



JOINT INSPECTION UNIT
of the United Nations System

CORPS COMMUN d'INSPECTION
du Système des Nations Unies

25 January 2019

Ref.: JIU/ES/2019/1

Dear Ms. Petrova,

Thank you for kindly conveying the comments of the United Nations System Chief Executives Board for Coordination (CEB) on the report of the Joint Inspection Unit entitled "Review of whistle-blower policies and practices in United Nations system organizations" (JIU/REP/2018/4) as contained in A/73/665/Add.1 (12 December 2018). The JIU greatly appreciates the time and effort of the CEB Secretariat in consolidating comments and responses to the report from JIU participating organizations.

Following a careful review and reflection on the comments of the CEB, Inspectors Eileen Cronin and Aicha Afifi, authors of the review, have asked me to request that the CEB correct and clarify the following paragraphs as they contain factual errors that could have a detrimental impact on: a) the credibility of the report and the JIU; and b) the protection of key informants who participated in the review with guarantees of full confidentiality.

- Paragraph 8 of the CEB comments states:

"Organizations note that the report also places significant weight on the statements of individuals who had claimed to be whistle-blowers but whose claims, after detailed and extensive review, were deemed to be without merit. Some consider that those unsubstantiated claims may have disproportionately informed some areas of the report."

The claim that the report placed "significant weight on the statements of individuals who had claimed to be whistle-blowers" which "disproportionately informed some areas of the report" is factually incorrect and misleading. Each recommendation is supported by at least two data sources and not a single one is weighted on the 17 cases. As stated in para 27 of the JIU report, the purpose of the cases was to provide the Inspectors with an understanding of the application of PAR policies and the processes and procedures undertaken to implement them in practice. Consequently, the cases provided information that further supported the recommendations, conclusions and findings derived from multiple other sources (interviews with organizational functions, survey responses, focus groups, questionnaire responses etc.)

..../

Ms Simona Petrova
Secretary
UN system Chief Executives Board for Coordination (CEB)
New York

Room/Bureau D-507 - Palais des Nations - CH 1211 Genève 10

Tel: (+41) 22 9173044 Fax: (+41) 22 9170627 E-mail: jiu_jointinspectionunit@un.org Web: <http://www.unjiu.org>

For the CEB to state that the claims of individuals “after detailed and extensive review, were deemed to be without merit” and further terming them as “unsubstantiated claims” clearly implies that the identities of the individuals were shared by the JIU with the participating organizations. Paragraph 26 of the JIU report states that the Inspectors could not “triangulate and verify the information provided with the associated organizations and relevant functions, as a consequence of the need to protect the identity and confidentiality of the complainants.”

Indeed, the Inspectors went to great lengths to ensure the confidentiality of the staff sharing their cases, mask the identities, anonymize case details and develop a methodology that focused on policies, processes and procedures rather than the merits of a particular case. For the CEB to imply otherwise is patently false, misleading and damaging to the reputation and credibility of the inspectors and the JIU.

- The last sentence of paragraph 31 of the CEB comments states:

That statement was based on the perceptions of a small pool of interviewees (17), and organizations wonder whether those individuals had reported actual cases of misconduct or had been the victims of actual retaliation, or whether they had only made unsubstantiated allegations thereof.

The above statement is misleading. Recommendation 7 is based on the findings and conclusions detailed from paragraphs 183 to 205, a reading of which makes it sufficiently evident that the recommendation is derived from multiple data sources. The focus and criticism of the personnel cases is again unwarranted and unsubstantiated.

- The last sentence of paragraph 19 of the CEB comments states:

However, most organizations find the best practices identified by the Unit to be arguable benchmarks and express reservations on several points identified in the best practice ratings, as they do not appear to fully and correctly evaluate the actual provisions in the respective organizations.

