

Guidelines for UN SECRETARIAT Managers
How to deal with possible discrimination, harassment, including sexual harassment,
and abuse of authority (ST/SGB/2008/5):

I. Introduction

1. The policy of the Organization is clear: discrimination, harassment and abuse of authority¹ is prohibited, as described in the Secretary-General's Bulletin ST/SGB/2008/5 ("the Bulletin"). This policy places great responsibility on heads of Departments, Offices and managers and the present guidelines are aimed at supporting informed decision-making relating to the implementation of this policy,

¹ Section 1 of ST/SGB/2008/5 sets out the definitions of discrimination, harassment and abuse of authority as follows:

Discrimination is any unfair treatment or arbitrary distinction based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin or other status. Discrimination may be an isolated event affecting one person or a group of persons similarly situated, or may manifest itself through harassment or abuse of authority.

Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.

Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders.

Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

with a particular focus on the roles and responsibilities of managers. As each case has its own unique facts and features, it is not possible to provide more than a guideline to the process to be followed.² Managers **MUST** use, on a case by case basis, their good judgment and discretion, bring a fair and unbiased mind to their decisions, consider relevant matters and disregard irrelevant ones and attempt to ensure facts are appropriately gathered and assessed. Decision-making should be documented in writing, setting out the decision and the reasons therefore.

2. These guidelines are provided to assist managers and lay-investigators and **are not a formal policy**. They may be amended from time to time, and those consulting them should verify that they are using the most up-to-date version, which is posted in the Human Resources Handbook on i-Seek.
3. These guidelines address:
 - The duties of managers and responsible officials under the Bulletin
 - Informal resolution
 - How to handle reports and formal complaints of prohibited conduct upon receipt
 - What action should be taken following receipt of an investigation report
 - Administrative measures pending an investigation or disciplinary process

Guidelines addressing **the investigative process** are **annexed** and focus on the role of those tasked with investigating complaints of possible prohibited conduct.

II. What are the duties of managers under the Bulletin?

4. The Bulletin highlights several responsibilities of managers in general, and also some specific responsibilities of heads of departments, offices or missions in relation to the implementation of the policy.

All managers have a duty to:

- a) **Take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct;**
- b) **Act as role models by upholding the highest standards of conduct;**
- c) **Maintain open channels of communication and ensure that staff members who wish to raise their concerns in good faith can do so freely and without fear of adverse consequences;**
- d) **Address any reports and allegations of prohibited conduct promptly, in a fair and impartial manner, and with concrete action;**

² **EXAMPLES ARE GIVEN ONLY TO HIGHLIGHT THE POINT BEING MADE. EXAMPLES ARE "BLACK & WHITE" OR "BRIGHT LINE" IN NATURE AND DO NOT CONTAIN THE UNIQUE CIRCUMSTANCES AND NUANCES THAT ARE PRESENT IN ACTUAL CASES.**

e) **Be ready to assist in arranging an informal resolution process.**

Tarek has noticed that Bob and Grace, who both work for him, are not working well on a joint project. He calls both of them into his office, individually. Bob tells him he finds Grace is too aggressive. Tarek asks Bob to cite some examples of such conduct and tells Bob that he would like for the three of them to meet together. Tarek arranges a joint meeting between the three of them to discuss ground rules on how to work jointly and explains to both that his door is always open to discuss any issues. Tarek further ensures he is present during some of their work discussion to ensure both staff members are working well together. Tarek also reminds them that the Ombudsman's Office is a resource that offers guidance and coaching and mediation to support working relationships, if they should find that helpful.

5. Heads of departments, offices or missions, referred to in the Bulletin as "the responsible official", have the duty to:
- a) **Hold all managers and other supervisory staff accountable for complying with the policy**, and ensure that failure on the part of managers and supervisors to fulfill their obligations under the Bulletin, if established, should be reflected in their annual performance appraisal;
 - b) As a preventive measure, ensure that their staff and others for whom they are responsible for are made aware of the policy;
 - c) **Provide annual reports to the ASG/OHRM to include an overview of preventive measures taken with a view to ensuring a harmonious work environment and protecting staff from prohibited conduct**;
 - d) Promptly review formal complaints or reports under the Bulletin, and assess whether there are sufficient grounds to warrant a formal fact-finding investigation;
 - e) If a fact-finding investigation is undertaken, take measures to monitor the status of the complainant, the alleged offender and the work unit(s) concerned to ensure that no party is subjected to retaliation;
 - f) Receive the investigation report and decide on the course of action to be taken;
 - g) To keep monitoring the status of the affected staff members and the work unit(s) after the investigation has been completed and a decision taken.
6. In addition to the responsibilities specifically listed in the Bulletin, it is strongly recommended that managers record, in writing, any action taken or decisions made under the Bulletin in a way that indicates the factual matters and information they considered (emails, memoranda, notes of conversation etc). As decisions of managers may be the subject of requests for management evaluation and/or challenge before the United Nations Dispute Tribunal, it is important to keep a complete record of the decision-making process.

III. Informal resolution vs. formal resolution

7. The Bulletin provides information about informal resolution as well as a formal complaint procedure. Both of these avenues are described more fully in the sections that follow. In brief, **informal resolution offers the opportunity to resolve a complaint in a non-threatening and non-contentious manner, including with the assistance of the Office of Ombudsman and Mediation Services.** In circumstances where informal resolution is not desired or appropriate, or has been unsuccessful, the complainant may choose to pursue formal procedures, which involve the submission of a formal complaint to the responsible official, who will then determine whether a formal investigation into the matter is warranted. **It is noted that a complainant's decision to pursue informal resolution does not preclude his or her later deciding to pursue formal procedures. Likewise, even if a formal complaint has been made, it is still possible to pursue informal resolution, if the complainant is in agreement.**

IV. Informal resolution

A. Early intervention is crucial

8. The Bulletin provides definitions of harassment, discrimination and abuse of authority (i.e., prohibited conduct), but in real life situations there is no perfect litmus test as to what is what. What is clear is that situations frequently arise where staff members feel ill-treated or someone's behaviour is affecting the work environment in a negative way. **It is generally good practice to address all situations of perceived or real misunderstandings, unease, upset, negative work environments, incivility, rudeness, etc. as early as possible, even if there is no evidence of prohibited conduct.**
9. Supervisors, managers and heads of departments are required to provide for a harmonious work environment that fosters productivity, and where all staff are treated with dignity and respect. **Where managers become aware of inappropriate behaviour, either through verbal reports or direct observation, they should take the initiative and take action.**
10. **There is no need to await a formal complaint to act.** On the contrary, early intervention is important to prevent such situations from escalating into perceived or real prohibited conduct and to keep negativity and conflict from spreading in the office. Sometimes, a team-building group activity can address issues in the working environment before they turn into something more serious.
11. Additionally, **it is particularly important to be watchful of the "abrasive manager", who exhibits behaviour that can be jarring, curt and insensitive.** This often is unintentional but nevertheless harmful and, if unaddressed, may lead to harassment

complaints from affected staff. **In instances where an abrasive management style is exhibited, supervisory intervention may be necessary, as the manager in question needs to be made aware of how his/her behaviour is affecting the work environment.** Also, heads of offices and supervisors of the individual concerned may wish to ask themselves how they may be enabling the abrasive behaviour. This could be by focusing only on the work contributions of the staff member while not understanding or even turning a blind eye to the human costs. One-on-one coaching with the abrasive individual may be a discreet and effective way to achieve the required behavioural change.

