



## **Policy on Protection against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations**

*Approved by the Council of the University for Peace at its 27<sup>th</sup> Session, celebrated at UPEACE HQ in San Jose, Costa Rica on 21-22 June 2017*

### **Section 1: General**

**1.1** It is the duty of staff members, students, visiting scholars, visiting faculty, interns, and other persons to whom the University's policies apply to report any material breach of the University's regulations, rules, administrative procedures or policies to one or more officials whose responsibility it is to take appropriate action. An individual who makes such a report has the right to be protected against retaliation. An individual is presumed to make such a report in good faith unless and until proven otherwise.

**1.2** It is also the duty of staff members, students, visiting scholars, visiting faculty, interns and other persons to whom this policy applies to cooperate with duly authorized audits and investigations. An individual who cooperates with a duly authorized audit or investigation has the right to be protected against retaliation. An individual is presumed to cooperate in good faith unless and until proven otherwise.

**1.3** Retaliation against individuals who have reported misconduct or who have cooperated with audits or investigations violates the fundamental obligation of all staff members, students, visiting scholars, visiting faculty, interns and other persons to whom the University's policies apply, to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the University in view.

**1.4** Retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in conduct protected by the present policy. When established, retaliation is by itself a misconduct and although not necessarily so, it may also amount to prohibited conduct within the meaning of the UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of authority.

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### **Section 2: Scope of application**

**2.1** Protection against retaliation applies to any staff member, student, visiting scholar, visiting faculty, intern and any other person who has a duty to report misconduct or cooperate with duly authorized audits or investigations and who:

(a) reports the failure of one or more staff members, students, visiting scholars, visiting faculty, interns and other persons to whom the University's policies apply to comply with his or her obligations under the University's rules, regulations, administrative procedures or policies, including any request or instruction from any such person to violate such rules, regulations, administrative procedures or policies. In order to receive protection, the



report should be made as soon as possible and not later than two years after the individual first becomes aware of the misconduct. The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred; or

(b) cooperates in good faith with a duly authorized investigation or audit.

**2.2** The present policy is without prejudice to the legitimate application of regulations, rules, administrative procedures, and policies including those governing evaluation of work or academic performance, and non-extension or termination of appointment. However, the burden of proof shall rest with the University administrators authorized to apply such regulations, rules, administrative procedures and policies, who must prove by clear and convincing evidence that they would have taken the same action absent the protected conduct referred to in section 2.1 above.

**2.3** Intentionally making a report or providing information that is false or misleading constitutes misconduct and may result in disciplinary or other appropriate action. It may also amount to prohibited conduct within the meaning of the UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority.

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### **Section 3: Reporting misconduct through established internal mechanisms**

**3.1** Reports of prohibited conduct covered by the UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority should be made in accordance with the procedures mentioned in the said policy. Reports of other misconduct may be made to the Office of the Ombudsperson/s, the Head of the Department concerned, the Rector, the Dean/s or exceptionally, to the President of the Governing Council of the University. It is the duty of the aforesaid authorities to protect the confidentiality of the identity of the individual making such a report and all communications through those channels to the maximum extent possible, unless the law or university regulations, rules, administrative procedures or policies otherwise require, or the individual concerned provides prior consent to disclosure.

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### **Section 4: Reporting misconduct through external mechanisms**

**4.1** Notwithstanding Section 3 above, protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:

- (a) such reporting is necessary to avoid:
  - (i) a significant threat to the individual's safety and security; or
  - (ii) a significant threat to public health and safety; or
  - (iii) substantive damage to the University's operations; or
  - (iv) violations, actual or threatened, of national or international law; *and*
  
- (b) the use of internal mechanisms is not possible because:



(i) at the time the report is made, the individual has reasonable grounds to believe that they will be subjected to retaliation by the person(s) they should report to pursuant to the established internal mechanism; or

(ii) it is likely that information or evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) they should report to pursuant to the established internal mechanisms; or

(iii) the individual has previously reported the same information through the established internal mechanisms, and the University has failed to inform the individual in writing of the status of the matter within three months of such a report; *and*

(c) the individual does not accept payment or any other material benefit from any party for making such report.

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## **Section 5: Reporting retaliation to the Ombudsperson/s, the Rector, or the President of the Governing Council**

**5.1** Individuals who believe that retaliation has been taken or is recommended or threatened against them because they have reported misconduct or cooperated with a duly authorized audit or investigation should forward all relevant information and documentation available to them to the Office of the Ombudsperson/s as soon as possible. In case the complaint is against the Ombudsperson/s, such complaint may be made to the Co-Ombudsperson (if the position is jointly held) or to the Rector. Reports may be made in person, by regular mail, by e-mail, by fax, or by phone.

**5.2** The functions of the Ombudsperson/s or the Rector, as the case may be, with respect to protection against retaliation for reporting misconduct or cooperating with a duly authorized audit or investigation are as follows:

(a) to receive reports of retaliation or of recommendations or threats of retaliation;

(b) to keep a confidential record of all reports received;

(c) to conduct a preliminary review of the report to determine if (i) the individual who made the report engaged in a protected conduct; and (ii) there is a prima facie case that the protected conduct was a contributing factor in causing the alleged retaliation or recommendation or threat of retaliation.

