



**Presidential Directive**

**ICC/PRES/D/G/2024/001**

**Date: 8 February 2024**

The President, pursuant to section 2 of the [Presidential Directive on Procedures for the Promulgation of Administrative Issuances](#) and with the concurrence of the Prosecutor, promulgates the following:

**Protection Against Retaliation**

**Section 1**

**General**

1.1 The International Criminal Court (“ICC” or “Court”) is committed to maintaining the highest standards of conduct. The ICC does not tolerate any form of retaliation against those who report suspected unsatisfactory conduct or engage in any other protected activity as defined in this Presidential Directive. The Court considers that whistleblowers play a key role in exposing and preventing unsatisfactory conduct and safeguarding the interests of the Court. Accordingly, the Court shall prevent retaliation and protect those who report in good faith suspected unsatisfactory conduct or engage in any other protected activity as defined in section 4 of this Presidential Directive, to encourage and enable them to do so without fear of retaliation and to foster an environment where the ICC functions in a fair, transparent and accountable manner.

1.2 Court personnel shall:

- a. Report any suspected unsatisfactory conduct in accordance with [section 4 of the Administrative Instruction on Investigations of Unsatisfactory Conduct](#); and
- b. Cooperate with duly authorised investigations, audits, and oversight activities such as evaluations and inspections.

1.3 Any Court personnel who makes such a report or cooperates, in good faith, has the right to be protected against retaliation.

1.4 The deliberate making of false allegations, or providing information that is known to be false, or making a statement that recklessly disregards the accuracy of the information, amounts to unsatisfactory conduct and may lead to disciplinary or other appropriate action, in accordance with the applicable legal framework.

## **Section 2**

### **Definitions**

For the purposes of this Presidential Directive, the following definitions apply:

2.1 “Complainant” means a person who submits a report of retaliation in accordance with this Presidential Directive.

2.2 “Staff member” means any person holding a letter of appointment under the Staff Rules and/or Regulations.

2.3 “Non-staff personnel” means those individuals, other than elected officials, staff members and counsel, performing services in a direct or other agreed relationship with the Court other than through a letter of appointment under the Staff Rules and/or Regulations, and include consultants, individual contractors, interns and visiting professionals.

2.4 “Court personnel” means staff members and non-staff personnel.

2.5 “Elected officials” means a judge, the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court.

2.6 “Retaliation” means any direct or indirect detrimental action or inaction that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken, for the purpose of punishing, intimidating or injuring an individual because that individual engaged in an activity protected by the present Presidential Directive as set out in section 4 below (“protected activity”). The mere expression of disagreement, admonishment, warning, criticism or a similar expression within a supervisory or similar relationship, does not necessarily constitute retaliation.

2.7 “Unsatisfactory conduct” means failure by a staff member to act in accordance with any official document of the Court governing rights and obligations of staff members, such as the Staff Regulations and Rules and the Financial Regulations and Rules, or any relevant resolutions and decisions of the Assembly of States Parties (“ASP”), or failure to observe the standards of conduct expected of an international civil servant. Additionally, it means any failure by non-staff personnel to uphold the standards of conduct described in the Staff Regulations and Staff Rules, any relevant issuances related to expected standards of conduct and/or any applicable texts governing their terms of service and legal relationship with the Court. Unless otherwise indicated, for the purpose of this Presidential Directive, reference to “unsatisfactory conduct” also encompasses serious misconduct, serious breach of duty or misconduct of a less serious nature as referred to in section 4.1(b) below and wrongdoing as referred to in section 4.1(c) below.

2.8 “Head of Organ” means the President for the Presidency and Chambers, the Prosecutor for the Office of the Prosecutor, and the Registrar for the Registry as well as the offices administratively linked to the Registry such as the Secretariat of the ASP and the Secretariat of the Trust Fund for Victims.

