



**Best Practices Working Group
on Addressing Allegations of Abusive Conduct**

United Nations Representatives of Investigative Services

**Position Paper on Best Practices
for Addressing Abusive Conduct Allegations**

January 2023

Background

Allegations of abusive conduct in the workplace (including Harassment, Sexual Harassment, Abuse of Authority and Discrimination)¹ present a significant challenge to international organizations, from a managerial and internal oversight perspective. Indeed, such behaviour:

- ***Negatively impacts staff members, productivity and the work environment***
- ***Persists if unaddressed for long periods of time***
- ***Results in confusion around which office is best placed to address it***
- ***Presents challenges to investigate as a form of misconduct***
- ***Represents a significant drain on organizational resources***

In February 2020, the UN-Representatives of Investigation Services (UN-RIS) formed a Working Group to address the question of how to most effectively and efficiently address allegations of abusive behaviour.

The envisioned methodology to address the question was to look at comparable data across agencies and compare how different organizations and institutions are handling these issues.² However, the present paper will not address allegations of sexual harassment, as such matters would normally be investigated in light of the nature of the conduct and under the provisions and guidance of the *CEB manual on the Investigation of Sexual Harassment Complaints in the United Nations*.

Since its inception in November 2020, the Working Group has met on a near-monthly basis and engaged in discussions addressing the problem, its impact on various organizations, its fundamental challenges, and different approaches that organizations and investigative offices have applied in the attempt to address the issues.

This paper presents, for the UN-RIS community's review and discussion, a summary of the key points distilled from the Working Group's deliberations, as well as best practices and recommended approaches for the handling of this developing issue.

Working Group

The following organizations contributed to this collaboration and paper:

International Monetary Fund (IMF)
Office of Internal Oversight Services (OIOS)
Pan-American Health Organization (PAHO)
United Nations Children's Fund (UNICEF)
United Nations High Commissioner for Refugees (UNHCR)
United Nations Population Fund (UNFPA)
World Food Programme (WFP)

Objective: Identify effective models for handling abusive conduct allegations that:

1. Establish common thresholds for launching an investigation instead of escalating to an investigation by default;
2. Ensure allegations are referred to and managed by the most appropriate mechanism in a timely manner;
3. Uphold consistency across organizations to the extent practicable; and
4. Manage with a view to limit appeals against decisions not to investigate.

¹ Minutes of UN-RIS Virtual Meeting 25 February 2020.

² Ibid.

TABLE OF CONTENTS

I. SUBSTANCE AND SCOPE 4

- A. What is the problem? 4
- B. Who is affected by the problem? 5
- C. What are the practical effects of the problem? 5
- D. What factors create or compound the problem? 6

II. BENCHMARKING RESULTS AND ANALYSIS OF UN-RIS COMMUNITY PRACTICES .. 7

- A. Policy administration 7
- B. Procedures for reporting 8
- C. Procedures for investigation 9
- D. Post-investigation procedures 9

III. CONSIDERATIONS 10

Annex I: Intake Criteria 12

Annex II: Current approaches: Working Group 14

I. SUBSTANCE AND SCOPE

A. What is the problem?

1. As stated above, allegations of abusive behaviour have a highly negative impact on organizations. Such allegations present challenges because, *inter alia*:
 - a. the conduct might have occurred over a prolonged period;
 - b. the reported incidents can take the form of micro-aggressions or otherwise innocuous conduct;
 - c. the behaviour and its significance, impact or gravity may be subjective, all of which makes the allegations difficult to investigate from an evidentiary standpoint;
 - d. such allegations often encompass a spectrum of behavioural issues, from issues that should instead be dealt with as performance concerns (e.g., lack of sensitivity or a one-off incident) to more problematic behaviour that affects staff to the degree that it prevents an office from effectively delivering its mandate; and
 - e. egregious behaviour can also be subtle and underhanded, making it difficult to investigate.
2. **Organizations should have a protocol for deciding whether the complaint should be investigated or referred for informal resolution or performance management. Clear intake guidelines should be in place to determine where on this spectrum a complaint falls.** For matters that are investigated, organizations must decide which entity is best tasked to investigate. Options will include an organization's own internal professional investigation offices, consultants, or lay panels comprised of staff trained by the professional investigation office.
3. Other factors discussed in this paper result frequently in the application of inefficient, ineffective, and disorganized approaches by organizations, however well-intentioned their attempts to respond to and address such reports.
4. As this paper will summarize, while all organizations in the UN system have policies that provide institutional guidance on addressing abusive behaviour, the approaches are not consistent. This reflects the fact that organizations are different in type and size, and as such, a "one size fits all" approach is not appropriate. Nevertheless, this paper addresses some common ground and lessons learned for the benefit of investigation services.
5. Posing a bigger problem for investigation offices, many of the existing policies do not prescribe specific and definitive measures for handling allegations of abusive behaviour that are not appropriate for investigation. In the absence of protocols, most allegations of abusive conduct are routed to investigative offices, which, in turn, are inundated with cases that are not best addressed by an investigation.
6. Too often, these cases either delay other investigations; are delayed themselves because of their (assessed) low priority; and/or are not investigated and have an adverse impact on the working environment, thus potentially causing more damage than they seek to address.
7. Through attempts to appropriately handle the influx of matters, investigative offices have applied a variety of approaches, also discussed in this paper, with varying levels of success. Certain approaches have yielded positive results, while others have presented learning opportunities. This paper summarizes some of these approaches with a view to identifying effective and replicable practices. Additionally, appeals of administrative decisions into issues relevant to abusive conduct allegations are providing a growing body of jurisprudence from which this exercise has drawn.

B. Who is affected by the problem?

8. In identifying practices or approaches that can be useful to all members of the UN-RIS community, it is important to acknowledge the heterogeneity of its membership. Certain solutions that work well for larger organizations with sizeable investigative offices may not be feasible for smaller ones. Likewise, different relationships or dynamics with management and other institutional counterparts may either enable or, alternately, restrict efforts to implement or advocate for certain solutions, however effective they may have proven in a comparable organization.
9. In this vein, the Working Group is composed of a balanced spectrum of large, medium and small organizations. Thus, the discussion and recommendations benefited from perspectives that reflect the broader UN-RIS membership.