**5.3** The Ombudsperson/s or the Rector, as the case may be, will seek to complete their preliminary review as soon as practicable, and in any case, no more than 15 days of receiving the report of retaliation or recommendation or threat of retaliation.



**5.4** All offices, staff members, students, visiting scholars, visiting faculty, interns and other persons to whom this policy applies shall cooperate with the Ombudsperson/s or the Rector, as the case may be, and provide access to all records and documents requested by such persons, except for medical records that are not available without the express consent of the staff member, student, or any other person concerned to whom the policy applies.

**5.5** If the Ombudsperson/s or the Rector, as the case may be, find that there is no credible case of retaliation or recommendation or threat of retaliation but find that there is an interpersonal problem, they will advise the individual who made the report of the existence of informal mechanisms of conflict resolution in the University.

**5.6** If the Office of the Ombudsperson/s or the Rector as the case may be, find that there is a managerial problem based on the preliminary review of the report or the record of reports relating to a particular department or office, they will advise the manager concerned.

**5.7** If the Ombudsperson/s or the Rector, as the case may be, find that there is a credible case of retaliation or recommendation or threat of retaliation, an investigation shall be initiated through the establishment of a Panel. Procedures incorporated in Sections 5.13 to 5.22 of the UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of authority, shall apply to such investigation, with such modifications as may be deemed necessary by the Panel. In case the Ombudsperson/s or the Rector find that there is a credible case of retaliation or recommendation or threat of retaliation which may likely also amount to prohibited conduct under the UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority, then the said policy, including further procedures incorporated in Sections 5.23 to 5.29, shall also apply as if they form part of this present policy.

**5.8** In cases of retaliation or recommended or threatened retaliation not amounting to prohibited conduct within the meaning of UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority, the following further procedures shall apply.

**5.9** Pending the completion of the investigation, the Ombudsperson/s may recommend that the Rector take appropriate measures to safeguard the interests of the individual who made the complaint, including but not limited to temporary suspension of the action reported as retaliatory and, with the consent of the staff member or student who made the report, temporary reassignment of the individual within or outside the individual's office or programme/course of study, or placement of the individual staff member on special leave with full pay. The Rector may also take such measures at his full discretion.

**5.10** Once the Panel's final report has been submitted, the Ombudsperson/s shall inform in writing to the individual who made the report of the outcome of the investigation and shall make recommendations on the case to the Rector. The recommendations may include disciplinary actions to be taken against the retaliator. In case of reports against the Ombudsperson/s, the Rector shall decide what actions may be taken.



**5.11** Reports against the Rector shall be made to the President of the Governing Council of the University, who shall deal with such reports in accordance with such procedures as the Governing Council may approve.

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## **Section 6: Protection of the person who suffered retaliation**

**6.1** If retaliation against an individual not also amounting to prohibited conduct within the meaning of the UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority, is established, the Ombudsperson/s or the Rector as the case may be, may, after taking into account any recommendations made by the Panel and after consultation with the individual who has suffered retaliation, recommend to the administrative or academic supervisor of the individual concerned appropriate measures aimed at correcting negative consequences suffered as a result of the retaliation or recommended or threatened retaliation. In case of staff members, such measures may include, but are not limited to, the rescission of the retaliatory decision or recommendation or threat of retaliation, including reinstatement, or, if requested by the individual, transfer to another office or function for which the individual is qualified, independently of the person who engaged in retaliation or recommendation or threat of retaliation. In case of students, such measures may include, but are not limited to, the rescission of the retaliatory decision or recommendation or threat of retaliation, including those relating to academic performance or supervision, or if requested by the individual, transfer to another programme or course mutually agreed upon with the Dean. Such measures may also include directions to the retaliator to refrain from acts of retaliation or recommendations or threats of retaliation.

**6.2** If the Ombudsperson/s is/are not satisfied with the response from the supervisor concerned or the retaliator concerned, they may make a recommendation to the Rector to take appropriate action.

**6.3** The procedures set out in the present policy are without prejudice to the rights of an individual who has suffered retaliation to seek redress through the internal recourse mechanisms. An individual may raise an issue of violation of the present policy by the Administration in any such internal recourse proceedings.

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## **Section 7: Action against the person who engaged in retaliation**

**7.1** Retaliation against an individual because that person has reported misconduct on the part of one or more University staff, student, intern, visiting scholar, visiting faculty, intern or other persons to whom this policy applies, or has cooperated with a duly authorized audit or investigation of the University constitutes misconduct which, if established, shall lead to disciplinary action against the retaliator, as deemed necessary or appropriate by the Rector. In case of staff members who are governed by Costa Rican labour laws, such disciplinary actions may be taken in accordance with such laws. In abundant caution, it is reiterated that in case of retaliation also amounting to a prohibited conduct within the meaning of the UPEACE Policy on Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority, procedures of the said policy, including for disciplinary actions, shall be followed.



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## **Section 8: Prohibition of retaliation against outside parties**

**8.1** Any retaliatory measures against a contractor or its employees, agents or representatives or any other individual engaged in any dealings with the University because such person has reported misconduct by University staff, student, intern, visiting scholar, visiting faculty, intern or other persons to whom this policy applies, will also be considered misconduct. Provisions of Section 7 shall apply as if the contractor or its employee, agent or representative or such other individual were the individual referred to in Section 7.

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## **Section 9: Final provisions**

**9.1** The present policy shall enter into force upon approval by the Governing Council of the University.