12. **Managers may wish to consult with the Office of Ombudsman and Mediation Services about possible options for early intervention to prevent escalation, including possible coaching, mediation or group facilitation.**

B. What can a manager do to encourage informal resolution?

13. Informal resolution is a voluntary process and cannot be compelled. However, it can always be encouraged and supported. Managers should, in appropriate cases:
 - a) **Encourage the staff member to consider notifying the alleged offender of their complaint or grievance and ask him or her to stop. The alleged offender may not be aware that his or her behaviour is offensive.** In some cases, however, disparity in power or status or other considerations may make such direct confrontation difficult.
 - b) **Suggest that the staff member may wish to contact the Office of Ombudsman and Mediation Services,** which has staff trained to deal with these types of situations. The Office of Ombudsman and Mediation Services guarantees confidentiality.
 - c) Ensure that the staff member is aware of other third party resources.
 - d) **Managers themselves can also consult the Office of Ombudsman and Mediation Services to explore options** on what can be done to try to informally address the issue through the assistance of an ombudsman or mediator.
 - e) In some cases, the manager may consider temporarily re-assigning either of the individuals, while informal resolution is explored. Such action should not be taken without first obtaining the individual's consent.

C. What are the benefits of informal resolution?

14. **An informal approach offers the opportunity for non-threatening and non-contentious resolution.** The Office of Ombudsman and Mediation Services can assist, while the parties retain ownership of the process. Informal resolution, which

could include mediation, is a **flexible process**, where the needs and interests underlying disputes can surface. The mandate of the Office of Ombudsman and Mediation Services guarantees confidentiality, which allows for candor and honest dialogue.

15. **Informal resolution may also help to contain the conflict to the parties directly involved.** It normally requires a lesser investment of staff time and organizational resources, and, if successful, minimizes the risk of adversarial or charged working relationships affecting the productivity of an office or work unit.
16. **Formal resolution, including an investigation, can be extremely stressful for all concerned, including the complainant and other witnesses.** This can potentially cause further damage to the work environment and morale.
17. It is also important to note that **pursuing the formal route does not necessarily solve the problem.** A fact-finding investigation, once completed, rarely would offer any easy or quick solutions to the underlying issues that led to the complaint.

Samir and Francis have worked in the same unit for a number of years and, in the past, had a collegial relationship. However, following a major disagreement over a task they were assigned to handle jointly, the two had a significant falling out. Absent management intervention and attempts at informal resolution, the situation degenerated to the point that Samir and Francis avoided speaking to each other, thereby negatively impacting their unit's work output.

Some time later, Francis began to make disparaging references to Samir in front of colleagues, including using inappropriate language when referring to Samir. Following this, Samir filed a formal complaint against Francis, which led to a formal fact-finding investigation and to a disciplinary process against Francis. At the conclusion of that disciplinary process, the Under-Secretary-General for Management decided to impose a disciplinary measure on Francis.

While the formal process has now concluded, Samir and Francis continue to dislike each other and work poorly together. Had early informal resolution and appropriate management intervention been pursued at an early stage, the working relationship between Samir and Francis might have been better preserved, potentially leading to a preferable outcome for all concerned.

V. Formal resolution

A. Who can make a complaint?

18. A formal complaint may be made by any person who feels that he/she may have been subject to prohibited conduct on the part of a staff member of the UN

Secretariat in a work-related situation. This includes staff members, consultants, contractors, and interns. Complaints may also be made by a third party who has direct knowledge of the situation. The written complaint does not have to expressly reference section 5.14 of the Bulletin to be regarded as a formal complaint.

B. Who receives the formal written complaint?

19. The written complaint should be submitted to the responsible official (see paragraph 5, above). If the responsible official is the alleged offender, then the complaint should be submitted to the ASG/OHRM or, for mission staff, to the USG/DFS. A copy of a written complaint should always be submitted to the ASG/OHRM.

C. How to review and assess a formal complaint

20. Once he/she becomes aware of a complaint, the responsible official should take prompt and concrete action. He/she should acknowledge receipt of the complaint and advise that it will be reviewed. If it is determined that a fact-finding investigation should take place, the Bulletin provides that the investigation report prepared by the appointed panel should normally be submitted to the responsible official no later than three months from the date of submission of the complaint. As this timeframe of three months starts from the date of submission of the complaint, and the fact-finding process can be time consuming, the responsible official should act as promptly as possible and impress upon those undertaking the investigation the importance of doing the same.

Does the complaint contain the required information?

21. As a first step, the responsible official should assess the complaint to ensure that it contains the required information:
- a) A detailed description of the alleged incident(s) of prohibited conduct;
 - b) The name of the alleged offender;
 - c) Date(s) and location(s) of incident(s);
 - d) Names of witnesses, if any;
 - e) Names of persons who are aware of the incident(s), if any;
 - f) Any other relevant information, including documentary evidence if available;
and
 - g) Date of submission and signature of the complainant or third party making the report.
22. If the complaint does not contain the required information, the complainant should be informed of this.
23. Anonymous complaints should be forwarded to OIOS.

D. Should there be a formal fact-finding investigation?

24. Once the responsible official is satisfied that he/she has sufficient information before him/her, he/she must assess whether:

- (i) The complaint appears to have been made in good faith; and
- (ii) There are sufficient grounds to warrant a formal fact-finding investigation.

Is the complaint in good faith?

25. Good faith means that the complainant is acting rationally, fairly and honestly. Good faith often comes down to a lack of evidence of bad faith, that is, whether the responsible official has before him/her any actual evidence that the complaint is: (i) based on intentionally false or misleading information; (ii) malicious (an intentionally baseless complaint, made with harmful intent); (iii) frivolous (a complaint without any merit whatsoever, containing no arguable factual basis); or (iv) manifestly unreasonable (obviously or clearly unreasonable).

26. A key point to note is that what management may perceive as a complainant's ulterior motives for filing a complaint (e.g. to seek leverage against the alleged offender in the context of a workplace dispute) would not normally lead to a complaint being considered to have been filed in "bad faith".

Rita has complained that Markus sexually harassed her by touching her inappropriately in the office on different dates throughout the month of August. In fact, it is clear that Markus was away from the office during that period. As Rita must know that the complaint is not true, her complaint is made in bad faith.

Stephen claims that his supervisor, Adriana, discriminated against him by changing his shift. A review of Stephen's complaint indicates that his claim of discrimination is unfounded and that he was reassigned for operational reasons. As Stephen may subjectively believe that his reassignment was based on discriminatory reasons, it is difficult to establish that his complaint was made in bad faith. Mediation or a facilitated discussion could allow Stephen and Adriana to safely discuss their perceptions.