C. What are the practical effects of the problem?

i. Caseload and timeliness

10. As previously mentioned, in many instances, institutions are relying on or defaulting to investigative offices for handling abusive conduct allegations, notwithstanding their severity or substance. This has the potential or actual effect of inundating investigative caseloads. In some situations, the cases may have been triaged previously by an institutional counterpart (e.g., Management, Ethics Office, Human Resources) or, alternately, the investigative office may have been the first point of contact.
11. The prioritization of such cases by investigative offices can have an adverse impact on the rest of their investigative caseload. When an abusive conduct case is appropriate for investigation and its prioritization is merited, this is the cost of doing business. However, when allegations of abusive conduct have not been properly triaged and/or referred to other counterparts for appropriate action, matters that are not suited for investigation are nonetheless handled under the framework applicable to investigations, consequently siphoning out valuable and scarce resources that would otherwise be deployed to other investigations.

ii. Prolonging or failing to timely address potentially abusive workplace situations

12. A case involving allegations of abusive conduct that is ill-suited for investigation may be registered for investigation as a default. However, in recognition of its low priority in relation to other investigations, it may languish, causing an untenable workplace situation to remain unaddressed, as the party/ies await the outcome of the investigation. Additionally, this stagnation could allow for an initially minor situation to escalate.
13. Thus, an *ad hoc* or unexamined approach can prevent a more suitable and potentially effective one from being applied. If investigation is the only approach, either by default or in the absence of agreed protocols that allow for other resolutions outside of investigation, the institution may be missing other potentially more appropriate solutions.
14. It is well known that workplace conduct investigations can be disruptive and potentially cause harm to the dynamics in an office. Depending on the gravity of the allegations, this is, again, sometimes a consequence that must be accepted. **If organisations allow such matters to automatically default to investigation or fail to put in place protocols whereby investigations can be avoided, opportunities for better-suited informal or grievance processes are missed.** Such a consequence can be avoided by an institutional protocol that identifies, at their outset, cases that are best handled by approaches other than investigation, and proactively applies more appropriate and proportional solutions.

iii. Inconsistency in practices

15. Lastly, an *ad hoc* approach to such cases inevitably results in inconsistencies, among different institutions' handling of similar matters and even within one institution. These inconsistencies expose institutions to risks of further grievances, criticism and appeals.

D. What factors create or compound the problem?

- i. Lack of communication among institutional parties and lack of consistency in approach or agreement to a protocol

16. The absence of a dedicated entity within an institution and/or an agreed protocol results in inappropriate matters being routed to investigation. In some cases, the Working Group found, this is exacerbated or facilitated by the lack of communication among institutional decision makers or relevant entities, including management or channels of conflict resolution, including Human Resources, Ethics, programme managers, etc.

17. Specifically, lack of communication and inconsistencies can result in, *inter alia*, the following inefficient or ineffective approaches:

- what should be investigated and what can be declined for investigation at a preliminary stage;
- who decides what approach will be applied (e.g., informal resolution, managerial intervention, no action);
- who owns and oversees the process; and
- who determines the outcome and makes the closing decisions (e.g., Is it harassment? Is it misconduct? Can a corrective measure, such as a transfer/reassignment, be sought and applied, outside of the misconduct context)?

ii. Avoidance of responsibility on the part of managers

18. The Working Group identified that a significant contributor to the rise in abusive conduct allegations was that managers and supervisors failed to proactively address situations at the root to avoid them becoming an allegation. Additionally, improper performance management of personnel can fall in this category.

19. Conversely, more positive results are seen when an institution holds managers accountable for addressing behavioural issues at their outset. **Responsibility should be placed on managers to address issues before they escalate and require external intervention or are reported for investigation.** This also includes situations where efforts are made to ensure managerial accountability for failing to properly address certain types of situations.

iii. Contestability of decisions not to investigate

20. A factor adding to the complexity of the issue and compounding efforts exerted and resources expended is the fact that, in some institutions, the decision not to investigate certain abusive conduct allegations is subject to appeal.

21. While this is not the case for all institutions represented on the Working Group, several investigative offices find their decisions regularly challenged. Those who are subject to this reality reported that decisions not to investigate are ultimately reviewable by the UNDT, ILOAT, or other tribunals. Significant resources are used on these kinds of cases, even if they clearly do not *prima facie* amount to misconduct (e.g., a complaint about being put on a performance improvement plan with no other indicia of possible misconduct), because the steps taken as part of the initial assessment and decision making must be appropriately documented by investigation units due to its appealability.

22. This underscores **the need for an accountable and transparent intake process** that ensures that initial decisions not to investigate and to refer to a different channel are defensible.

II. BENCHMARKING RESULTS AND ANALYSIS OF UN-RIS COMMUNITY PRACTICES

23. As part of the Working Group’s discussions, a benchmarking exercise was performed between 20 July 2021 and 8 August 2021 and repeated between 22 September 2022 and 23 October 2022 to include additional responses. The exercise collected data on best practices across organizations by way of a survey distributed to member organizations addressing existing policies and practices on workplace conduct. Nineteen (19) organizations provided responses to the questionnaire.³

24. Results and notable trends are set out thematically below.

A. Policy administration

25. All responsive organizations (19) have a policy that addresses abusive conduct in the workplace either as a separate policy or within a personnel management framework. The policy owner of most organizations is the human resources function (16/19) while the policy of two organizations is the ethics function (2/19). One organization reported that its policy is handled by its Secretary General.

26. Less than half of the policies contain a mandatory review date or period (8/19). Three of the 19 organizations (3/19) had a policy that had been updated within the prior two years, while all had a policy that was issued or revised within 5 years of data collection.