### **Section 3**

#### **Scope**

3.1 This Presidential Directive regulates protection against retaliation for Court personnel by establishing rules and procedures governing the reporting of suspected retaliation. This does not prevent its application to other categories of persons, where possible and appropriate, in accordance with their terms of service and legal relationship with the Court, to be determined by the Registrar or the Prosecutor, as appropriate.

- 3.2 This Presidential Directive does not limit the categories of persons who may provide information about suspected unsatisfactory conduct, including retaliation, nor does it limit the extent to which unsatisfactory conduct may be investigated, which are addressed in accordance with the [Administrative Instruction on Investigations of Unsatisfactory Conduct](#) and any other applicable legal texts or ICC regulations, rules or administrative issuances.
- 3.3 Unsatisfactory conduct, including retaliation, will be addressed in accordance with the [Administrative Instruction on Unsatisfactory Conduct and Disciplinary Proceedings](#) and/or any other applicable legal texts or ICC regulations, rules or administrative issuances.

#### **Section 4**

##### **Protected Activity**

- 4.1 Protection against retaliation applies to any Court personnel who, acting in good faith,:
- a. Reports the failure of one or more staff members to comply with obligations under the Rome Statute, the Staff Regulations and Staff Rules or other relevant administrative issuances, the Financial Regulations and Rules, any relevant resolutions and decisions of the ASP, or failure to observe the standards of conduct expected of an international civil servant, including any requests or instructions from any staff member to violate the above-mentioned regulations, rules or standards; or reports the failure of non-staff personnel to comply with obligations under their respective terms of service; or
  - b. Reports serious misconduct or serious breach of duty by an elected official, as defined in [rule 24 of the Rules of Procedure and Evidence](#), or misconduct of a less serious nature by an elected official, as defined in [rule 25 of the Rules of Procedure and Evidence](#); or
  - c. Reports wrongdoing that, if established, would be manifestly harmful to the interests, operations or governance of the ICC; or
  - d. Cooperates with a duly authorised investigation, audit, or other oversight activity such as an evaluation or inspection; or

- e. Cooperates with, participates in proceedings of or testifies before either the Administrative Tribunal of the International Labour Organization or any of the ICC's formal grievance mechanisms (including any contractually prescribed arbitration); or
- f. Cooperates with or participates in the work of duly authorised internal boards or panels; or
- g. Uses available informal intervention or resolution mechanisms, including those intended to resolve suspected issues of harassment, including sexual harassment, discrimination or abuse of authority; or
- h. Provides guidance or support in accordance with section 5 of this Presidential Directive. Where guidance or support is provided by the Staff Union Council, protection can be afforded to individuals providing such guidance or support regardless of whether they are staff members of the Court who have been duly elected to the Staff Union Council or other staff members who provide assistance on behalf of the Staff Union Council.

4.2 Protection against retaliation shall be extended to any Court personnel who has been mistakenly identified as having engaged in a protected activity provided that the complainant substantiates the claim of mistaken identity in relation to the protected activity.

4.3 This Presidential Directive is without prejudice to the legitimate application of regulations, rules and administrative issuances, including those governing evaluation of performance, non-extension or termination of appointment. However, the burden of proof shall rest with the ICC to demonstrate by clear and convincing evidence that the same action would have been taken absent the protected activity referred to in section 4.1 above or that the detrimental action was not taken for the purpose of punishing, intimidating or injuring the individual who engaged in the protected activity.

4.4 The transmission or dissemination of unsubstantiated rumours outside the context of established reporting mechanisms is not a protected activity.

4.5 While any Court personnel engaging in these protected activities may seek protection against retaliation, such a request for protection against retaliation or their engagement in protected activities does not shield a person from accountability for any of their own conduct. Notwithstanding their request for protection against retaliation or their

engagement in protected activities, such person may face disciplinary or other appropriate action for their role, if any, in the matter under investigation. Nonetheless, the reporting of unsatisfactory conduct may be relevant as a mitigating factor in the context of any such disciplinary action.