This statement is substantively misleading and needs clarification. In November 2017, participating organizations were provided with the best practices criteria and ratings for their PAR policies to validate and comment upon. 23 organizations provided detailed feedback by December 2017, based on which the ratings were updated. Where the JIU disagreed with an organization’s proposed rating update, this was highlighted in endnotes in the report. Subsequently when the full draft report was sent for external comments in May 2018, organizations once again had an opportunity to propose updates to the ratings as long as they could be factually verified through relevant documentation. Consequently, the organizations were provided with sufficient opportunities to comment on and validate the best practices criteria and ratings.

- Paragraph 25 of the CEB comments states:

“...the Unit reached the conclusion that a “lack of understanding of reporting mechanisms” was confirmed by the responses to the global staff survey. They find that such a statement is based on the wrong premise, namely, that all staff should know to whom to report misconduct. Organizations argue that what staff members should know is that they can easily find the information on how to report misconduct, in case they find themselves in a situation where they would have to make such a report.

The Inspectors draw attention to the use of the word 'confirmed' in paragraph 162 of JIU/REP/2018/4 which clearly indicates that Recommendation 5 is based on more than just the survey results - it is also based on interviews with staff as well as JIU research. Also note the Recommendation 5 includes "what, how, where and to whom" to report and not just "how."

- Paragraphs 26-27 of the CEB comments state:

"Organizations find this recommendation unclear and therefore difficult to support. Some, however, have taken steps to revise their protection against retaliation policies to include preventive measures. Most organizations are doubtful that a standard operating procedure, on its own, would proactively protect from retaliation. Some also note that their protection against retaliation policies already include the possibility of providing protection to any and all reporters, including during the preliminary assessment stage, making the creation of new guidelines or standard operating procedures unnecessary and counterproductive."

The comments imply that the Inspectors are only recommending Standard Operating Procedures as a stand-alone solution tantamount to a bureaucratic exercise. This is not the intent of the recommendation nor of the findings that support it – see paragraphs 170 to 177.

- Paragraph 30 of the CEB comments state:

In reference to paragraph 189, some note that the Unit did not cover the cost implications of its proposals. For instance, all but the largest ethics offices have between 1 and 4 staff members, and retaliation is one of several mandates for those offices.

The Inspectors note that para 189 of the JIU report calls for the development of realistic time frames" for both misconduct/wrongdoing and retaliation reports." The term "realistic" is used to balance the organization's response capacity with the essentiality of dealing with such reporting promptly.

- Paragraph 33 of the CEB comments state:

Notwithstanding the findings outlined in paragraphs 178 to 182, organizations observe a general lack of clarity on how staff members report concerns that do not amount to wrongdoing, on whether retaliation protection should be attached to such reports and on how non-investigation or non-oversight office staff handle such reports.

The Inspectors do not see any connections between what is stated above and Recommendation 8 which deals with anonymous reporting of misconduct/wrongdoing.

- Paragraph 35 of the CEB comments state:

Some organizations express reservations about including in its reports information on all misconduct and wrongdoing cases, including those remaining under investigation or that have been closed by the Office of the Inspector General at the intake phase or by the administration on the basis of the findings of the Office's investigation. Other organizations publish such reports only internally, on a biennial basis, which is considered to be sufficient.

The Inspectors note that that the language of recommendation 9 - which calls for detailing allegations, findings, outcomes and administrative actions taken on cases – makes it clear that the reference is to completed cases and not to cases under investigation. With regards to confidentiality, para 241 of the JIU report highlights the UNICEF practice of including statistical information on disciplinary measures and actions taken, without any reference to the types of misconduct or wrongdoing or any specific details on the cases.

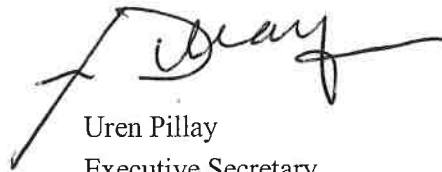
- Paragraph 38 of the CEB comments state:

Organizations find that the implications of the statement made in paragraph 262 regarding protection against retaliation policies have not been fully addressed in the section or in the related recommendation.

