted information regarding their relevant policies and procedures.

5. Section II of the present report contains information on relevant policies and procedures of the United Nations Secretariat, funds and programmes and other entities. Section III concerns the relevant policies and procedures of specialized agencies and related organizations. Section IV contains a reiterated recommendation to help to ensure that such policies and procedures are coherent, systematic and coordinated throughout the United Nations system.

II. Policies and procedures of the United Nations Secretariat, funds and programmes and other entities

6. The United Nations system is composed of the United Nations Secretariat and a number of affiliated funds and programmes, as well as specialized agencies and related organizations. While the United Nations Secretariat, funds and programmes are subject to the authority of the Secretary-General and apply the Staff Regulations and Rules of the United Nations (see [A/73/155](#), sect. II), the specialized agencies and

¹ See, in particular, reports issued under the agenda item “Criminal accountability of United Nations officials and experts on mission”, including [A/75/217](#).

related organizations are independent international organizations (*ibid.*, sect. III). Several units, funds and programmes, as well as other entities, provided information regarding their relevant policies and procedures, which is summarized below.

United Nations Development Programme

7. The United Nations Development Programme (UNDP) reported that its previously described legal framework for addressing non-compliance with United Nations standards of conduct (see [A/73/155](#) and [A/74/142](#)) had not undergone any further update during the reporting period.

8. UNDP also reported that the Investigation Guidelines of its Office of Audit and Investigations had been revised on 7 August 2019 to address the seizure of UNDP information and communications technology resources and data, including, in some circumstances, personal devices, at the request of the Office during an investigation. The purpose of the Guidelines, which are not mandatory, is to inform relevant stakeholders about the investigative process and to ensure that investigations are conducted in accordance with professional standards and best international practice.

9. With regard to the handling of complaints of possible criminal conduct, UNDP referred to the standard operating procedures on the intake of complaints and assessment of the Office of Audit and Investigations. The purpose of the procedures is to provide guidance to Office personnel on how to document complaints received by the Office, assess and prioritize them and ensure that appropriate steps are taken in a timely and structured manner in reviewing the allegations. The procedures were revised on 7 August 2019 to reflect the Office's obligation to report credible allegations of sexual exploitation and abuse to the United Nations.

United Nations University

10. The United Nations University supplemented its previous submission (see [A/74/142](#)) by reporting that, under its policy on prohibited conduct, a resolution mechanism with an informal and formal pathway is available for individuals affected by prohibited conduct performed at the workplace or in connection with the performance of the University's work.

11. The informal pathway enables individuals to raise the issue with institute directors, heads of office, managers or supervisors or to voluntarily request assistance from the Office of the Ombudsman.

12. The formal pathway enables individuals who have been affected by prohibited conduct, or third parties with direct or relevant knowledge of possible prohibited conduct, to submit a formal report to the director of the institute or head of the office where the incident took place. The Rector of the University will decide whether an investigation is warranted. If so, the report will be referred to the Office of Internal Oversight Services (OIOS), which performs the investigative functions for the University. OIOS will determine whether an investigation is necessary and, if so, will conduct it and provide its findings in a report to the University. The Rector and the Director of Administration, in conjunction with the institute director or head of office, will take action on the basis of the findings.

13. If credible allegations of possible criminal conduct are established through the investigation, the University will consider referral of the allegations to national authorities in accordance with applicable United Nations policies and procedures. The affected individual may choose to report possible criminal conduct directly to national authorities.

III. Policies and procedures of specialized agencies and related organizations

International Maritime Organization

14. The International Maritime Organization (IMO) supplemented the information previously provided (see [A/73/155](#)). It reiterated that all IMO staff members are bound by its Staff Regulations and Staff Rules, including associated policies and guidelines. All staff members have an obligation to report any breach of rules or other administrative issuances. Some of the relevant policies are also binding for experts on mission. For that purpose, an appropriate clause is included in an expert's contract. Failure to observe the relevant regulations, policies and standards may result in administrative or disciplinary measures in accordance with the IMO regulatory framework. If, as a result of an investigation, allegations that a criminal offence may have been committed are deemed credible, IMO may consider referring the matter to the appropriate national authorities, taking into account the privileges and immunities of IMO and the staff member and the safety and security of the victim.