## **Section 5**

### **Guidance and support**

5.1 Court personnel who suspect they have been or may be subject to retaliation may require guidance and support:

- a. Before making a report of suspected retaliation regarding options to address the matter;
- b. During any informal or formal process; and
- c. Following the conclusion of any informal or formal process or investigation.

5.2 Such guidance and support may also be required when managing confidentiality requirements throughout the different stages described below or any subsequent informal or formal process or investigation.

5.3 The following offices can provide guidance and support, as applicable and consistent with their mandate, to Court personnel who suspect they have been or may be subject to retaliation:

- a. the [Human Resources Section](#);
- b. the [Staff Union Council](#);
- c. the [Staff Counsellor](#);
- d. the [Court's Ombuds](#);
- e. the [Independent Oversight Mechanism](#) ("IOM") ([external website](#)); and
- f. the [Focal Point for Gender Equality](#).

5.4 The above offices, in particular the Court's Ombuds, can also provide guidance and support to any person considering making any report of suspected unsatisfactory conduct.

## **Section 6**

### **Reporting through established internal mechanisms**

Except as provided in section 7 below, reports of suspected unsatisfactory conduct shall be made in accordance with the [Administrative Instruction on Investigations of Unsatisfactory Conduct](#), the [Administrative Instruction on Addressing Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority](#) or other applicable administrative issuances. Reports of suspected misconduct by an elected official in accordance with section 4.1(b) above shall be made in accordance with [rule 26 of the Rules of Procedure and Evidence](#). Reports of suspected unsatisfactory conduct or misconduct may be made confidentially and/or anonymously, as established in applicable administrative issuances or other applicable legal texts. Protection under this Presidential Directive cannot be applied to Court personnel who choose to remain anonymous.

## **Section 7**

### **External Reporting**

7.1 Reports of unsatisfactory conduct should be made in accordance with the established internal mechanisms referred to in section 6 above. In exceptional circumstances of significant gravity, where the use of established internal mechanisms is unavailable, notwithstanding Staff Regulation 1.2(i) and any applicable obligations of confidentiality and discretion, protection against retaliation will be extended to any Court personnel who reports, in good faith, suspected unsatisfactory conduct to an external entity or

person, where the Court personnel can demonstrate that the cumulative criteria set out in subparagraphs a, b, c and d below are satisfied:

- a. Such reporting is necessary to avoid:
  - i. A significant threat to public health or safety; or
  - ii. Substantive damage to the Court's operations or premises; or
  - iii. Violations of national or international law; and
- b. The use of established 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 evidence relating to the suspected unsatisfactory conduct will be concealed or destroyed if the individual reports to the person(s) they should report to pursuant to the established internal mechanisms; and
  - iii. There is no alternative person to whom a report may be made in accordance with the applicable internal mechanisms; and
- c. The individual does not accept payment or any other benefit from any party for such report; and
- d. The report is not vexatious nor frivolous.

7.2 Reporting under this section cannot be used to express disagreement or dissatisfaction with the outcome of matters previously reported through established internal mechanisms.



## **Section 8**

### **Preventive action**

- 8.1 The IOM, a person or entity conducting a duly authorised investigation, audit or oversight activity, or Heads of Organ may identify Court personnel at risk of retaliation due to engaging in a protected activity.
- 8.2 Court personnel may address the IOM if they suspect that they are at risk of retaliation due to engaging in a protected activity.
- 8.3 When the IOM has identified, or been informed by any person or entity referred to in sections 8.1 or 8.2, of a Court personnel who is at risk of retaliation, the IOM will consult with the individual on appropriate preventive action. With the individual's consent, such action may include engagement with the Head of Organ to ensure monitoring of the individual's workplace situation, employment and working conditions, with a view to preventing any detrimental action against the individual as a consequence of their engaging in a protected activity. In circumstances where a Court personnel has addressed the IOM under section 8.2 above, the IOM will approach the individual for consultation on this matter within 15 calendar days.
- 8.4 If, for any reason, the IOM considers it inappropriate for the IOM to perform the function in section 8.3, she or he will consult with the individual to identify an alternative person to perform this function.