The Inspectors note that the content of para 262 of the JIU report provides context for recommendation 10 and points to knowledge, skills and abilities that managers need to handle reports of misconduct/wrongdoing and establish a positive environment.

The prompt action of the CEB Secretariat on the Inspectors' to the abovementioned comments would be greatly appreciated.

Yours sincerely,



Uren Pillay
Executive Secretary

CC: Federica Pietracci, Senior Programme Management Officer, CEB



General Assembly

Distr.: General
12 December 2018

Original: English

Seventy-third session
Agenda item 142
Joint Inspection Unit

Review of whistle-blower policies and practices in United Nations system organizations

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled “Review of whistle-blower policies and practices in United Nations system organizations” (see [A/73/665](#)).



Summary

In its report entitled “Review of whistle-blower policies and practices in United Nations system organizations” (see [A/73/665](#)), the Joint Inspection Unit reviewed the effectiveness of whistle-blower policies and practices across the United Nations system organizations to ensure that whistle-blowers are accorded adequate levels of protection, especially with regard to retaliation.

The present note reflects the views of organizations of the United Nations system on the recommendations provided in the report. The views have been consolidated on the basis of inputs provided by member organizations of the United Nations System Chief Executives Board for Coordination, which welcomed the report and supported some of its conclusions.

I. Introduction

1. In its report entitled “Review of whistle-blower policies and practices in United Nations system organizations” (see [A/73/665](#)), the Joint Inspection Unit focused on system-wide policies, processes and procedures for reporting misconduct and wrongdoing and for protecting those who do report from retaliation.

II. General Comments

2. Organizations of the United Nations system welcome the report of the Joint Inspection Unit and its findings and commend the richness of its information and the usefulness of its data. The organizations note that the report offers useful information and a number of useful recommendations.

3. Organizations appreciate the effort made to identify good practices, although they note that applying those practices as assessment criteria or targets for the broad spectrum of United Nations system organizations covered by the report may not sufficiently take into account the different organizational contexts and circumstances of each organization. While approaches used in the private and public sector at the national level are an important source of information for further developing the policies of international organizations, those policies need to be tailored to the specific characteristics of the relevant organization.

4. Organizations recognize that the United Nations, as a whole, has a differentiated system of addressing wrongdoing. Few mechanisms, if any, exist to address conduct that does not constitute wrongdoing, but is nevertheless undesirable in a workplace where tolerance and understanding are core values. Some organizations, especially small ones with limited resources, note that malicious reporting is also an issue of particular concern.

5. Organizations observe that the review could have deepened its analysis on the root causes of the challenges involved in ensuring whistle-blower protection within the United Nations system. Many see those challenges as being closely linked to issues of policy harmonization and implementation, both across and within organizations, rather than policy languages.

6. Organizations further observe that their respective institutional and governance structures could have been accorded greater prominence in the report in order to better describe which legal and internal administrative tools are available to guarantee justice for staff members or other complainants. The elements for comparison on seeking and/or finding justice and the sub-element on the protection against retaliation, when necessary, are missing.

7. They further note that the reporting of misconduct within the regulatory and legal framework, and the possibility for all staff to seek legal redress (whether or not protection had been granted), is not given much emphasis.

8. Organizations note that the report also places significant weight on the statements of individuals who had claimed to be whistle-blowers but whose claims, after detailed and extensive review, were deemed to be without merit. Some consider that those unsubstantiated claims may have disproportionately informed some areas of the report.

9. The World Intellectual Property Organization (WIPO) points to a discrepancy between the text of paragraph 41, in which it is stated that only the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the Office of the United Nations High Commissioner for Refugees meet all the best practices

requirements for criterion 1, and the table that follows, which indicates that WIPO also meets all the requirements for that criterion.

10. Organizations note that the statement in paragraph 150 should include the word “alleged”, as follows: “A total of 10,413 alleged instances of misconduct/wrongdoing were reported to the oversight offices”.