Joint United Nations Programme on HIV/AIDS

15. The Joint United Nations Programme on HIV/AIDS (UNAIDS) reported that, pursuant to articles 11.1, 11.4 and 11.5 of the Memorandum of Understanding on a Joint and Cosponsored United Nations Programme on HIV/AIDS, UNAIDS is administered in accordance with the Financial Regulations and Rules of the World Health Organization (WHO), and administrative matters concerning the employment of UNAIDS staff are subject to WHO Staff Regulations and Rules and other relevant policies by default, which may be adjusted, as necessary, to take into account any special needs of UNAIDS. Where adaptations were made to the WHO regulatory framework, they would typically concern adjustments to equivalent titles and/or offices, the composition of internal bodies and procedures applicable to UNAIDS (for example, the Office of Compliance, Risk Management and Ethics would be read and understood as the UNAIDS Senior Ethics Officer), as well as references to internal responsibilities. UNAIDS also has an ethics guide and a policy on information management, usage and security. Unless otherwise specified or detailed, information previously reported by WHO (see [A/72/121](#) and [A/73/155](#)) also applies to UNAIDS.

16. Any breach of the standards of conduct and/or allegations of criminal conduct may typically trigger any of the following key procedures: the initiation of an internal fact-finding or investigation exercise conducted by the WHO Office of Internal Oversight Services for UNAIDS cases, followed, if warranted, by disciplinary proceedings and, as appropriate, the imposition of disciplinary measures decided by the UNAIDS Executive Director or UNAIDS Deputy Executive Director, Management and Governance, and/or referral, if appropriate, to national authorities, or other managerial action, as warranted. All referrals, as well as waivers of immunities, are closely coordinated with the WHO Office of Legal Affairs. The final decision on waivers of privileges and immunities of UNAIDS staff members rests with the Director General of WHO, in consultation with the UNAIDS Executive Director.

17. The WHO Office of Internal Oversight Services, which, among other things, conducts investigations of alleged irregular activities, including at UNAIDS, is the default reporting body. It reports annually to the Director General of WHO on its activities and on the status of implementation of recommendations, including for any cases involving UNAIDS staff. UNAIDS also has a Senior Ethics Officer who provides advice on issues relating to ethics at UNAIDS. UNAIDS uses an external integrity hotline, one of the tools available to staff, which facilitates the reporting of

wrongdoing across WHO. It is administered by a professional third-party provider to ensure confidentiality and, when requested, anonymity.

International Atomic Energy Agency

18. The International Atomic Energy Agency (IAEA) supplemented its previous submissions (see [A/73/155](#) and [A/74/142](#)) by reporting that the procedures to be followed in the event of reported misconduct (appendix G to the IAEA Staff Regulations and Staff Rules) were amended effective 11 November 2019. Changes made include: (a) clarification of the procedures followed upon receipt of a report of alleged misconduct; (b) amendment of the timelines associated with the procedures in appendix G to bring greater efficiency to the process; (c) inclusion of actions that IAEA may take with regard to financial recovery, if staff members separate before the conclusion of an investigative and/or disciplinary process; and (d) strengthened emphasis on the importance of all officials involved in the investigation and disciplinary process avoiding any conflict of interest or appearance thereof.

19. The Staff Regulations and Staff Rules have also been amended so that staff members may be required to reimburse IAEA for financial losses incurred by the Agency as a result of their actions, where misconduct has been established and where such actions have been determined by the Director General to be wilful, reckless or grossly negligent.

20. Effective 8 May 2020, IAEA has updated its policy on whistle-blowers. The review was focused on the anti-retaliation provisions, which concern protection against retaliation for staff members and personnel other than staff members who have reported misconduct or who have cooperated with duly authorized audits or investigations.

21. Moreover, according to the IAEA Office of Internal Oversight procedures for the investigation of staff members, the Director of that Office is allowed to “consider whether it is appropriate to refer information from an investigation to the appropriate national authorities in cases where jurisdictional action, e.g., criminal action, is required”. If the Director has “reasonable evidence that a case involves criminal conduct, he or she may recommend to the Director General, in consultation with the Office of Legal Affairs, that the case be referred to the relevant national authorities”. However, no such referral to national authorities has been made recently.

22. With regard to upcoming policy developments, IAEA is finalizing a new anti-fraud policy, in which its “zero tolerance” for fraud, corruption and other proscribed practices is reiterated, reflecting the Agency’s commitment to fostering an organizational culture that does not tolerate fraud and placing emphasis on accountability and integrity.