## **Section 9**

### **Reporting suspected retaliation**

- 9.1 Court personnel who suspect that retaliation has been recommended, threatened or taken against them because they have engaged in a protected activity may bring this to the attention of:
- a. The IOM; or
  - b. The Prosecutor, for suspected retaliation on the part of staff members, consultants and contractors serving the Office of the Prosecutor; or

- c. The Registrar, for suspected retaliation on the part of Court personnel serving the other organs of the Court, as well as offices administratively linked to the Registry such as the Secretariat of the ASP and the Secretariat of the Trust Fund for Victims.
- 9.2 Court personnel who may not wish to approach any of the above directly may confide in a manager or supervisor, who shall in turn be responsible for bringing the information about suspected retaliation to the attention of the IOM, the Prosecutor or the Registrar on behalf of the Court personnel.
- 9.3 Court personnel who suspect retaliation should forward all relevant information and documentation available to them to the IOM as soon as possible.
- 9.4 The IOM shall maintain the confidentiality of all reports of suspected retaliation received, in accordance with [section 6 of the Administrative Instruction on Investigations of Unsatisfactory Conduct](#).
- 9.5 If the IOM is of the opinion that there is an actual or potential conflict of interest in reviewing a report of suspected retaliation at any stage, the IOM will take appropriate steps to ensure compliance with applicable ethical standards. This may include referral to another investigator or investigating body. In the event of such referral, the investigator or body may exercise all functions and powers granted to the IOM in this Presidential Directive and shall act in accordance with the [Administrative Instruction on Investigations of Unsatisfactory Conduct](#), the [Administrative Instruction on Addressing Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority](#) or other applicable administrative issuances and with the additional requirements established in this Presidential Directive.

## **Section 10**

### **Time limit for reporting suspected retaliation**

- 10.1 Reports of suspected retaliation must be submitted to the IOM no later than six months after the date on which the Court personnel knew, or in the opinion of the IOM should have known, of the suspected retaliation.
- 10.2 Former Court personnel may submit a report of suspected retaliation to the IOM, but must comply with the time limits provided in this section.

10.3 A report of suspected retaliation may be considered by the IOM notwithstanding the failure to comply with the time limits provided in this section if the Prosecutor or Registrar, as relevant, in consultation with the IOM, determines that it is necessary to give effect to the overall intent and purpose of this Presidential Directive, or otherwise in the interest of the Court to do so.

## **Section 11**

### **Informal resolution**

11.1 Court personnel who suspect that they have been or may be subject to retaliation may, on a voluntary and confidential basis, initially contact the Court's Ombuds, to consult and/or seek an informal resolution of the matter.

11.2 During the informal resolution process, the time limit for reporting suspected retaliation under section 10 above is suspended, provided that the IOM has been jointly informed by the person who suspects retaliation and the person suspected of having committed such retaliation that an informal resolution of the matter has been sought through the Court's Ombuds. The person who suspects retaliation and the person suspected of having committed such retaliation shall inform the IOM of the date on which informal resolution of a matter was sought through the Court's Ombuds and the date on which attempts to seek informal resolution came to an end. This time period shall be treated as suspended for the purpose of the calculation of time limits applying to any eventual report of suspected retaliation in section 10.

11.3 The pursuit of an informal resolution of a matter, grievance or interpersonal problem that may form the basis of a report of suspected retaliation does not prevent or preclude the eventual institution of disciplinary or other administrative action against the person suspected of having committed the retaliation, if appropriate.