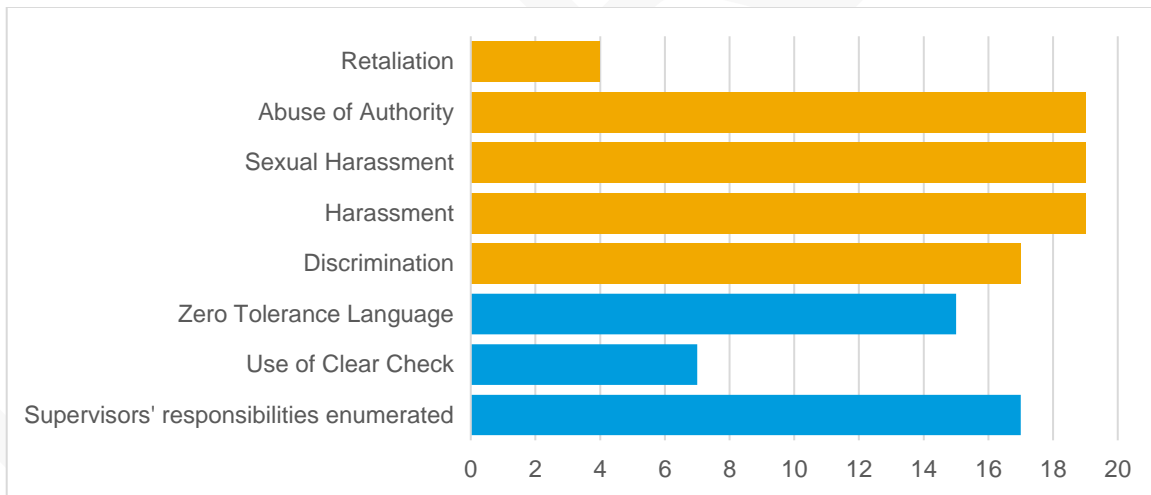


Figure 1 - Topics referenced in harassment policy

27. All respondents (19) reported that their policy covered aspects of harassment that include abuse of authority, harassment, and sexual harassment. A majority (17/19) also include discrimination. While only 4 reported that their policies referenced retaliation, many respondents shared that retaliation is addressed in a separate policy document. Figure 1 amalgamates various topics referenced in organizations’ respective abusive conduct policies.

28. Policies also address certain preventive measures. Almost all organizations (17/19) explicitly place a specific obligation on managers to address harassment. A similar number (15/19) refer to “zero tolerance” towards abusive conduct.

³ CTBTO; FAO; IAEA; IMF; IMO; PAHO; UNICEF; UNHCR; UNFPA; UN Secretariat; UNDP; UNESCO; UNIDO; UNWRA; UNOPS; WIPO; WFP; WMO; WTO.

29. Few organizations (4/19) have explicitly defined the term “workplace” within the context of their abusive conduct policy. This may present an opportunity for organizations to further clarify the scope of the policy where organizations have adapted to new modalities of work in view of Covid-19 restrictions and the widespread implementation of teleworking.

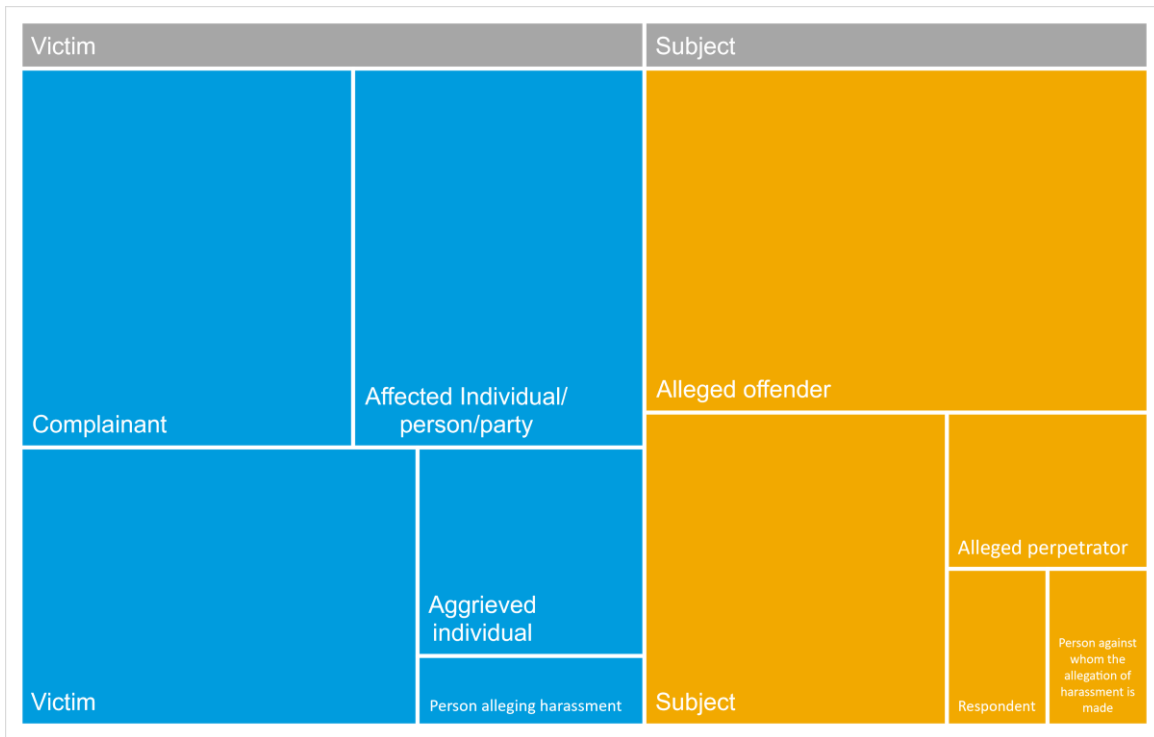


Figure 2 - Proportional frequency of various terms for 'victim' and 'subject'.

30. Nomenclature for victims and subjects in the context of abusive conduct varies across organizations. Other terms employed for “victim” include: “complainant”, “affected person”, “affected party”; and “aggrieved individual”. Six organizations employ the term “victim” exclusively or in combination with other expressions (7/19). The term “subject” is used by five organizations (6/19) while the remainder prefer expressions equivalent to “alleged offender” or “alleged perpetrator” (13/19). Figure 2 highlights the proportional frequency of different terms used.
31. The term “complainant” is the term that comes up most often when referring to the person making the report (8/17), whereas the remainder use a wide range of descriptors, including “person who reported” or “reporter” as distinct from the victim in some situations.

B. Procedures for reporting

32. Few organizations (7/19) place time-limits on reporting harassment and other abusive conduct matters. Organizations that place time-limits on reporting typically require that matters be reported within three months, with two organizations allowing reporting up to one year after an incident.
33. Few organizations (3/19) place a limitation on the class of persons who may report allegations of possible harassment and abusive conduct allegations. Of those, two require that the reporter have direct knowledge of the situation; one requires that the reporter be a member of personnel.
34. Most organizations (16/19) accept anonymous complaints. Confidentiality, with stated limits, is a consideration for all organizations (19).

35. Formal processes typically involve formal reporting to the investigative function (15/19). Four organizations require that formal complaints be addressed to management or the human resources function in the first instance (4/19).