International Organization for Migration

23. The International Organization for Migration (IOM) reported that it had revised its previously described procedures for the reporting of wrongdoing or misconduct, effective 1 August 2019, to reinforce its internal justice system (see [A/74/142](#)). Under the new framework, it is the Office of the Inspector General that receives all allegations of misconduct, with the exception of allegations of retaliation. The Office carries out preliminary assessments with regard to such allegations, which may include fraud, workplace harassment, abuse of authority and sexual exploitation and abuse. Where the Office considers that an investigation is warranted or where the Director General requests one, the Office may also conduct investigations into allegations of misconduct. In the case of retaliation, it is the Office of Ethics and Conduct that receives all allegations and processes them in accordance with applicable organizational policies, referring the matter to the Office of the Inspector

General for investigation if necessary or, in cases in which there may have been a conflict of interest, recommending to the Director General that the allegation be referred to an alternative investigative mechanism.

24. The IOM Office of Legal Affairs is in charge of reviewing investigation reports and all available evidence and makes recommendations to the Director General on appropriate action in application of the internal legal framework, for his or her consideration and decision on any possible disciplinary measures or other administrative measures deemed appropriate. If there are credible allegations that a criminal offence may have been committed, IOM, following a recommendation by the Office, may consider referring the matter to the appropriate national authorities, taking into account the privileges and immunities of IOM and the staff member and the safety and security of the victim.

25. With regard to complaint mechanisms, in addition to existing channels, IOM launched the online platform “We are all in” in August 2019 to simplify reporting for IOM staff and external parties. The system automatically and confidentially sends submissions of reports and complaints to the appropriate intake point for consideration and action. In addition to reporting, the platform also facilitates access to tools and information resources on sexual exploitation and abuse, fraud and corruption, harassment, retaliation, misuse of resources or other misconduct.

Organisation for the Prohibition of Chemical Weapons

26. The Organisation for the Prohibition of Chemical Weapons (OPCW) reported that key policies and procedures that guide its response to allegations of criminal conduct by its personnel are contained, among other places, in the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, including in the Annex on Implementation and Verification; the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Kingdom of the Netherlands concerning the Headquarters of the OPCW; the bilateral agreements with States parties concerning the privileges and immunities of OPCW;² the OPCW Staff Regulations and Interim Staff Rules (OPCW-S/DGB/26); and other internal legislative and regulatory issuances of OPCW, including its Code of Conduct.³

27. As stated in paragraph 30 of its Code of Conduct, OPCW staff members are expected scrupulously to observe compliance with the laws of the host country – including the avoidance of illicit or speculative dealings in currencies and the honouring of financial obligations. In addition, in accordance with the OPCW Staff Regulations and the OPCW Code of Conduct, any privileges and immunities enjoyed by the Organisation and by its staff members are conferred in the interests of the Organisation, and such privileges and immunities furnish no excuse to the staff who enjoy them for non-performance of their private obligations or failure to observe laws and regulations.⁴ Under the OPCW headquarters agreement and various extant bilateral agreements concerning the privileges and immunities of OPCW, it is the duty

² See, for example, the agreements between the Governments of the United Kingdom of Great Britain and Northern Ireland, Cyprus and Portugal and the Organisation for the Prohibition of Chemical Weapons (OPCW), which entered into force on 28 February 2002, 6 September 2005 and 2 July 2010, respectively.

³ See, for example, AD/PER/1 on the Code of Conduct for staff members of the OPCW secretariat; AD/ADM/26 on uniform guidelines for investigation; AD/PER/25 on disciplinary measures and procedures; AD/PER/42/Rev.1 on the prohibition of harassment, sexual harassment, abuse of authority and discrimination; and C-I/DEC.13 (OPCW policy on confidentiality).

⁴ OPCW Staff Regulation 1.9; and AD/PER/1, para. 12.

of staff members and experts to observe the laws and regulations of the host country.⁵ Moreover, during the conduct of verification activities under the Convention, members of an OPCW inspection team are obliged to respect the laws and regulations of the inspected State party or host State.⁶

28. The OPCW Staff Regulations and internal rules require staff members who are arrested, charged with an offence other than a minor traffic violation, summoned before a court as defendants in criminal proceedings or convicted, fined or imprisoned for any offence other than a minor traffic violation to immediately report the fact to the Director General.⁷ In relation to the OPCW confidentiality regime, all staff members have an obligation to protect confidential information and are required to report any suspected breach of the confidentiality rules and procedures, in accordance with paragraph 31 of the OPCW Code of Conduct. The Director General oversees the implementation of individual secrecy agreements.⁸