## **Section 12**

### **Investigations**

Investigations of suspected retaliation shall take place in accordance with the [Administrative Instruction on Investigations of Unsatisfactory Conduct](#), the [Administrative Instruction on Addressing Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority](#) or other applicable administrative issuances and with the additional requirements established in this Presidential Directive.

## **Section 13**

### **Preliminary Assessment**

13.1 Notwithstanding the [Administrative Instruction on Investigations of Unsatisfactory Conduct](#), reports of suspected retaliation cannot be referred to the Registrar or the Prosecutor for investigation. Reports of suspected retaliation must be addressed by the IOM except as otherwise provided in section 9.5 above.

13.2 The Preliminary Assessment of a report of suspected retaliation shall determine whether:

- a. the complainant engaged in a protected activity;
- b. the detrimental action did take place; and
- c. there is a prima facie case that the protected activity was a contributing factor in causing the suspected retaliation.

13.3 The IOM will seek to complete its Preliminary Assessment within 45 calendar days of receiving all information requested concerning a report of suspected retaliation. Any deviation from this deadline shall be justified in sufficient detail.

13.4 If the IOM determines that there is no prima facie case that the protected activity was a contributing factor in causing the suspected detrimental action, it shall so notify the complainant in writing that it will not proceed with a Full Investigation. Should the IOM consider that there is an interpersonal problem within a particular section, office, unit or similar, it may additionally advise the complainant of the mandate of the

Court's Ombuds or of the existence of other informal mechanisms of resolution. Should the IOM consider that there is a managerial problem relating to a particular section, office, unit or similar, it may advise the head of the section, office, unit or similar concerned and the relevant Head of Organ.

## **Section 14**

### **Full Investigation if a prima facie case exists**

- 14.1 If the IOM determines that there is a prima facie case that the protected activity was a contributing factor in causing the detrimental action, it shall proceed to a Full Investigation and shall promptly notify the complainant in writing of this step.
- 14.2 The Full Investigation shall gather evidence as to whether retaliation actually occurred. The IOM will assess the entire dossier of the matter to determine whether it shows, by clear and convincing evidence, that the same action would have been taken absent the protected activity, or that the detrimental action was not taken for the purpose of punishing, intimidating or injuring the complainant. If, in the view of the IOM, this standard of proof is not met, the IOM will consider that the allegation of retaliation has been substantiated. If, in the view of the IOM, this standard of proof is met, the IOM will consider that the allegation of retaliation has not been substantiated.
- 14.3 The IOM shall seek to complete its Full Investigation and submit its findings to the appropriate Head of Organ within 120 calendar days from the completion of its Preliminary Assessment.
- 14.4 The investigation report of the IOM shall determine whether the investigation substantiates the retaliation. If an investigation report finds that retaliation is substantiated it may include recommendations on corrective measures in accordance with section 16 below and on disciplinary proceedings in accordance with section 17 below.

## **Section 15**

### **Interim protection**

Both during the Preliminary Assessment and pending completion of the Full Investigation, the Head of Organ, acting on the recommendation of the IOM or acting proprio motu after having consulted the IOM, may put in place appropriate interim measures to safeguard the interests of the complainant. Interim measures shall be temporary in nature, including, but not limited to, suspension of the implementation of the action reported as detrimental; with the consent of the complainant, reassignment of the complainant and/or change of reporting lines; or, for staff members, with the consent of the complainant, placement of the complainant on special leave with full pay. For interns, visiting professionals, individual contractors or consultants, such interim measures shall not include reinstatement or extension of a contract beyond its original date of completion.