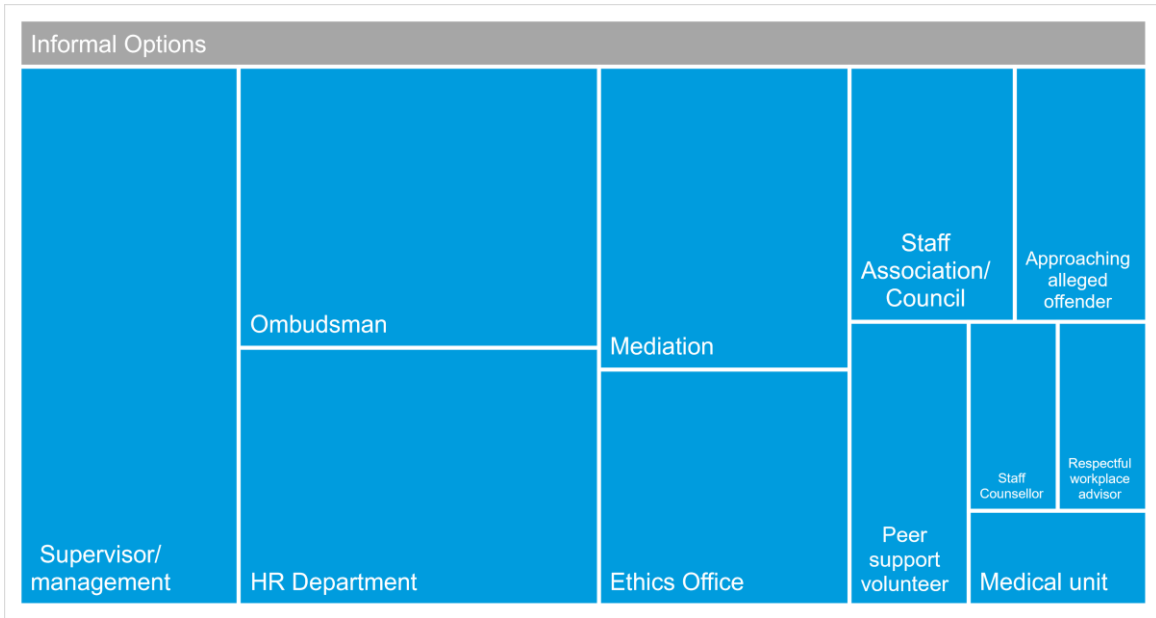


Figure 3 - Proportional frequency of available informal options

36. Respondents reported a variety of informal options for addressing abusive conduct. They typically involve the ombudsman function of the organization or management with mediation as a tool. The availability of various informal processes likely corresponds to the size of the organization. Figure 3 provides an overview of informal processes mentioned by respondents and the frequency each option is mentioned by respondents.
37. Most organizations will consider withdrawal of a complaint by the claimant, but such a request does not normally bind the organization to end a formal process.

C. Procedures for investigation

38. None of the responding organizations require mediation as a precondition to a formal investigation process, although informal processes are encouraged at all steps.
39. No organization's policies contain mandatory requirements (e.g., informal processes such as mediation or other intervention). However, most organizations (15/19) reported that internal guidance or other policies set targets at some 3 to 6 months for the completion of a preliminary assessment and/or investigation.
40. Investigations into abusive conduct complaints are typically conducted by the investigative function (18/19), while one of those organizations indicated they have recourse to investigative lay panels as an alternative (1/19) and another indicated that they conduct investigations exclusively by way of investigative panels (1/19).

D. Post-investigation procedures

41. Almost all organizations reported that they inform the complainant (or equivalent) if a matter is closed at the preliminary assessment stage (17/19). Almost all organizations (17/19) reported that a complainant is informed if the matter progresses to investigation, either because it is provided in the policy or as a matter of practice. While all organizations reported that the complainant is informed when an investigation is completed, a small number of organizations provide, to varying degree, details about the outcome of the investigation. Aggrieved individuals

are typically informed by the human resources function of any measures taken following an investigation report.

42. Witnesses who were not aggrieved individuals are typically not informed of the outcome of the matter. One organization reported that all “stakeholders” are informed of the disposition of an investigation (1/19) while another stated that it depended on the “nature and gravity of the case”.
43. Several organizations reported that they sought consent of the reporter/victim/affected party before referring a matter to management (8/19), while several organizations noted that their policies on abusive conduct did not address the matter explicitly (4/19) or that they did not require consent prior to a referral for management action (1/19).

III. CONSIDERATIONS

44. The Working Group has identified the following institutional investigative considerations towards a collective, informed and consistent approach to addressing the problem.

A. Consider ways to streamline intake, decision-making, action and tracking of abusive conduct allegations within the organization.

45. There is a need for organizations to have a holistic view of allegations or possible abusive conduct. This is made more challenging when different offices within an institution deal with the same matter independently under their own terms of reference.
46. Accounting for confidentiality requirements, organizations should consider how to streamline their approach to addressing abusive conduct matters. For some Working Group members, this may include an independent entity outside the investigation function that could intake the matter; make determinations and/or referrals for informal resolution, investigation in appropriate cases, management intervention, mediation/facilitation, non-disciplinary or voluntary transfer or reassignment; and track resolution and implementation of determined actions.
47. The benchmarking exercise found that organizations across the UN system adopt a wide variety of approaches to handle harassment and related abusive conduct. While investigative offices need to tailor their procedures in accordance with their respective requirements and policies, there are opportunities to standardize some of these approaches, such as the uniform adoption of key terms, investigative intake criteria (Consideration B), and the amount and nature of information shared with complainants or affected parties at the conclusion of a preliminary assessment or investigation.
48. The Working Group notes, however, that implementing a centralized model is not compatible with all investigative offices’ mandates and they remain focused on other means to increase their inter-connectedness with internal counterparts.

B. Develop a common list of factors that may be considered prior to initiating an investigation, making distinctions, where possible, between misconduct and other forms of behaviour, and articulating bases on which matter may be declined for investigation.

49. Examples of factors that may be considered are included herewith as *Annex 1: Intake Criteria*.
50. Establishing such a list aims to enhance consistency within and across entities while leaving room for discretion considering the specific contexts of each organization in which the allegations arise.
51. For example, one criterion to consider is anonymity of a source or complainant. The fact that a complaint has an identifiable source or was made anonymously may affect its reliability, credibility and the likelihood that an investigation would reveal sufficient evidence to sustain a finding of misconduct. Detailed, actionable, and verifiable complaints made by anonymous parties may nonetheless lead to an investigation.