Are there "sufficient grounds" to warrant a formal fact-finding investigation?

27. In considering whether there are "sufficient grounds to warrant a formal fact finding investigation", the following non-exhaustive considerations are relevant:

- (i) The threshold is a low one and should not be too narrowly interpreted. The alleged prohibited conduct does not have to be already proven by the complainant. Whether, in fact, prohibited conduct has taken place is a matter

for later determination, after an investigation and disciplinary process.

- (ii) A fact-finding investigation ought to be initiated if the overall circumstances of the complaint offer *at least a reasonable chance* that the alleged facts may amount to prohibited conduct.

How to distinguish prohibited conduct from abrasive behaviour, performance management or other work related issues

- 28. Managers are often confronted with issues arising out of disagreement on work performance or on other work related issues (e.g. decisions on distribution of functions or restructuring of a unit; decisions on leave or training opportunities). Such matters are *normally* not considered prohibited conduct and should be dealt with in the context of performance management or other management processes (e.g. prior consultations between staff members and managers about proposed restructuring and/or changes to functions). An administrative decision may, of course, be subject to formal challenge by an affected staff member, initially by a request for management evaluation. The mere fact that a supervisor's actions, such as the performance appraisal or non-renewal of appointment, are not favourable to a staff member, is not normally, on its own, regarded as prohibited conduct. Other supporting elements are needed. There should be some indication of harassment, abuse of authority or discrimination.
- 29. Likewise, allegations of disrespectful behaviour, rude e-mails or derogatory comments may, in some cases, reflect poor communication skills and insensitivity rather than amount to prohibited conduct/misconduct. However, such conduct in the context of work performance or work-related issues *may*, in some cases, amount to harassment. Certain incidents, when viewed as isolated events, could be regarded as purely work-related issues. However, a series of such incidents, taken together, may warrant investigation. The key consideration is, therefore, whether the facts as set out in the complaint indicate that prohibited conduct may have occurred.

Pedro complained that he had been harassed by his supervisor, Maria: Maria stopped him from attending training he had previously attended; she had taken certain work away from him, she was not keeping him informed of the matters pertaining to the Section, whereas she kept other members of the team informed; and she bypassed him and gave instructions to his supervisees directly. Taken together, these actions could possibly amount to harassment / abuse of authority that would merit investigation.

Johnson called Ana, who reports to him and has worked in her current role for 20 years, into his office. He said: "I have decided you and I need a change. As of Monday, you will report to Maria-Theresa in another office. This move was approved by the Head of Department". Ana complained that she felt treated like she was completely disposable, and with no regard to her years of loyal service.

Johnson handled the situation poorly. He should have acknowledged Ana's loyal service in her role and given her an explanation for why he felt it best for her to be reassigned, including the contributions Ana could make in her new role. In addition, Johnson should have taken into account any concerns and issues raised by Ana during this discussion with Ana, e.g. regarding the effective date of the reassignment.

Although it is understandable that Ana felt humiliated by the situation, abuse of authority cannot cover every impolite or awkward interaction. It may, therefore, be appropriate for the responsible official to decide not to investigate the conduct alleged, as not amounting to abuse of authority or harassment.

Is there still an opportunity for informal resolution?

30. In assessing the written complaint, and depending on the nature of the allegations, the responsible official may wish to explore with the complainant whether informal resolution, including mediation, could be attempted, subject to the agreement of the parties. The responsible official may seek advice from the Office of Ombudsman and Mediation Services on options for seeking informal resolution. If informal resolution is pursued, it is suggested that timelines be discussed to ensure that the complaint is handled in an effective and timely manner and that the responsible official is kept informed of progress, or lack thereof.

E. If the complaint is not in good faith and/or there are not sufficient grounds to investigate: close the matter

31. If the responsible official determines that the complaint is not in good faith and/or there are insufficient grounds to investigate a complaint, he/she should:
- a) Decide not to initiate an investigation and inform the complainant of the closure of the matter, giving reasons. This is an important communication, given that it may form the basis of an appeal by the complainant.
 - b) If the alleged offender was made aware of the complaint (e.g., if the alleged offender was contacted during the assessment of the complaint), inform the alleged offender of the closure of the matter.
 - c) Where relevant, the responsible official may decide to take administrative action to address performance or work place issues. If this course is followed, certain steps should be followed (discussed later in these guidelines).
 - d) If the complaint reveals tensions in a working relationship, the Office of Ombudsman and Mediation Services may be consulted for guidance in addressing the workplace situation.

32. The responsible official should inform the ASG/OHRM of the decision, as OHRM has a monitoring function in relation to complaints made under the Bulletin.

F. If the complaint is in good faith and there are sufficient grounds: appoint a fact-finding panel

33. If the responsible official determines that the complaint is in good faith, and there are sufficient grounds to warrant a formal fact-finding investigation (and if informal resolution was deemed not appropriate for the case, was not agreed by the parties or was unsuccessful), he/she should appoint a fact-finding panel. The responsible official should:

- a) Appoint at least two individuals who have been trained in investigating allegations of prohibited conduct (“the investigators”). They can be from the department, office or mission concerned or, if necessary, from the list maintained by OHRM identifying trained individuals (a copy should be held by the respective Executive Offices, Conduct and Discipline Team or local human resources office). This list includes individuals outside the Organization who have the requisite training (e.g. retired staff members) and who can be appointed as investigators, although this entails a cost that will normally be met by the department/office/mission concerned.
- b) Ensure that he/she appoints investigator(s) who are impartial and who are not affected by actual bias or conflict of interest or appearance thereof. To this end, the responsible official may wish to enquire of each potential panel member if any such circumstance would prevent the participation of such potential panel member in the investigation. If the complainant, subject and/or a potential panel member raises concerns about an actual or perceived bias or conflict of interest, the matter should be carefully considered before proceeding.

An investigation is being initiated into a complaint by Tim alleging that Nebiat abused his authority. A number of individuals are being considered as potential investigators.

Gerald: He has worked in the same large department with Nebiat and Tim for 8 years. Gerald knows each of Nebiat and Tim well in the work context but he is not the supervisor, directly or indirectly, of Nebiat or Tim. This is not a conflict of interest.

Sophie: Sophie and Tim socialize frequently. The fact of their personal relationship is an actual or at least perceived conflict of interest.

Cristina: She was present during some of the incidents alleged. This renders her unsuitable as she cannot be an independent investigator and a witness.

Raoul: Tim has also complained, separately, against Raoul. This renders Raoul unsuitable as he cannot be independent if he is the possible subject of a separate investigation into allegations against him made by Tim.