29. When misconduct or wrongdoing is reported, OPCW may take a number of internal actions, such as: (a) investigating the matter;⁹ (b) taking appropriate administrative measures;¹⁰ (c) initiating disciplinary proceedings;¹¹ or (d) imposing disciplinary measures.¹² Where investigative findings adduced during an investigation tend to show that the laws of a State have been violated, OPCW may also refer the case to the appropriate national law enforcement agency.¹³

30. Investigations into alleged crimes committed by OPCW staff members are conducted taking into account principles of due process.¹⁴ It is noted in the OPCW Code of Conduct that violations of the law can range from trivial to serious criminal activities and that standards for judgment can best be developed in the light of the nature and the circumstances of individual cases. In paragraph 30 of the Code of Conduct, it is further noted that that approach was formulated by the Secretary-General in his report to the General Assembly on personnel policy ([A/2533](#), para. 72).

31. With regard to external action, when there is an allegation or a reason to believe that a crime may have been committed by OPCW staff members or experts, OPCW may, depending on the case: (a) consult or cooperate with relevant governmental authorities to facilitate the proper administration of justice;¹⁵ and/or (b) waive any applicable immunities of the officials concerned in circumstances in which OPCW considers that such immunity would impede the course of justice.¹⁶ When there is reason to believe that OPCW staff members have engaged in criminal misconduct arising from a serious breach of confidentiality, the Director General may decide to

⁵ Agreement between the Organisation for the Prohibition of Chemical Weapons and the Kingdom of the Netherlands concerning the Headquarters of the OPCW, art. 24 (1); see also, for example, art. 6 (5) of the agreement between the Government of the United Kingdom and OPCW.

⁶ Annex on Implementation and Verification to the Chemical Weapons Convention, part II, sect. B, para. 13.

⁷ OPCW Staff Regulations, rule 1.9.01; and AD/PER/25, para. 6.

⁸ Annex on the Protection of Confidential Information to the Chemical Weapons Convention, sect. D, para. 20.

⁹ AD/PER/25, para. 6.

¹⁰ AD/PER/25, para. 8.

¹¹ Ibid.

¹² OPCW Staff Regulation 10.2.

¹³ AD/ADM/26, para. E (4).

¹⁴ OPCW Code of Conduct, para. 31; and AD/ADM/26, sects. II I (3) and IV (D).

¹⁵ AD/PER/25, para. 6; see also Headquarters Agreement, art. 24 (4); and, for example, arts. 6 (6) and 7 (2) of the agreement between the Government of the United Kingdom and OPCW. These instruments have variable applicability to staff members and experts.

¹⁶ AD/PER/25, para. 6; see also Headquarters Agreement, art. 24 (3) and (6); and, for example, arts. 6 (6) and 7 (2) of the agreement between the Government of the United Kingdom and OPCW. These instruments have variable applicability to staff members and experts.

waive the immunity from jurisdiction of staff members, permitting prosecution in the jurisdiction of member States, when individual responsibility has been established and damage has been suffered as a result thereof.¹⁷ In addition, in the event of allegations of abuse of privileges and immunities by members of an OPCW inspection team during the conduct of verification activities under the Convention, OPCW may: (a) consult with the inspected State party to determine whether such abuse has occurred;¹⁸ (b) if so determined, prevent repetition of such abuse;¹⁹ and/or (c) waive immunity from jurisdiction of members of the inspection team in cases in which the Director General is of the opinion that immunity would impede the course of justice, and provided that such immunity can be waived without prejudice to the implementation of the provisions of the Convention. Furthermore, a waiver must always be express.²⁰

IV. Recommendation

32. It is recommended that Member States continue to encourage the distinct legislative bodies of the United Nations system and related organizations to help to ensure the coherence and coordination of policies and procedures relating to the reporting, investigation, referral and follow-up of credible allegations revealing that a crime may have been committed by personnel of such agencies and organizations who fall outside the scope of General Assembly resolutions, with policies and procedures related to United Nations officials and experts on mission. In the meantime, the United Nations system entities will continue to utilize their internal networks to measure the adequacy of their existing policies and procedures and to identify potential disparities, as well as to promote enhanced cooperation on cross-cutting issues, such as financial recovery.

¹⁷ Annex on the Protection of Confidential Information, sect. D, para. 20; and OPCW policy on confidentiality, part IX on breach procedures, para. 1.29.

¹⁸ Annex on Implementation and Verification, part II, sect. B, para. 13.

¹⁹ Ibid.

²⁰ Annex on Implementation and Verification, part II, sect. B, para. 14.