11. Small organizations, in particular those that do not currently have an ethics officer or ombudsman, find the implementation of the proposed recommendations challenging in terms of both timeline and resource implications, when those implications are not budgeted, such as in the case of the World Meteorological Organization.

12. Organizations welcome most of the recommendations contained in the review, but underscore that their implementation would be closely linked to the availability of resources such as time, staffing and funding.

III. Comments on specific recommendations

Recommendation 1

Legislative bodies should adopt measures by 2020 to ensure that all policies related to misconduct/wrongdoing and retaliation specify appropriate channels and modalities, such as independent oversight committees, for reporting and investigating allegations against the executive head of the organization, as well as against any other functions that may entail a potential conflict of interest in the handling of such issues.

13. While the recommendation is addressed to the General Assembly and other governing bodies, organizations report that they: (a) already have mechanisms and standard operating procedures in place that address the content of the recommendation; (b) are in the process of revising staff rules and guidelines to add clarity to existing and available channels, for consideration by their respective governing bodies; (c) are reviewing existing whistle-blower protection policies with regard to conflicts of interest and making links with other recommendations, including recommendation 1 of the report entitled “Review of mechanisms and policies addressing conflict of interest in the United Nations system” (see [A/73/187](#)).

14. Specifically in reference to the Secretary-General of the United Nations, the Secretariat notes that the appointment of the Secretary-General is governed by the Charter of the United Nations. The Charter does not include any express provisions on the investigation of allegations against the Secretary-General, and the question has not arisen in practice. The appointment of the Secretary-General by the General Assembly on the recommendation of the Security Council is provided for in Article 97 of the Charter. Any measure to provide for the investigation of allegations against the Secretary-General would need to be taken in a manner respectful of the Charter. In that regard, it is noted that, in article V, section 20, of the Convention on the Privileges and Immunities of the United Nations, Member States agreed that the Security Council is the principal organ with the authority to waive the immunity of the Secretary-General.

15. For the executive heads of the United Nations funds and programmes, the applicable legal framework for addressing allegations of misconduct/wrongdoing and retaliation consists of the Staff Regulations and Rules of the United Nations and other relevant United Nations administrative issuances. As stated in paragraph 51 of the report, the Secretary-General appoints the executive heads of the United Nations funds and programmes as United Nations staff members, and their terms of

appointment include the provision that they are subject to the Staff Regulations and Rules and to other relevant United Nations administrative issuances. Such issuances include the administrative instruction on unsatisfactory conduct, investigations and the disciplinary process (ST/AI/2017/1) and the Secretary-General's bulletin on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations (ST/SGB/2017/2/Rev.1).

16. Pursuant to that legal framework, and insofar as the existing investigating entity of the United Nations fund or programme is not in a position to conduct an investigation of its executive head, an investigation may be conducted by the Office of Internal Oversight Services or an investigative panel or other investigating entity appointed by the Secretary-General. The decision to initiate the disciplinary process concerning an executive head of a United Nations fund or programme is made by the Secretary-General.

17. In addressing the recommendation, the legislative bodies could be invited to take note of the applicability of the above legal framework to the executive heads of the United Nations funds and programmes.

Recommendation 2

In United Nations system organizations that do not have an external and independent mechanism for appeals when a prima facie case of retaliation is not determined, the executive head should instruct the relevant office(s) to develop, by 2020, appropriate options to address this deficiency for his or her timely consideration, and to outline any agreed-upon mechanisms and processes in updates to protection against retaliation policies.

18. Organizations partially support this recommendation. While some note that their existing mechanisms fully address the above recommendation, others are considering introducing appeal mechanisms, as part of their whistle-blower protection policy review process, to address instances when a prima facie case of retaliation is determined not to exist.

Recommendation 3

Executive heads of United Nations system organizations should update their relevant whistle-blower policies by 2020 to address shortcomings and gaps identified in the Joint Inspection Unit best practices ratings.