- c) Make efforts to appoint a diverse panel, with at least one member who is at the same or higher functional level than the alleged offender. Efforts should also be made to take into account the language requirements of the complainant as well as the alleged offender.
 - d) The complaint and the supporting documentation should NOT be sent to potential panel members until they have actually been appointed to a panel.
34. After the responsible official has appointed a fact-finding panel, he/she should:
- a. Inform the panel in writing of its terms of reference and its obligations under the Bulletin, and provide the panel with the relevant documentation. A sample memorandum is attached to these guidelines at Annex II.
 - b. Inform the complainant and the alleged offender, in writing, of the establishment of the panel, its composition and mandate, the timing of the investigation, the duty to co-operate with the investigation, and the policy contained in ST/SGB/2005/21 (protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations). Sample memoranda are attached to these guidelines as Annex II.

Scope of the investigation

35. When formulating the terms of reference for the panel, the responsible official should give consideration to the scope of the investigation.
36. A clear scope of investigation should be established by identifying the facts alleged, the type(s) of prohibited conduct to be investigated, the party(ies) who are claimed to have engaged in that conduct and the period when the possible misconduct occurred. Matters and/or parties not within the prescribed scope should not be included as part of the investigation, without a prior re-consideration of the terms of reference by the responsible official.
37. With regards to the type(s) of prohibited conduct alleged, the Bulletin prohibits four different types of conduct: discrimination, abuse of authority, harassment and sexual harassment. Although each type has distinct elements, reports of possible misconduct often refer to various elements from different types of prohibited conduct without distinction. For example, harassment claims may include elements

of abuse of authority and elements of discrimination. The nature of the prohibited conduct alleged should to be carefully considered, and may benefit from being clarified with the complainant, before the terms of reference are finalized.

38. If there are other issues in the complaint that fall outside the scope of ST/SGB/2008/5, for example performance issues, the responsible official should ensure that these are looked into and handled in accordance with established procedures.
39. Annex I sets out guidelines prepared by OIOS about the investigation to be conducted by panel members under ST/SGB/2008/5.

G. What action should be taken following receipt of an investigation report

40. Upon receipt of an investigation report, the responsible official should take at least one of three courses of action:
 - (i) Close the case with no action;
 - (ii) Refer it to OHRM for possible disciplinary action; or
 - (iii) Take managerial action.
41. Before deciding on the appropriate action, the responsible official must evaluate and assess the investigation report and supporting evidence.

Reviewing the investigation report

42. In order to assess the evidence, the responsible official should have before him/her the outcome of a comprehensive investigation. Some relevant non-exhaustive considerations in this regard may include:
 - (i) At the beginning of the investigation, was the alleged offender sufficiently informed of the allegation/s against him or her? The Bulletin (section 5.15) sets out what the panel should tell the alleged offender at the start of the investigation. The responsible official should make sure that, by the end of the investigation, the alleged offender was aware of all the allegations and the identity of the complainant and had enough information to give him/her a full and fair opportunity to respond to the allegations against him/her.
 - (ii) Did the investigators conduct interviews with all relevant witnesses, including the alleged offender, alleged victim and individuals who may have relevant information about the alleged conduct? The panel is not required to conduct wide ranging interviews of witnesses of peripheral or no relevance, for example, “character witnesses”; however, they should make enquiries to ensure that all relevant

witnesses were interviewed.

- (iii) Did the record show that investigators acted in a manner that was, and perceived to be, fair, objective and responsible?
- (iv) The Bulletin sets out what the report should say and the documentary evidence that should be attached (see section 5.17). Is the report itself sufficiently detailed? Does it give a full account of the facts or are there “gaps” where further inquiries should be made? Does it attach documentary evidence, such as written interview records signed by the witnesses and other relevant documents (copies of emails, memoranda, notes of conversation etc).

Assessing the evidence: are the allegations well-founded

- 43. The responsible official should conduct a full analysis of all of the evidence. The responsible official cannot simply endorse or “rubberstamp” the findings of the panel.
- 44. The question for the responsible official is whether there is enough evidence to satisfy an objective observer that the alleged offender may have committed the acts alleged. The question is not whether the responsible official himself or herself has a subjective belief one way or the other; the question is whether there is, objectively, sufficient evidence to indicate that the alleged conduct may have occurred.

Aiko complained that Hachiro touched her breasts. Hachiro denies it entirely. The investigation report concludes that Aiko is telling the truth based on a detailed credibility analysis. The responsible official takes a different view of the evidence and thinks Hachiro is telling the truth. The responsible official tends to believe Hachiro because he/she has known him for a long time and the conduct seems totally out of character for Hachiro. The responsible official’s view is irrelevant. If the conclusions of the investigation report are supported by the evidence, the responsible official should conclude that the alleged conduct may have occurred.

- 45. Every piece of evidence should be assessed. A single piece of evidence may not, taken in isolation, establish the facts, but when considered together with other evidence, it may support a factual conclusion. In some cases, there may not be corroboration of the alleged conduct in the form of documentary evidence. However, the absence of such documents should not automatically render a complainant’s or an alleged offender’s version as not credible. Credible witness testimony alone may be sufficient in certain cases, without further corroboration being required.

46. The standard of proof of clear and convincing evidence is discussed in Annex I and the responsible official should consider whether there may be sufficient evidence to permit the clear and convincing standard to be met. The “clear and convincing” standard is the standard that will be applied, by the Under-Secretary-General for Management, in determining whether misconduct has occurred. The Appeals Tribunal has stated that “[c]lear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – it means that the truth of the facts asserted is highly probable”.³

Evaluating witnesses’ evidence

47. Evaluating complaints of discrimination, harassment and abuse of authority requires a delicate and thoughtful approach. It should include a thorough objective evaluation of the accounts of all of the witnesses, including the complainant and alleged offender. In deciding what weight to give to the witness evidence, regard may be given to the factors set out under “testimonial evidence” in Annex I to these guidelines.

A report into whether Pedro made inappropriate sexual jokes in front of Carlos sets out the accounts of Carlos and Pedro but provides no analysis as to why the panel decided that Carlos should be believed and that Pedro should not be believed. The responsible official notes, however, that Pedro has changed his account of the events on multiple occasions and therefore reasonably concludes that, on that basis, Carlos’ account is more credible and that, accordingly, the alleged conduct may have occurred. The responsible official’s analysis of the evidence should be documented.

Making further inquiries

48. The responsible official may make any further enquiries he/she considers necessary to enable him/her to conduct an assessment of the investigation report/evidence. For example, he/she may decide to ask the panel for clarification or to request the panel to undertake additional interviews on certain points or of new or different witnesses. Any further inquiries should be in writing and a full record kept of any action taken.

H. If alleged conduct is not established: close the case

49. If, having analyzed the evidence, the responsible official determines that it is *not* sufficient to establish a factual basis for the allegations, he/she should:
- (i) Close the case; and

³ UNAT Judgment No. 2011-UNAT-164 (Molari), para. 30.