52. The amount of time elapsed since the alleged incident(s) may also be a relevant factor insofar as the passage of time may make it more difficult to investigate a matter, warranting that the matter be closed or referred.
53. The level of gravity of the alleged conduct may command an investigation or, conversely, a referral in light of resource constraints, policy priorities of each organization, and the context in which the alleged misconduct took place.
54. Lastly, these criteria would serve as a guide and are not intended to be prescriptive or have mandatory application.

C. Investigation offices should encourage their respective institutions to develop and implement approaches and policies that empower supervisors and managers to mitigate and address abusive conduct issues at the outset. The approaches could range from “soft encouragement” measures, to placing an affirmative responsibility on supervisors and managers to address, as appropriate, situations of possible harassment of which they become aware.

55. Managers normally have a responsibility to address situations of possible abusive conduct and, to that end, should be empowered and supported by institutional senior management. If this responsibility is not upheld by managers, organizations could consider addressing the failure to address the situation as non-performance, negligence, or, if appropriate, misconduct.
56. Organizations could, for instance, develop training tools for managers and supervisors and provide support from relevant Offices that are subject matter experts on addressing such topics, such as Ethics and Ombuds Offices, Mediators, or Human Resources.
57. Organizations could ensure that relevant functions, including the Ombudsperson, the Ethics Office, Human Resources and other management parties, in addition to the abusive conduct focal point, regularly meet and engage as well as on specific cases, having created terms of reference for such communication and collaboration that clearly set forth, in particular, confidentiality and information sharing modalities and parameters.

D. Mandatory application of informal approaches to abusive conduct allegations when appropriate.

58. In discussions regarding the application of informal approaches, the Working Group noted that the appetite for such an approach varied among institutions. The spectrum ran from a belief that the informal approach should have mandatory application to the view that this was not a viable option for reasons of ideology or a lack of support from senior management.
59. Working Group members did agree that informal mechanisms were not appropriate for all situations, depending on the severity and/or nature of some abusive conduct.
60. As such, the Working Group further underscored broad support for a common list of factors prior to initiating an investigation which could facilitate consistency and awareness around informal resolution mechanisms, which remain poorly understood and underutilized.

Annex 1: Intake Criteria

	Criteria	Answers that would support decision to investigate
I.	Jurisdiction	
	Is the subject under the investigation office’s authority?	Yes
	If proven to be true, is it a violation of policy? ⁴	Yes
II.	Wishes of Affected Party(ies)	
	Do(es) the Affected Party(ies) want the matter investigated?	Yes
III.	Active risk	
	Is the conduct ongoing?	Yes
	Is there more than one victim/complainant/affected party?	Yes
	What is the impact of the alleged conduct on the Affected Party(ies)?	Severe
	Is/are the Affected Party(ies) still employed by the organization?	Yes
	Does the alleged conduct represent a reputational risk to the organization, internally and/or externally?	Yes
	Is there an operational impact of the alleged conduct?	Yes
IV.	Characteristics of the alleged conduct	
	Is the alleged conduct either a single egregious act or part of a pattern?	Yes
	Is the alleged conduct consistent with routine staff functions and duties, including the discharge of managerial and supervisory responsibilities?	No
	Does the alleged conduct constitute a criminal offense?	Yes
IV.	Subject’s profile	

⁴ If yes, would it be sanctionable? – i.e., many abusive conduct allegations, if proven to be true, would constitute a violation of policy, but would not result in imposition of disciplinary measures.

UNRIS Position Paper on Best Practices for Addressing Abusive Conduct Allegations

	Are there any previous complaints or pending misconduct allegations against same subject (of any type)?	Yes
	Has the alleged current conduct been addressed with the subject?	Yes
	Has the subject been counseled or disciplined in the past for similar conduct?	Yes
	Is the subject still employed by the organization? Any other UN system organization?	Yes
	What is the subject's grade/level?	High
V.	Alternatives to investigation	
	Have alternative dispute resolution processes been attempted?	
	Is the matter suitable for other dispute resolution processes?	No
	Is there a related or parallel formal process ongoing (e.g., grievance)?	No
VI.	Viability of investigation	
	Are there significant challenges to establishment of the facts and to reaching an affirmative finding?	No
	Is the reporter anonymous?	No
	Is there a significant delay in reporting?	No

Annex 2: Current approaches: Working Group

International Monetary Fund (IMF)

1. The IMF approach towards addressing allegations of harassment, discrimination, and other abusive workplace conduct can best be described as a *multi-point decentralized model*. A complainant, or affected individual, can employ multiple channels for reporting or addressing abusive behaviour, even simultaneously, depending on their objective for reporting and preferred approach.
2. Specifically, a complainant can use the dispute resolution system, which is comprised of informal and formal channels. The informal channels are the Ombudsman's Office and the Mediator. Formal dispute resolution consists of three levels: i) Administrative Review, ii) Grievance Committee and iii) Administrative Tribunal for staff members, or arbitration, for contractual employees.
3. Affected parties may also seek informal consultation with or resolution through a supervisor, a departmental Human Resources representative, a Peer for Respectful Workplace or the Ethics Office.
4. Finally, one can file a formal complaint with the Office of Internal Investigations (OII). Upon receipt of a complaint, OII conducts a preliminary inquiry to determine if there is a credible basis to suggest that a policy (Harassment, Discrimination, or any other applicable standard of conduct) has been violated. If there is no such basis, the matter is closed without further investigation. Cases that are investigated and result in substantiated allegations may result in the imposition of disciplinary measures but the investigative process in and of itself would not result in remedial measures or any redress; this can be achieved only through the grievance process or arbitration. OII decisions not to investigate are not subject to appeal.
5. These channels operate independently and there is no centralized intake or triage focal point that registers cases or advises on the route of a reported matter. However, if a complainant employs more than one channel simultaneously, those Offices will make efforts to communicate in order to avoid adverse or counterproductive impacts from one process to the other.
6. The IMF Harassment Policy applies to staff and contractual employees and places an affirmative responsibility on supervisors and managers to address situations of possible harassment of which they become aware. Failure to do so may be investigated as misconduct.

Office of Internal Oversight Services (OIOS)

1. OIOS' response to allegations of abusive behaviour is governed by ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).
2. The bulletin's framework includes the following:
 - a. Prevention; all staff members have a responsibility for maintaining a harmonious workplace, with a heightened responsibility on managers and senior leadership who are expected to proactively respond to workplace grievances.
 - b. Complainants can elect to bring forward a formal or informal complaint. Informal complaints mirror alternative dispute resolution mechanisms; including the possibility of approaching the alleged offender directing or soliciting mediation through the Ombudsman's office. Counselling and other support services are also available to staff.
 - c. When informal resolution is ineffective or inappropriate, a complainant can elect to make a formal complaint, requesting an investigation.