19. Organizations partially agree with the above recommendation and point to the fact that such updates should be done as and where relevant for each entity. Several organizations report that they already updated their policies in 2018 or are in the process of doing so, informed by the findings of the review. However, most organizations find the best practices identified by the Unit to be arguable benchmarks and express reservations on several points identified in the best practice ratings, as they do not appear to fully and correctly evaluate the actual provisions in the respective organizations.

20. In reference to paragraph 118, organizations with a large field presence note that the implications of having an entire body of policies translated should be considered in terms of both cost implications and quality of translation, as experience has shown that such work requires a native speaker of the target language who is also fluent in English and familiar with the topic. Translation should be considered primarily with regard to the working languages of the organization.

Recommendation 4

By 2020, the legislative bodies of the United Nations system organizations should request executive heads to ensure that the independence of the head of ethics, head of oversight and ombudsman/mediator functions is clearly defined, in accordance with recommendations contained in Joint Inspection Unit reports (JIU/REP/2006/2, JIU/REP/2010/3, JIU/REP/2011/7, JIU/REP/2015/6 and JIU/REP/2016/8), and that these functions report periodically to the legislative body.

21. Organizations generally support this recommendation, although several note that its provisions are already present in their current policies and arrangements.

22. A few organizations observe that, while the statement regarding independence is present in the above proposed formulation, so are the factors that cut against independence. Those factors invite consideration of how to make oversight functions truly independent, how to align the terms for each office (renewable versus exceptionally renewable terms of office, the inclusion of such independent heads in senior management meetings ex officio versus as relevant) and how to budget for and staff the role to allow for strategic work, among other variables.

23. In reference to paragraph 131, organizations note that, in its analysis, the Unit does not recognize that term limits also lead to a different set of challenges, in that tenure (especially a short one) creates the risk that incumbents focus more on their personal career than on the organization they serve. While single long-term tenures can help ensure independence, they make it hard to remove an individual who is not performing. Conversely, having the ability to be appointed to more than one term invites the very kind of problem that cuts against independence.

Recommendation 5

By the end of 2019, executive heads of United Nations system organizations should develop comprehensive communication tools for all personnel on what, how, where and to whom to report misconduct/wrongdoing, including harassment and retaliation, in all the working languages of the organization.

24. Organizations are generally supportive of this recommendation, although they warn about the cost and resource implications that may arise from its implementation and that have not been accounted for in the current budget cycle allotment and express concern about their ability to meet the proposed deadline. Some organizations, however, have taken steps to address the issue through webinars and information materials.

25. Some organizations note that the recommendation is based on the results of a survey that showed that “only 56.5 per cent of respondents fully agreed that they knew specifically to whom to report such misconduct/wrongdoing” and question how the Unit reached the conclusion that a “lack of understanding of reporting mechanisms” was confirmed by the responses to the global staff survey. They find that such a statement is based on the wrong premise, namely, that all staff should know to whom to report misconduct. Organizations argue that what staff members should know is that they can easily find the information on how to report misconduct, in case they find themselves in a situation where they would have to make such a report.

Recommendation 6

Executive heads of United Nations system organizations should develop, by 2020, standard operating procedures for proactively protecting those who report misconduct/wrongdoing from retaliation, which should include undertaking

relevant risk assessments and clearly identifying available support mechanisms and resources.

26. Organizations find this recommendation unclear and therefore difficult to support. Some, however, have taken steps to revise their protection against retaliation policies to include preventive measures.

27. Most organizations are doubtful that a standard operating procedure, on its own, would proactively protect from retaliation. Some also note that their protection against retaliation policies already include the possibility of providing protection to any and all reporters, including during the preliminary assessment stage, making the creation of new guidelines or standard operating procedures unnecessary and counterproductive.

Recommendation 7

Executive heads of United Nations system organizations should develop standard operating procedures by 2020 for handling retaliation cases, with specific checklists and protocols for investigation, support services and communication.