- (ii) Inform the alleged offender and the complainant in writing, giving a summary of the findings and conclusions of the investigation. Neither the alleged offender nor the complainant is entitled, under the Bulletin, to a copy of the report or the supporting evidence. However, the summary provided should be sufficiently detailed that the parties are informed of the pertinent aspects of the investigation and of the reasons that the responsible official has decided to close the case. In the communication conveying the outcome of an investigation and the responsible official's subsequent decision, the procedural history of the matter should be summarized and each of the allegations or group of allegations that have been investigated should be specifically addressed together with a detailed summary of the evidentiary basis underpinning the responsible official's decision on each aspect. These communications are important as they may form the basis of a challenge of the decision as well as any defense of the decision in the formal justice system. The form of the communication to a complainant following a decision by the responsible official to close a matter is set out in Annex II.

50. The responsible official should inform the ASG/OHRM of the decision to close the case and the reasons for the decision, as OHRM has a monitoring function in relation to complaints made under the Bulletin.

I. If the evidence is sufficient to establish a factual basis for the allegations: consider whether it may amount to possible misconduct

51. If the responsible official determines that the evidence may be sufficient to establish a factual basis for the allegations, the next step is to determine whether the alleged conduct *could* constitute possible misconduct. Whether, *in fact*, there was misconduct is a matter for later determination by the ASG/OHRM or USG/DM, on behalf of the Secretary-General, as appropriate.

52. Some matters which may be relevant in considering whether the alleged conduct could be "prohibited conduct" are:

- (i) The test is the perception of the alleged behaviour by a reasonable person within a multicultural environment. It is not whether the actions and behaviour can be explained by, for example, "misunderstanding" by, or particular "sensitivity" of, the victim.

Certain staff members downloaded pornographic images onto their computers in an office where Emanuelle works. It may amount to harassment if Emanuelle is aware that the images are being downloaded and the effect of this is to create a hostile and humiliating environment for her. In this situation, it is irrelevant that the staff members did not have the purpose of upsetting Emanuelle, and that they merely considered the downloading of images as a bit of fun.

- (ii) The perceptions and the subjective belief of a victim are not, however, irrelevant: they should be taken into account, especially when considering whether the alleged conduct was “unwelcome”, which can only be ascertained against the perceptions of the person experiencing the behaviour.

Fatoumata has complained that Anita, a colleague with no supervisory authority with respect to Fatoumata, is touching her waist regularly. The investigation revealed that Fatoumata’s and Anita’s colleagues regularly saw them in close contact and hugging each other as Anita was touching Fatoumata on the waist. Although a reasonable person may hold that repeatedly touching another person on the waist may amount to sexual harassment, in this case, the evidence indicates that it was welcome behaviour. Anita’s conduct cannot, therefore, amount to misconduct.

- (iii) The conduct could be a “one off” occurrence but nevertheless based on improper motive. Alternately, it could be part of a series of actions, which, when considered on their own, appear lawful and harmless, but, when considered together, reveal a pattern of prohibited conduct.

Andrei is angry with his colleague Ying Hua because he feels she is lazy. He refuses to sign off on her Movement of Personnel form, which she needs to go on her R&R. This one off incident is an abuse of authority as there is no legitimate reason for Andrei to deny Ying Hua her MOP.

J. If conduct would not amount to possible misconduct: consider managerial action

- 53. If the responsible official determines that the facts are insufficient to justify referral for disciplinary action, he/she should consider whether they nevertheless warrant managerial action and, if so, the type of managerial action to be taken.
- 54. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counseling or other appropriate corrective measures. A manager may, for example, decide to re-assign a staff member because their conduct is negatively impacting the work place or it may be necessary to put an end to a dysfunctional situation.
- 55. In deciding whether to take managerial action, managers should:
 - (i) Act reasonably and with due regard to rights of all parties involved, including the alleged offender and complainant.
 - (ii) Take into account relevant factors, which may include how to best utilize the staff member’s talents and the physical and psychological well-being of other staff members.

- (iii) Normally, consult the staff member and give him/her the rationale for the proposed decision, and seek their input, prior to any decision being made.
- (iv) Where the manager considers that adverse managerial action against a staff member may be warranted, such as issuing a reprimand or reassigning the staff member to different functions or duties, prior to making any decision, the alleged offender must first be provided with the investigation report and supporting documents and his/her comments obtained.

56. After the responsible official decides that managerial action will be taken, he/she must:

- (i) Inform the staff member concerned in writing;
- (ii) Make arrangements for the implementation of any follow-up measures that may be necessary; and
- (iii) Inform the complainant in writing of the outcome of the investigation and of the action taken. These communications are important as they may form the basis of a challenge of the decision in the formal justice system. The summary provided should be sufficiently detailed that the parties are informed of the pertinent aspects of the investigation and of the reasons that the responsible official has decided to close the case. As concerns the summary of the action taken, it is sufficient to notify the complainant of the nature of the action taken (e.g., administrative action). While there is no requirement to give the complainant the specific details of the action taken, if the complainant has suffered adversely, carefully consider if it is appropriate in the circumstances to provide details of the action taken⁴. Neither the alleged offender nor the complainant is entitled, under the Bulletin, to a copy of the report or the supporting evidence, although it will be necessary to share the report and supporting evidence with the alleged offender if adverse managerial action is contemplated.

57. The responsible official should also inform the ASG/OHRM of the decisions taken, as OHRM has a specific monitoring function in relation to complaints made under the Bulletin.

⁴ See conclusion of the Appeals Tribunal in *Rahman*, 2014-UNAT-453, concerning the entitlement of a victim of retaliation to know "whether justice was done to the perpetrators of the retaliation".

K. If conduct could amount to possible misconduct: refer for disciplinary action

58. If the responsible official determines that: (i) the evidence is sufficient to establish a factual basis for the allegation; and (ii) the conduct in question may amount to possible misconduct, he/she should refer the matter to the ASG/OHRM for disciplinary action. The ASG/OHRM will proceed in accordance with the disciplinary procedures and inform the complainant and the alleged offender of the outcome of the investigation and of the action taken, at the end of the process.
59. If this course is pursued, the complainant and alleged offender should be informed that the matter has been referred to OHRM for possible disciplinary action.

L. Post-investigation “conflict management”

60. Whether the results of the investigation pointed to possible misconduct or not, there may be a need to repair or restore working relationships in the work unit concerned. The responsible official may wish to consult with the Office of Ombudsman and Mediation Services for possible interventions or mediation, subject to the agreement of individuals concerned.

M. Feedback to the panel

61. Once the responsible official has assessed the evidence, consideration should be given to providing the panel with feedback on the investigation, as appropriate.

N. Reassignment and other administrative actions

62. On receipt of a complaint of prohibited conduct, the responsible official may wish to consider the appropriateness of reassigning the complainant or the alleged offender to another position within the same department. Section 5.10 of the Bulletin provides that this may only take place with the consent of the individual concerned.
63. Consideration should also be given by the responsible official to other appropriate administrative actions that may be taken following receipt of a complaint of prohibited conduct. This may include conduct being tracked during the appropriate performance appraisal cycles.