- d. Formal complaints can be made by anyone with knowledge of abusive behaviour; can be made anonymously; and are not subject to time limitations. There are policy reasons for this flexibility. It encourages complainants to come forward with systemic issues, without fear of reprisals. However, anonymity and the passage of time is part of the intake criteria, which may justify a decision not to investigate.
- e. All formal complaints are sent to OIOS which has an intake process to guide its handling of the complaint.
- f. Excluding SH complaints, which OIOS handles exclusively, most abusive behaviour complaints are referred by OIOS to management for a decision on how to handle them. Management can decide to close the complaint, take administrative/managerial measures, or can set up a panel to investigate.
- g. As for which of these options to take, management's intake criteria (which also applies to OIOS, see below) is reflected in a complementary administrative instruction, ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). A key part of the intake assessment lies in distinguishing between complaints of unsatisfactory behaviour, which should be dealt with as a performance issue, and complaints of possible misconduct, which could result in a disciplinary sanction. In the latter case, the complaint is more likely to be investigated. Other criteria include:
 - i. Whether the provision of the information of unsatisfactory conduct is made in good faith and is sufficiently detailed that it may form the basis for an investigation. This allows management to assess, for instance, that an anonymous complaint is so vague and unsupported as to not warrant investigation.
 - ii. Whether there is a likelihood that an investigation would reveal sufficient evidence to further pursue the matter as a disciplinary case. This allows management to determine that the complaint is of such subtlety that the facts asserted could never be established through an investigation; or that the passage of times renders an investigation futile.
 - iii. Whether an informal resolution process would be more appropriate in the circumstances. This allows management to tell a complainant that the complaint is not appropriate for investigation; e.g. counter complaints, or protracted office disputes that should have been addressed managerially at an earlier point in time.
 - iv. Any other factor(s) reasonable in the circumstances.
- h. When management elects to set up an investigation, it draws on a roster of panel members who have been trained in fact-finding by OIOS, in collaboration with the arm of human resources responsible for disciplinary decisions.
- i. Alternatively, OIOS may elect to retain a complaint and investigate it itself. In making this decision, OIOS draws on the intake criteria set out in ST/AI/2017/1 but also takes broader policy considerations into account, like the impact of the alleged behaviour on the office. OIOS is more likely to investigate when the complaint implicates senior management or is protracted and has harmed an office's ability to deliver its mandate.
- j. All intake decisions, whether made by OIOS or management, must be carefully documented in a manner which meets the Organization, and UNDT's, accountability expectations.
- k. Regardless of whether the complaint is investigated by a panel or OIOS, management is responsible for monitoring the workplace during an investigation and disciplinary process to ensure that the situation for complainants does not get worse. This means

management may elect to place the alleged offender on leave, move the alleged offender to a different work stream, change the complainants work plan etc. Investigators should bring information relevant to this responsibility to management's attention as an investigation progresses.

Pan-American Health Organization (PAHO)

1. The purpose of PAHO's Policy on the Prevention and Resolution of Harassment in the Workplace is to foster a healthy and respectful workplace through the prevention and prompt resolution of harassment. This policy aims to prevent harassment by promoting increased awareness, early problem resolution, and the use of informal and formal resolution processes.
2. The policy applies to any person who works for PAHO, regardless of the type or duration of contract, as well as to people who previously worked in the Organization who claim that their separation was due to harassment, provided that the established time limits under the applicable rules are respected.
3. In PAHO, harassment includes the following categories of behaviour and normally consists of a series of incidents but can exceptionally be one severe incident as well: personal harassment, sexual harassment, bullying, abuse of authority, creating a hostile work environment.
4. The policy enumerates the rights, responsibilities and obligations of all people who work in PAHO. Specifically, it mentions that persons who work for PAHO must cooperate in the informal and/or formal resolution process and provide information and documentation to the Investigations Office or external investigator, upon request. Managers and supervisors are required to notify immediately the Investigations Office of serious incidents of suspected harassment that are brought to their attention.
5. In PAHO, any person who feels that he or she has been subjected to harassment may use the informal and/or formal resolution processes. While the policy encourages early resolution of workplace conflict using the informal resolution process, a person is not required to use the informal resolution process before electing to use the formal resolution process.
6. The policy encourages the following informal processes: talking to the person, consulting with the Ombudsman, Ethics Office, Human Resources Management, Staff Association, or the Employee Assistance Program, and participating in mediation.
7. In the formal resolution process, the harassment complaint will usually be filed by the person(s) who allege(s) that they have been subjected to harassment. However, a harassment complaint may also be submitted by any other concerned person(s), including the PAHO Staff Association. While not explicitly stated in this policy, PAHO accepts anonymous harassment complaints.
8. While some coordination effort has been made to avoid duplication of effort, complainants have been known to 'forum-shop' and engage in concurrent resolution processes.

United Nations Children's Fund (UNICEF)

1. UNICEF personnel may choose to seek guidance and advice from a number of different offices in addition to pursuing formal and/or informal avenues. These avenues are not mutually exclusive, and an unsuccessful attempt to resolve a matter informally does not preclude it from being reported to the Office of Internal Audit and Investigations (OIAI). Although there have been *ad hoc* efforts to coordinate internally amongst offices regarding specific matters, the absence of a centralized focal point and confidentiality considerations mean that these mechanisms generally operate independently and in parallel rather than in a coordinated fashion.
2. UNICEF functions providing confidential guidance and advice regarding workplace disputes and related dispute resolution mechanisms include the Ethics Office, the Office of the Ombudsman for the UN Funds and Programmes ("Ombudsman's Office"), and staff counsellors. Informal processes range from the complainant approaching the alleged offender directly, approaching a

supervisor or higher-level manager for guidance or seeking support through a neutral third party, in particular the Ombudsman's Office.