## **Section 16**

### **Corrective measures when an allegation of retaliation is substantiated**

- 16.1 If the IOM finds that an allegation of retaliation has been substantiated, it may, after consultation with the complainant, as appropriate, make recommendations to the Registrar or the Prosecutor, as appropriate, for measures aimed at correcting negative consequences suffered as a result of the retaliation and protecting the complainant from any further retaliation.
- 16.2 Corrective measures include, but are not limited to, the rescission of the detrimental action, including reinstatement, or, if requested by the complainant, transfer to another office and/or function for which the staff member is qualified and/or change of reporting lines. For interns, visiting professional, individual contractors or consultants, such corrective measures shall not include reinstatement or extension of a contract beyond its original date of completion.
- 16.3 Where possible and appropriate, the ICC will recover the costs of any remedy from the person or persons responsible for the retaliation.
- 16.4 The Registrar or the Prosecutor, as appropriate, shall provide a written decision to the complainant and the IOM on the recommendations for corrective measures, within 30

calendar days of receipt. The Registrar or Prosecutor may further consult with the complainant in connection with any corrective measures, as appropriate. Such decision must respect the confidentiality of any ongoing disciplinary process.

## **Section 17**

### **Disciplinary action against the person who engaged in retaliation**

- 17.1 The ICC considers that retaliation may constitute, as applicable, unsatisfactory conduct within the meaning of Staff Regulation 10.2 and Staff Rule 110.1; serious misconduct or misconduct of a less serious nature pursuant to [Articles 46 and 47 of the Rome Statute](#); or a violation of the terms and conditions governing the relationship of the offender with the Court. Accordingly, it may result in disciplinary or other appropriate action against the person responsible.
- 17.2 If the IOM finds that retaliation has been substantiated, it shall refer the matter to the Registrar or the Prosecutor, as appropriate, for the initiation of disciplinary proceedings pursuant to [section 7 of the Administrative Instruction on Unsatisfactory Conduct and Disciplinary Proceedings](#) or other action that may be warranted as a result of the determination. The Registrar or the Prosecutor, as appropriate, shall report to the IOM on disciplinary proceedings in accordance with [section 7 of the Administrative Instruction on Investigations of Unsatisfactory Conduct](#). If retaliation has been committed by an individual other than Court personnel, the IOM shall report the matter to the entity(ies) with authority to initiate disciplinary or other appropriate (legal) action against that individual.
- 17.3 A person may be subject to disciplinary proceedings for unsatisfactory conduct that may also constitute retaliation even if such retaliation has not been reported in accordance with this Presidential Directive.

## **Section 18**

### **Prohibition of retaliation against outside parties**

If substantiated, any retaliation against a contractor or its employees, agents or representatives or any other individual engaged in any dealings with the ICC, because such person has engaged in an activity which would be a protected activity for Court personnel may lead to disciplinary or other appropriate action against the Court personnel determined to be responsible for such retaliation.

## **Section 19**

### **Appeals against administrative decisions**

19.1 The action, or absence thereof within the relevant time limit, of the Court on a recommendation from the IOM under sections 14-16 above will constitute an administrative decision under Chapter XI of the Staff Rules if it involves the non-observance of a staff member's terms of appointment, including all pertinent regulations and rules, and may be appealed within the time limits specified under those Rules.

19.2 Staff members are reminded that they may seek to appeal any administrative decision that they consider to be retaliatory under Chapter XI of the Staff Rules. Such recourse must comply with the time limits specified under those Rules. Staff members bear the burden of establishing retaliation in the context of appeals against administrative decisions.



## **Section 20**

### **Periodic review**

The present administrative instruction will be reviewed periodically with any revisions identified on an as-needed basis, but every two years at a minimum.

## **Section 21**

### **Entry into force**

21.1 This Presidential Directive shall enter into force on the date of its issuance.

21.2 The [Presidential Directive on ICC Whistleblowing and Whistleblower Protection Policy \(ICC/PRES/D/G/2014/003\)](#) is abolished and superseded by this Presidential Directive, except insofar as reports of suspected retaliation submitted prior to the entry into force of this Presidential Directive shall continue to be handled in accordance with the legal framework applicable at the time of the report.

A handwritten signature in black ink, appearing to read 'Piotr Hofmański', with a stylized flourish at the end.

Piotr Hofmański

President