O. Placement of staff members on administrative leave pending an investigation or disciplinary process

64. In the context of an investigation or during the disciplinary process, the responsible official may recommend to the official with the requisite delegated authority⁵ that a staff member (usually the alleged offender) be placed on administrative leave. Such action should normally only be considered where it is

⁵ Refer to Staff Rule 10.4(a) and ST/AI/371, as amended.

not possible to re-assign or redeploy a staff member, in cases of the most serious nature and gravity, for example, when the staff member is a danger to staff at large or to the security of the Organization or its property.

65. Any such recommendation should address in detail, and provide any supporting evidence of, the criteria for placement on administrative leave, namely:
- (i) Why reassignment or redeployment in the same duty station is not be feasible, or would not adequately address the risks that have been identified.
 - (ii) Whether there is prima facie evidence that the conduct of the staff member would pose a danger to other UN personnel or to the Organization
 - (iii) Whether there is prima facie evidence that the staff member is unable to continue performing his or her functions effectively, in view of (i) the ongoing investigation; and (ii) the nature of those functions; and
 - (iv) Whether there is prima facie evidence that continued service by the staff member would create an unacceptable risk that he or she could destroy, conceal or otherwise tamper with evidence, or interfere in any way with the investigation, including retaliation against individuals protected under ST/SGB/2005/21.

P. Monitoring

66. Under Section 6 of the Bulletin, heads of offices/departments and the ASG/OHRM have monitoring obligations.
67. Heads of offices/departments are under the obligation to monitor the situation during an investigation to ensure cooperation with the investigation and that no party is subject to retaliation. Heads of offices/departments are also obliged to continue to monitor the situation after completion of an investigation. Periodically, OHRM will request information about these activities in furtherance of its obligation to monitor such matters across the Secretariat.
68. Section 6.1 of the Bulletin provides that heads of offices/departments are to provide an annual report to the ASG/OHRM containing an overview of all preventative measures and corrective measures and evaluations or assessments relating to such measures or activities.

69. Joint harassment prevention boards have been established in New York, Geneva, Vienna and other duty stations. Responsible officials should be mindful of the existence of such boards and provide support and input as necessary.

**Approved by the ASG/OHRM
on 23 October 2014**

UN SECRETARIAT ONLY

ANNEX I

Guidelines on investigating allegations of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5)

1. These guidelines have been devised to assist fact-finding panel members in the conduct of investigation into complaints made pursuant to ST/SGB/2008/5.

Fact-finding investigation

2. Prior to starting the investigation, and during the course of the investigation, the panel should ensure that any possible conflict of interest for the investigators is raised with the responsible official.

Investigation Plan and Case File

3. The panel should begin by preparing an investigation plan. It serves as a tool for managing the investigation and ultimately for writing the investigation report. The plan should be based on the scope of investigation, which should be defined in the terms of reference of the panel. The investigation plan will serve as a written record of anticipated needs, as well as developments through the process. The plan should include:
 - (i) Name/position of panel members
 - (ii) Documents/records required and obtained, including digital information
 - (iii) The names of the persons to be interviewed or from whom a statement will be sought, including consideration of the matters each interviewee will be asked about
 - (iv) Special requirements, such as handwriting experts
 - (v) Logistical requirements, including, but not limited to, space/equipment, supplies, scheduling
4. The plan should be updated as required. While it often is maintained electronically to facilitate updating, a current version of the plan should be included as part of the investigation case file.
5. The investigation case file is the single record of all documents and records related to the investigation. The case file should be created at the outset of any investigation with one panel member identified as the custodian who ensures documents are properly

maintained and the file secured throughout the investigation.

Fact-Finding

6. The investigation is an analytical process to gather facts related to the claim of prohibited conduct. That process should follow an established plan with adjustments when required and apply appropriate methodology as presented during the OIOS Prohibited Conduct Investigations Training and as generally prescribed by the OIOS Investigations Manual⁶. At the beginning of the investigation, panel members should contact the OIOS Investigations Division, Policy and Legal Support Team, in order to obtain the most recent versions of templates and other guidance material for investigations.

Elements of Prohibited Conduct

7. Each of the different types of prohibited conduct have elements that, if established, may evidence misconduct. The investigations should consider facts related to each element of conduct identified in scope of investigation. For example, the elements of discrimination are (1) *unfair or arbitrary distinction* based on (2) *religion, race, gender, sexual orientation, disability, age, nationality, ethnic origin, language, social origin or other status*. An investigation into possible discrimination, therefore, should obtain information about if, how and when any distinction in treatment occurred and any connection that distinction may have to the complainant's personal status.

Testimonial Evidence

8. Fact-finding in circumstances of prohibited conduct is often significantly based on testimonial evidence from witnesses. All parties with information that may be important are considered witnesses. For purposes of investigation, this also includes the complainant and the subject of the claimed conduct. These witnesses tend to fall in one or more of the following categories:
 - (i) individuals who may have observed the reported conduct;
 - (ii) individuals who may have knowledge of statements/actions related to the reported conduct;
 - (iii) individuals who may have knowledge of circumstances related to the reported conduct.

⁶ This manual may be updated from time to time. It is therefore necessary to check whether the latest version is being consulted.

9. Testimonial evidence is obtained through either interview and/or a written statement. Interviews should be conducted by at least two panel members with questions and answers reduced to writing and acknowledged by all present during the interview. Statements generally are a written account that a witness provides based on a request of the panel. The complainant, the subject and material witnesses should be interviewed according to standards presented during the OIOS Prohibited Conduct Investigations Training and prescribed in the OIOS Investigations Manual.
10. All testimony is confidential subject to a need to know basis (e.g. if administrative action or a disciplinary process is pursued, the documents will be released, as appropriate; similarly, if the case is the subject of an appeal before the UN Dispute or Appeals Tribunal, the documents may be released, as appropriate). Witnesses, whether through interview or statement, are expected not to disclose the discussion to third parties. Third parties, such as support persons or legal counsel, are not permitted in the interview.
11. A credibility analysis of the evidence of a witness is often necessary and, in order to make a finding as to whether an alleged fact occurred or not, is crucial in cases where the complainant and the subject is the only individuals who have observed the reported conduct. Credibility of a witness's testimony is a matter of judgment for the panel, based on information that may help assess credibility. Here are some factors a panel may use to assess credibility:
 - a. any internal inconsistencies or inconsistencies with statements previously made by the witness, taking account of whether the inconsistencies are on a material point;
 - b. whether the facts proffered as true by the witness are supported by the evidence, in particular any documentary evidence. Consideration can also be given to the inherent probability of the account (i.e. does the account require the panel to assume facts that are unlikely).
 - c. the demeanor of the witness, being mindful that nervousness may not indicate lack of truthfulness, in contrast to a deliberate attempt to avoid answering direct questions, or lack of responsiveness. Dress or physical appearance is irrelevant.
 - d. the extent of the capacity of the witness to perceive, to recollect or to communicate the matters about which they are providing an account;
 - e. the witnesses' ability to observe what they state they observed (e.g. taking account of the lay out of the environment);
 - f. the existence or nonexistence of a bias, interest or other motive;
 - g. any admission of untruthfulness.