3. The formal process begins with the filing of a complaint with OIAI. OIAI then undertakes an initial assessment of the complaint to determine whether to initiate an investigation. OIAI retains the ultimate authority to decide which cases it will consider and closes matters implicating staff members without initiating an investigation where there is insufficient information, the reported conduct would not amount to misconduct as a matter of law, or it is unlikely that an investigation would reveal sufficient evidence to sustain a finding of misconduct. If OIAI investigates a matter and substantiates the allegations, its report is transmitted to the Deputy Executive Director, Management to determine whether there is sufficient evidence that the misconduct occurred, in which case disciplinary measures may be imposed.
4. OIAI notifies complainants who have reported conduct that directly harmed them, such as assault, harassment, sexual harassment, abuse of authority, discrimination and retaliation, upon closure of a case following an initial assessment or upon completion of an investigation. Victims of harassment, sexual harassment, abuse of authority, and discrimination may appeal OIAI's decision to close a case without initiating an investigation or to close a case as unsubstantiated following an investigation—first through a management evaluation by the Deputy Executive Director, Management, and then through the UN Dispute Tribunal and UN Appeal Tribunal, as relevant. More generally, OIAI seeks to follow a victim-centred approach during all stages of its review. The above-described processes are addressed in the UNICEF Policy on the Prohibition of Discrimination, Harassment, Sexual Harassment and Abuse of Authority, POLICY DHR/2020/002, and the UNICEF Policy on the Disciplinary Process and Measures, POLICY/DHR/2020/002 v. 7 May 2020.
5. Recognizing that the pendency of an investigation in cases involving interpersonal allegations can be perceived as hindering management's ability to take non-disciplinary measures to resolve conflict, OIAI communicates, where appropriate and with due regard for confidentiality and the integrity of its investigations, with heads of office regarding the status of ongoing cases to facilitate the implementation of appropriate remedial measures in parallel, as necessary. The creation of a new intake and assessment team in mid-2020 has strengthened the review and screening of allegations at the initial assessment stage. Cases not predicated for investigation may be referred to senior management for appropriate follow-up action.
6. Together with other UNICEF offices, OIAI is continuing to explore the possibility of alternative means of resolving reports of harassment, abuse of authority and discrimination, such as through early closure and/or referral of such complaints where they do not require investigative intervention or for which other recourse mechanisms have not yet been exhausted.

United Nations High Commissioner for Refugees (UNHCR)

A new corporate approach in UNHCR

1. UNHCR has recently recalibrated its system to receive and resolve workplace grievances and personnel retain several options to raise and seek resolution of disputes and workplace issues within both the management line and the formal line, including the internal justice system. A key change is the improved coordination among the specialist entities involved in these complaints and ensuring a proper follow-up on individual issues. To this end, the Ethics Office is leading a Support Desk for Workplace Concerns to sort and allocate individual issues. This mechanism will ensure that the action of the specialist entities is better aligned and will convey meetings in an Informal Conflict Management Support Group where entities coordinate action on emerging situations. This leverages the strengths, mandates and independence of each of these entities, while guaranteeing that real or perceived threats of retaliation are considered.
2. The Support Desk for Workplace Concerns as well as a one-stop shop for information on the intranet to guide colleagues to the right entity for resolution of workplace issues and concerns are led by the Ethics Office. The one-stop-shop on the intranet – similar to the UN's Administration

of Justice website – is tailored to UNHCR and provides information on options available to members of the workforce and will gradually encourage personnel to seek resolution of conflict and other workplace challenges through dialogue, using informal processes as facilitators to this where and when needed. All while providing enhanced information on the role of formal processes, parameters to engage with these and support available internally and externally to help staff navigate these. In case any misconduct issues are received through the one-stop-shop intranet portal, these will be referred to the IGO for intake assessment. If the complaint does not meet the *prima facie* misconduct threshold, the matter will be referred back to management either directly or through the Support Desk for Workplace Concerns.

3. The support to those engaged in addressing workplace issues has also been enhanced through the hiring of a Senior Advisor for management support, embedded in the HR division. The overall idea is to put an emphasis on strengthening people-management skills, transform the performance management system with stronger emphasis on dialogue, accountability, development, enhance team collaboration and help managers address workplace issues locally, early and effectively. The new system will however not replace the existing formal internal justice line and will remain available to colleagues who choose to make use of it, subject to a conclusion by an independent intake assessment undertaken by the IGO that the complaint strictly meets the *prima facie* misconduct threshold.

Integrity case and data management

4. UNHCR is also increasing its capabilities to use data and tools for integrity prevention and response measures through the creation of an integrated data management system, led and hosted by the Ethics Office. This will allow analysis of integrity cases, which in turn will enable the organisation to better identify trends related to workplace issues and to address problematic issues through early interventions. This system will also allow the Ethics Office to cross-check referrals and avoid duplication between headquarters facilitated and locally led efforts to resolve workplace issues.

A strict application of the prima facie misconduct threshold during the intake assessment phase

5. The UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4), defines harassment as an improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation. The test is objective; it focusses on the conduct itself and examines whether it would be expected to cause offence or humiliation to a reasonable person, considering all circumstances in which it occurred. It should be noted that the voicing of disagreement in opinions and views, even if expressed strongly, does not constitute harassment, provided it is not done in a discriminatory, humiliating or abusive manner (Mashhour 2014-UNAT-483). This includes disagreements on performance (Osman 2013-UNAT-301).
6. The key element in the definition of abuse of authority according to the same policy is the improper use of a position of influence, power or authority by an individual against another person. While impropriety itself is not defined, one can conclude from jurisprudence of the UN Tribunals that a position of influence, power or authority is used improperly when it is used in a manner or for a purpose other than it was intended for. At the same time, it is important to keep in mind that not every infringement of the rules, be it the result of a conscious or unconscious act or omission, is an abuse of authority (Gehr 2013-UNAT-253). Whether a decision or an act raises to the level of misconduct depends on the totality of circumstances of the case (Bagot 2017-UNAT-718).
7. Elements such as “improper use” or “causing offence” are not precisely defined and as a result, there will be grey zones and a certain margin of discretion in the appreciation of specific conduct to consider in the intake assessment. When assessing a misconduct complaint received, they are considered to either having reached the *prima facie* threshold for misconduct or this threshold can easily be reached through the assessments process by adding missing information. The intake process will normally not include extensive proactive investigative steps, unless there are

expectational reasons that would require these additional steps. The jurisprudence is clear and requires the intake assessment of abuse of authority and harassment complaints to always consider the needs to act in good faith in following the provisions of the applicable policies and needs to show that any decision is properly motivated and the grounds for it are documented.

8. According to the UNHCR applicable framework the intake assessment should, among other elements, consider whether referral to another entity or other resolution process would be more appropriate in the circumstances and any other factor(s) reasonable in the circumstances. These provisions explicitly mandate the IGO to refer workplace matters not clearly amounting to misconduct back to management for resolution through the performance route or other types of interventions as well as to consider the negative or even aggravated impact an investigation can have on a workplace and its personnel.