28. Although organizations mostly welcome the provisions of this recommendation, many question the efficiency of creating additional standard operating procedures when there are clear and detailed policies already in place. They question how those additional procedures would differ. They further note that the proposed approach may create an unnecessary administrative burden that would not make the processes more efficient.

29. Organizations currently updating their whistle-blower protection policies are addressing the matter with tools and measures in line with their specific organizational context.

30. In reference to paragraph 189, some note that the Unit did not cover the cost implications of its proposals. For instance, all but the largest ethics offices have between 1 and 4 staff members, and retaliation is one of several mandates for those offices.

31. Some find it unclear how this recommendation relates to some of the findings on which it is apparently based: in paragraphs 201 and 202, the Unit elaborates on the “physical and emotional effects that retaliation can have on whistle-blowers and the detrimental effect reporting can have on a career”. That statement was based on the perceptions of a small pool of interviewees (17), and organizations wonder whether those individuals had reported actual cases of misconduct or had been the victims of actual retaliation, or whether they had only made unsubstantiated allegations thereof.

Recommendation 8

Executive heads of United Nations system organizations should ensure that, by 2020, anonymous channels to report misconduct/wrongdoing are: (a) developed and operational; (b) available in all the working languages of the organization; (c) accessible to all personnel, vendors and beneficiaries; (d) reflected in their relevant policies; and (e) widely communicated.

32. Organizations support this recommendation, but underscore that anonymous complaints are often harder to substantiate and prove to the required extent before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.

33. Notwithstanding the findings outlined in paragraphs 178 to 182, organizations observe a general lack of clarity on how staff members report concerns that do not amount to wrongdoing, on whether retaliation protection should be attached to such reports and on how non-investigation or non-oversight office staff handle such reports.

Recommendation 9

By the end of 2019, executive heads of United Nations system organizations should ensure the public posting of an annual report, with all due consideration to confidentiality, on misconduct/wrongdoing and retaliation cases. The report should specifically include allegations, findings and outcomes, including administrative actions taken.

34. Organizations support this recommendation and highlight the need to pay close attention to privacy and the protection and traceability of data. Those issues, paired with the impossibility of completely removing data from the Internet, may expose staff who have filed complaints to potential harm and could provide opportunities for significant legal claims against the organization.

35. Some organizations express reservations about including in its reports information on all misconduct and wrongdoing cases, including those remaining under investigation or that have been closed by the Office of the Inspector General at the intake phase or by the administration on the basis of the findings of the Office's investigation. Other organizations publish such reports only internally, on a biennial basis, which is considered to be sufficient.

Recommendation 10

By the end of 2019, executive heads of United Nations system organizations should ensure that all supervisors and managers are required to complete specific training on whistle-blowing policies and on how to appropriately respond to and handle misconduct/wrongdoing and retaliation reports.

36. Organizations partially support this recommendation. Although several organizations already have mandatory training courses in place, others note the restrictive nature and somewhat unrealistic timeline of the proposed recommendation and stress the importance of making information about a specific issue available and easy to find.

37. Some organizations concur with the statement that the gap in training is acute in soft skills areas, such as conflict management and team-building. There may, however, be a need to dispel the notion of "soft skills", as the term could imply that managers and supervisors should be able to learn them easily and apply them quickly, when, in fact, such skills take time to develop and training to implement. Organizations note that once those skills are acquired and mastered, they lead to hard results that could increase organization effectiveness.

38. Organizations find that the implications of the statement made in paragraph 262 regarding protection against retaliation policies have not been fully addressed in the section or in the related recommendation.

Recommendation 11

By 2020, executive heads of United Nations system organizations should conduct global staff surveys on a biennial basis, in order to gauge staff views on "tone at the top" issues, accountability and ethics-related topics and to develop a comprehensive action plan to address the issues identified.

39. Organizations generally support the above recommendation, in cases where such surveys do not exist already. Some favour a regular or periodic, rather than biennial, collection of global staff views, to allow entities to modulate the timing of the surveys to coincide with major events and human resource engagements, rather than following a prescribed timeline.