12. The panel should challenge witnesses' evidence as it is given, using the factors above, and consider seeking further comments from a witness when new information comes to light that brings into doubt their account.

Documents and Records

13. The panel has access to all official United Nations records and documents, including those in electronic format. The panel may wish to consider requesting witnesses directly to provide them with copies of all relevant documentary and electronic (e.g. emails) evidence concerning the matter.
14. The panel may also wish to consider seeking direct access to relevant electronic data. This may be appropriate when there is a legitimate reason to believe relevant evidence exists in that form. It is not appropriate to seek electronic records as a "fishing expedition". Requests for access by the panel directly to electronic data (including emails, telephone records, hard drives) generally requires compliance with section 8 of ST/SGB/2004/15 ("Use of information and communications technology, resources and data"). Further advice may be sought as to how to comply with the provisions of ST/SGB/2004/15, including from OIOS and OHRM. Requests for documents/records should be made in writing under authority delegated to the panel and limited to the scope of the investigation. All documents received should be catalogued and kept in the investigation case file together with a copy of the corresponding request. Any documents received relating to medical/personal issues or that may otherwise be considered privileged (e.g. communications between staff members and their legal representative, staff counselor, the Ombudsman's office, the Ethics Office) should be noted and returned to the source, as they are not appropriate for use in the investigation, unless an explicit waiver by the concerned staff member has been provided, ensuring the staff member is fully aware that the information may be disclosed at a later stage in furtherance of administrative or disciplinary action.

Ensuring the investigation is comprehensive

15. The panel should ensure that both the complainant and the subject are given adequate opportunities to provide their accounts of events. All relevant lines of enquiry should be pursued, including considering and investigating possible exculpatory evidence.
16. Often, it will be necessary to re-interview witnesses (including the subject and/or complainant) to clarify information previously given or to give them the opportunity to answer new facts or allegations raised. This is particularly important with regards to the subject as, prior to concluding the investigation, the panel should ensure that the subject is fully aware of the facts alleged, by others, against him/her, and that he/she has been given an opportunity to respond to such facts. This means that the subject should have a chance to respond to more than the nature of the allegations made. The subject should be aware of the specific facts alleged in support of the allegation, obtained during the investigation, and have a chance to respond to these specific facts.

Standard of proof

17. The panel should have in mind that the standard of proof the Under-Secretary-General for Management will apply in any disciplinary case resulting from an investigation in order to determine whether a fact has been established is, generally, that the evidence of the fact must be “clear and convincing”. In arriving at its findings, the panel should therefore consider whether the evidence of the fact in question is stronger than “more likely than not”. However, facts do not have to be clear beyond reasonable doubt in order to be considered as established.

Duties

Duty to cooperate

18. All United Nations personnel, whether panel members, complainants, investigation subjects or other witnesses, are obliged to comply with the Bulletin, maintain relevant level of confidentiality and follow the prescribed investigation process. This means that staff members have a duty to cooperate with the panel, which includes providing complete and accurate information in a timely manner when requested. Staff members cannot invoke a “right against self-incrimination” in order not to cooperate.

Responsibilities of the panel – independence, objectivity, fairness

19. Panel members have a particular responsibility for maintaining independence and objectivity throughout the process and to ensure fairness for all parties.⁷ They must ensure their judgment is free from bias and remains as objective as possible.
20. In addition to the need, set out above, to explore all lines of enquiry, which will demonstrate the panel’s independence and objectivity in carrying out its functions, the panel should, among other things:
 - (i) Identify themselves and their role whenever conducting panel activities
 - (ii) Explain the investigation process and possible consequences to all parties concerned
 - (iii) Conduct panel activities, including interviews, at a reasonable place and time
 - (iv) Allow interviewees to review their written record of interview
 - (v) Give parties an opportunity to identify additional witnesses/information
 - (vi) Maintain an objective and open mind during the investigation.

Although this will normally have also been done by the responsible official commissioning the investigation prior to the start of the investigation, the Bulletin requires that the alleged

⁷ OIOS Investigations Manual

offender must be notified by the panel of the nature of the allegation(s) against him or her. The notification need not disclose the actual written complaint, names of witnesses or particular details of incidents if the panel deems it necessary to preserve the integrity of the process.

21. The panel should also inform the subject of the:
 - (i) fact that they are the subject of the investigation;
 - (ii) identity of the panel members;
 - (iii) period during which the fact-finding process will proceed; and
 - (iv) contact person for questions or clarifications.
22. Another element of fairness is to conduct the investigation without unnecessary delays.

Report

23. The panel must prepare a written report. The report is an official UN document and may become part of a subsequent internal process. It should, therefore, be complete and accurate, and include:
 - (i) A full account of the facts ascertained during the investigation, based on a thorough analysis of the evidence collected by the panel;
 - (ii) Written witness interviews/signed statements with annexes/attachments; and
 - (iii) Any other documents or records relevant to the claimed prohibited conduct.
24. The report should address all issues provided for in the investigation scope with factual statements supported by relevant evidence. It should include any exculpatory evidence discovered during investigations. Based on the evidence obtained, the panel should draw conclusions as to what occurred, explaining how these conclusions were arrived at. The panel should **not** determine whether the facts they concluded occurred amount to prohibited conduct under the Bulletin (e.g. harassment, abuse of authority, discrimination). For example, the panel will conclude that, based on the testimony of Mr. X, Ms. A and the note of the meeting, Mr. X shouted at Mr. Z during the meeting and that Mr. Z felt humiliated. It should not conclude that this amounts to abuse of authority or harassment. This is a decision that will be made later in the process.
25. The report should neither raise unanswered questions nor leave matters open to interpretation. References to evidence and sources should be properly cited, (footnoted) and annexed to the report.
26. The report should be clear, concise and logically organized, so as to enable readers to quickly identify the issues.

27. The investigation report and case file should be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint.
28. The panel members also should remain available to explain the report, provide clarifications and additional fact-finding where necessary, and possibly provide testimony in any legal process that may follow.

UN SECRETARIAT ONLY

ANNEX II

SAMPLE FORM: Communication to Constitute Investigation Panel

ON UN LETTERHEAD

TO: [Panel members]

DATE:

A:

FROM: [Head of office / department]

DE:

CONFIDENTIAL

SUBJECT: **Appointment to panel to conduct investigation into allegations of**

OBJET: **prohibited conduct under ST/SGB/2008/5**

1. Thank you for agreeing to participate in a investigation, further to section 5.14 of ST/SGB/2008/5 (“Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”).
2. The investigation is in connection with a complaint filed by [complainant(s)], concerning [his/her/their] allegations of [nature of allegations] against [subjects of the investigation].
3. Please find attached a copy of [complainant(s)] complaint, dated [], and the supporting documents attached thereto.
4. Please also find attached a copy of the ST/SGB/2008/5 and of the related Guidelines.

Background about complainant

5. [Information about complaint and incidents/events to be investigated.]
6. [Information, if any, about further information about the complaint obtained by the Responsible Official.]