Appeals on decisions not to investigate

9. Contrary to the UN policy on discrimination, harassment, sexual harassment and abuse of authority (ST/SGB 2008/5), which explicitly foresees the right for complainants to contest the decision not to open an investigation, the UNHCR policy does not mention any such right. The policy merely states that “the IGO will determine whether the allegation of discrimination, harassment, sexual harassment or abuse of authority can be established based on the facts of the case. It follows however from the jurisprudence that a UN staff member has a right to an investigation against another staff member with the important caveat that this right is limited to cases of serious and reasonable accusations [Nadeau 2017-UNAT-733]. The jurisprudence finds that the discretion sits with the Organization to determine whether an allegation will be investigated. This discretion is wide and unobstructed where Tribunals are alert only to whether the decision was made in bad faith rather than any substantive review of the merits of the decision.⁵ This means that the organization needs to act in good faith in following the applicable provisions on discrimination, harassment, sexual harassment and abuse of authority and needs to show any decision is properly motivated and the grounds for it are documented.⁶

United Nations Population Fund (UNFPA)

1. Individuals who believe they are victims of prohibited conduct may pursue consultation and/or informal resolutions through entities such as the Ombudsman’s Office, the Ethics Office, Division for Human Resources, the Coordinator for PSEA/SH and/or management. Office of Audit and Investigation Services (OAIS) does not coordinate with entities using informal mechanisms and generally does not proceed with a preliminary assessment of a reported matter when informed by the affected individual that they are involved with an informal process, such as with the Ombudsman’s Office. The affected individual can choose to pursue a formal complaint once the informal process has been completed.

⁵ By contrast, stronger language is used by Tribunals in **sexual harassment** cases on the necessary limitations of the Organization’s discretion in reviewing investigation findings and deciding whether to sanction [Ular 2020-UNDT-221]

⁶ “The Administration has a degree of discretion as to how to conduct a review and assessment of a complaint and may decide whether to undertake an investigation regarding all or some of the allegations” [Oummih 2014-UNAT 592].

“A staff member only has a right to an investigation against another staff member in cases of serious and reasonable accusations” [Nadeau 2017-UNAT-733].

“(The Tribunal) has the responsibility to assess whether the Organizations’ decision is not improperly motivated” [Messinger 2011-UNAT-123].

“As part of its judicial review, it is necessary to determine whether the decision was vitiated by bias or bad faith, that is, if it was taken for an improper purpose” [Toure 2016-UNAT-660].

“The Dispute Tribunal’s scope of review is limited to determining whether the exercise of such discretion is legal, rational, reasonable and procedurally correct, so that it does not lend to unfairness, unlawfulness or arbitrariness [Abusondous 2018-UNAT-812].

In a more recent judgement, the Tribunal has noted that the very least is to show the complainant was interviewed before deciding in light of the applicable law which explicitly requires to do so [Coleman 2021-UNDT-016]

2. Persons wishing to pursue a formal mechanism can submit a complaint of wrongdoing through the UNFPA OASIS investigations hotline, among other channels. OASIS accepts anonymous reports and there is no deadline for filing a complaint. After an initial screening, OASIS then conducts a preliminary assessment, which includes all allegations of sexual misconduct, after which the decision to close or investigate is made. OASIS does not investigate allegations of sexual harassment against IPs and other third parties but, if the allegations could have an impact on programme activities, OASIS will seek to ensure that the entities have taken appropriate measures to address the allegations.
3. OASIS has discretionary authority to decide if a matter (a) warrants investigation; (b) does not fall within its mandate; and/or (c) can be referred for informal resolution (with the victim's consent). At the conclusion of a preliminary assessment or investigation, complainants are notified of the matter's closure. The closing of a matter after preliminary assessment does not preclude OASIS from re-opening if further details or information are subsequently disclosed. A request can be made to OASIS to re-open a matter closed at either the preliminary review phase or after an investigation. An appeal of a decision by OASIS to close a matter concerning prohibited conduct can be matter by first submitting a Request for Management Evaluation followed by an appeal to the UNDT.
4. If an investigation results in substantiated allegations, the matter is referred to the Executive Director (via the Legal Unit) for possible disciplinary action. If a final determination of sexual harassment is made, the subject of the investigation may be entered into the "clear check" database.
5. OASIS continues to improve efforts to internally triage complaints given the quantity and wide range of gravity/priority that the portfolio presents. Specifically, in 2022, a new Intake, Policy and Reporting team will be installed within the Investigations Branch to triage reports and expedite the completion of preliminary assessments. Additionally, while interest exists among UNFPA stakeholders to improve the collective response to prohibited conduct, no changes to the present structure are currently being undertaken.

World Food Programme (WFP)

61. Upon receiving a complaint of abusive conduct, Office of Inspections and Investigations (OIGI) conducts a preliminary review of the allegations at hand. As with all reports of misconduct, OIGI may decide to close the matter at the preliminary assessment stage. OIGI's decision not to open an investigation is an appealable administrative decision. The complainant can remain anonymous.
62. During the preliminary assessment, OIGI will also aim to determine, *inter alia*, if the alleged conduct constitutes misconduct as per WFP policy on Harassment, Sexual Harassment, Discrimination and Abuse of Authority. If the alleged abusive conduct appears credible but does not amount to misconduct, OIGI may choose, if appropriate, to refer the matter for informal resolution either to management or to the Ombudsman for consideration of whether mediation or other informal resolution would be appropriate.
63. Conversely, OIGI may deem that the complaint would be better addressed through a formal investigation, in which case they investigate the matter. If, at the end of the investigative process, OIGI finds the allegation of abusive conduct to be substantiated, an investigation report will be issued and submitted to the Director, Human Resources Management (HRM) and the Executive Director for appropriate action.
64. Whilst there is no centralized response mechanism *per se*, WFP has implemented the Inter-Divisional Standing Committee Commission (comprising the Ombudsman, General Counsel, Head of HR, Ethics and the Inspector General), whose purpose is to work towards a coordinated and centralized response to abusive conduct.

65. Finally, managers and supervisors have a duty to report any conduct that is not consistent with WFP Policy on Harassment, Sexual Harassment, Discrimination and Abuse of Authority, irrespective of whether the behaviour rises to the level of misconduct.

UNRIS