The investigation

7. The role of the panel, to which you are appointed, is to conduct a investigation under the provisions of ST/SGB/2008/5 into the allegations contained in [complainant(s)] complaint dated [] and the attachments thereto.

8. I draw your attention to sections 5.15 to 5.17 of ST/SGB/2008/5, which set out procedural requirements in relation to the conduct of the investigation, including the obligation to inform the alleged offender(s) of the nature of the allegation(s) against him or her.

9. As provided by section 5.16, the investigation shall include interviews with [complainant], [the alleged offender(s)] and any other individuals who you consider may have relevant information about the conduct alleged. Please inform interviewees that their statements may be provided to the alleged offender(s) in the context of any further action taken by me or in the context of any disciplinary process or any process preceding the disciplinary process. Furthermore, interview statements may reach the public domain in the context of cases heard within the United Nations' internal system of justice.

10. Your task is to establish the facts with respect to the allegations made by [complainant]. You are not required to make any determination as to whether the facts, as established, may amount to prohibited conduct or misconduct. I would appreciate a full picture of what occurred so that a determination may be made as to, *inter alia*, whether there was a factual basis for the allegations of prohibited conduct.

11. As set out in section 5.17, your findings should be set out in a detailed written report, to be submitted to [me], giving a full account of the facts ascertained in the course of the investigation and attaching documentary evidence, such as signed written statements by witnesses or any other documents or records relevant to the alleged prohibited conduct. This report will form the basis of further action to be taken in accordance with section 5.18 of the SGB.

12. As set out in section 5.17, the report should be submitted to me normally no later than three months from the date of submission of the complaint.

13. The investigation is scheduled to commence during the week of [], with a view to finalizing your report by [].

14. Should you need any assistance or have any other questions, please do not hesitate to contact [].

15. I am very grateful for your acceptance of this appointment, and your support in this important matter.

UN SECRETARIAT ONLY

SAMPLE FORM: Communication to Alleged Offender at Outset

ON UN LETTERHEAD

TO: [Alleged Offender]
A:

DATE: [date]

FROM: [Head of office / department]
DE:

SUBJECT:
OBJET:

CONFIDENTIAL

Investigation of allegations of prohibited conduct

1. I have received a complaint [dated] against you submitted by [complainant], in which he/she made allegations against you of [nature of allegation] in violation of ST/SGB/2008/5 (“Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”).
2. [It may be appropriate to make reference to any prior communications with the alleged offender during the assessment phase]
3. Please be advised that, in accordance with section 5.14 of ST/SGB/2008/5, I have decided to appoint a panel to conduct an investigation in connection with the allegations.
4. The members of the panel are [names of panel].
5. The panel expects to begin its work on [date]. You are required to cooperate fully with the panel during the investigation.
6. After the completion of the investigation, you shall be informed of the course of action that [the Responsible Official] decides upon, in accordance with section 5.18 of ST/SGB/2008/5.
7. You are reminded, in connection with the complaint and investigation, of the terms of Staff Rule 1.2(g) and the policy contained in ST/SGB/2005/21 (protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations)

cc: [panel members]

SAMPLE FORM: Communication to Complainant at Outset

ON UN LETTERHEAD

TO: [Complainant]
A:

DATE: [date]

FROM: [Head of office / department]
DE:

CONFIDENTIAL

SUBJECT:
OBJET:

Investigation of allegations of prohibited conduct

1. Reference is made to your complaint, against [alleged offender/s], dated [], in which you alleged that you were subject to [allegations] in violation of ST/SGB/2008/5 (“Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”).
2. Please be advised that, in accordance with section 5.14 of ST/SGB/2008/5, I have decided to appoint a panel to conduct an investigation in connection with your allegations.
3. The members of the panel are [names of panel/contact details].
4. The panel expects to begin its work on [date]. You are required to cooperate fully with the panel during the investigation.
5. After the completion of the investigation, you shall be informed of the course of action I decide upon in accordance with section 5.18 of ST/SGB/2008/5.
6. You are reminded, in connection with the complaint and investigation, of the protective mechanisms provided under Staff Rule 1.2(g) and under the policy contained in ST/SGB/2005/21 (protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations).

cc: [panel members]

SAMPLE FORM: Communication to Complainant on closure by Responsible Official

ON UN LETTERHEAD

REFERENCE:

DATE

**PERSONAL and
CONFIDENTIAL**

Dear AAA,

I [the responsible official] refer to the complaint, dated [date], submitted by you in which you alleged that the conduct of XXX towards you during [description of incidents] constituted a breach of ST/SGB/2008/5 (“Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”) and that XXX had acted improperly in [description of conduct].

[INSERT details of any relevant procedural actions prior to constitution of the panel]

Pursuant to section 5.14 of ST/SGB/2008/5, I constituted a panel to conduct an investigation into your complaint. During the course of its investigation, the panel interviewed [*] witnesses and examined documentary evidence. ***[INSERT details of any relevant procedure matters]***

The panel submitted their investigation report dated [date] to me [the responsible official] and [description of post investigation actions taken by the responsible official – if any]. Pursuant to section 5.18 [(a)/(b)]⁸ of ST/SGB/2008/5, I write to provide you with a summary of the findings and conclusions of the investigation and my decision regarding the matter.

Summary of the findings of the Investigation Report

Nature of the [incidents]/ Context of Complaint (if relevant)

1. [Provide description if relevant]

[Specific incident 1]

⁸ If the responsible official has concluded that the conduct does violate the provisions of ST/SGB/2008/5 and the responsible official decides to refer for possible disciplinary action – the matter should be referred to OHRM pursuant to Section 5.18(c) of ST/SGB/2008/5.

2. [Set out of incidents] According to the panel, the incident that took place during [incident and date] had its roots [description of alleged prohibited conduct of the complainant].

3. According to certain witnesses...

4. The panel found that [... summary of analysis of panel about the conduct, e.g. XXX's [conduct] was [analysis of alleged conduct]. The panel noted that, for most witnesses, XXX's statements at the meeting were "consistent with [conduct of XXX in general]].

[Incident 2]

5. According to the panel, [details].

6. According to *** statement, ...

7. [Insert more details]

8. In relation to the [incident 2], the panel found that [findings].

[Incident 3]

9. According to the panel, [details]

10. According to ***, [description/summary of witness statements etc., details]

11. In relation to [incident 3], the panel found [details].

[Analysis of facts & conclusions of the investigation report]

12. [Details of the responsible official's analysis of the report – including information taken into account to come to a conclusion about whether prohibited conduct has taken place]

[Other relevant issues e.g. good faith complaint]

13. [Details]

Conclusion

Following a review of the investigation report and supporting documentation and [other] I have concluded that the record indicates that XXX's conduct in the context of the three [incidents] does not violate the provisions of ST/SGB/2008/5. In reaching this decision, I gave regard, in particular, to: *insert summary of evidentiary basis underpinning the responsible official's decision as well as any other relevant considerations.*

[Details of any administrative action taken against the subject pursuant to section 5.18(b) if relevant]

Thank you for your cooperation.

Yours sincerely,

[The Responsible Official]