Subject: Disciplinary Proceedings and Measures

1. Introduction and background

1.1 IOM/38/2002-FOM/36/2002 (hereinafter referred to as “this Memorandum”), together with IOM/37/2002-FOM/35/2002 on “The role of the Inspector General’s Office regarding inspection, preliminary investigations and inquiries”, sets out the actions taken by the relevant UNHCR officials regarding allegations of misconduct. IOM/37/2002-FOM/35/2002 describes in its section 3 the reporting and investigation of allegations of misconduct, up to the transmission of the findings to the Head, Human Resources Service (HRS). The purpose of this Memorandum is to advise all staff on the procedural steps UNHCR’s Administration may take or be obliged to take in accordance with Chapter X of the Staff Rules and ST/AI/371 of 1 August 1991 on "Revised Disciplinary Measures and Procedures". This Memorandum refers to Chapter 10 of the UNHCR Staff Administration Management Manual (SAMM) which will be amended accordingly.

1.2 According to Staff Rule 110.1, failure to comply with obligations under the UN Charter, the Staff Regulations and Rules, or other relevant administrative issuances, or failure to observe standards of conduct expected of an international civil servant, may amount to misconduct leading to the institution of disciplinary proceedings and the imposition of disciplinary measures.

1.3 Before disciplinary proceedings may be formally initiated by the Head, HRS in accordance with this Memorandum, the following steps, as set out in IOM/37/2002-FOM/35/2002 on “The role of the Inspector General’s Office regarding inspection, preliminary investigations and inquiries”, must have been completed:

· Allegations of misconduct have been reported to the Inspector General’s Office (IGO);
· The Inspector General has decided that an investigation be conducted either by the Inspector General or by an official designated by him or her;
· An investigation has been conducted;
· A preliminary investigation report, concluding that the allegations are well-founded, has been submitted to the Head, HRS;
· The Head, HRS, has decided to issue allegations.

1.4 The decision by the Head, HRS, to issue allegations of misconduct against a staff member is the first formal administrative action instituting disciplinary proceedings which is dealt with by this Memorandum. These proceedings are terminated either when the Head, HRS, decides to close the case, or when a
disciplinary measure decided upon by the Secretary-General after referral of a case to him for a decision is imposed.

1.5 In each instance the High Commissioner, to whom cases of misconduct in UNHCR are a matter of great concern, will be kept fully informed. Recommendations to the Secretary-General by the Head, HRS will be made in consultation with the High Commissioner (see paragraphs 4.1.1, 4.1.2, 4.5.1, 4.6.3 and 4.6.6).

1.6 Disciplinary measures imposed by the Secretary-General may take one or more of the following forms:
- written censure
- loss of one or more steps-in-grade
- deferment, for a specified period, of eligibility for a within-grade salary increment
- suspension without pay
- fine
- demotion
- separation from service, with or without notice or compensation in lieu of notice
- summary dismissal

1.7 The following are not disciplinary measures:
- A reprimand (normally written by a supervisory official)
- recovery of monies owed to the Organization under Staff Rule 112.3
- suspension during investigation and/or disciplinary proceedings (see IOM/37/2002-FOM/35/2002, paragraph 3.6.2)

2. Issuance of allegations by the Head, HRS

2.1 The Head, HRS, will inform a staff member who has allegedly committed misconduct of the allegations, in writing, and of his or her right to respond. This communication is generally referred to as the “Charge Letter”.

2.2 In the Charge Letter, the Head, HRS will determine and advise the staff member of the time limit in which to respond to the allegations and produce any countervailing evidence. The amount of time allowed shall take into account the seriousness and complexity of the matter. The Head, HRS, shall also inform the staff member that, if no response is submitted within the time limit, the matter will nevertheless proceed.

2.3 Together with the Charge Letter, the Head, HRS, will provide the staff member with copies of all documentary evidence on which the allegations of misconduct are based. These normally include the “preliminary investigation report” (see paragraph 3.6 of IOM/37/2002-FOM 35/2002) and, for example, written testimonies.

2.4 The Head, HRS, will also provide the staff member with a copy of ST/AI/371 on “Revised Disciplinary Measures and Procedures” and notify the staff member of his or her right to the advice and assistance of a serving or retired staff member in preparing a response. For that purpose a copy of the current list of members of the Panel of Counsel of the Joint Disciplinary Committee (JDC) at Geneva, who can provide such assistance, will be attached.

3. The staff member’s Reply

3.1 The staff member’s reply to the Charge Letter (hereinafter referred to as “the Reply”) should be received within the stipulated time limit. Should the staff member believe that more time is needed to submit the Reply, he or she may write to the Head, HRS, requesting an extension of the time limit and setting out the reasons for such an
request. The Head, HRS, will consider the request and inform the staff member whether or not an extension will be granted.

3.2 The Reply should comment on the allegation(s) and the staff member should attach copies of any documentary evidence available to him or her.

3.3 The Head of HRS will evaluate the Reply.

3.4 If the Head, HRS does not receive a Reply within the given time limit, the matter will nevertheless proceed (see paragraph 2.2 above).

4. Possible actions by the Head, HRS, upon receipt of the Reply

4.1 General remarks

4.1.1 Upon receipt of the Reply, and after having evaluated its contents, or after the expiry of the time limit, the Head, HRS, may decide to:

- close the case (see 4.2 below); or
- request additional information which might necessitate a further investigation (see 4.3 below); or
- submit the case to a Joint Disciplinary Committee (JDC) (see 4.4 below); or
- recommend to the Secretary-General, after consultation with the High Commissioner, that the staff member be summarily dismissed (see 4.5 below); or
- propose to the staff member, after consultation with the High Commissioner, an agreed disciplinary measure (see 4.6).

4.1.2 The Head, HRS, will evaluate the facts of the alleged misconduct and consider whether those facts constitute a violation of the Staff Regulations and Rules (see paragraph 1.2). If he or she concludes that a disciplinary measure is warranted, a recommendation will be made to the Secretary-General, in consultation with the High Commissioner. The Secretary-General will take a decision on the particular disciplinary measure to be imposed.

4.1.3 No staff member shall be subject to disciplinary measures without the matter having first been referred to a Joint Disciplinary Committee (JDC) (except in the case of summary dismissal or a joint waiver to submit the case to a JDC; see below 4.5 and 4.6). Consequently, the Head, HRS, will refer the case to the JDC in Geneva, which is competent to deal with disciplinary matters regarding UNHCR staff (unless the staff member seizes the JDC, following a decision of summary dismissal, in which case the JDC in New York is competent, see 4.5.2 below). The JDC will advise the Secretary-General on the appropriate disciplinary measure.

4.2 Closure of the case

4.2.1 The Reply and the evidence presented to support it might permit the Head, HRS, to conclude that the allegations are unfounded. The Head, HRS, will then close the case and inform the staff member accordingly.

4.2.2 The available evidence may be found insufficient to conclude that the allegations are well-founded, without permitting to conclude that they are unfounded. In that event the Head, HRS, will give the staff member the benefit of the doubt and close the case. Nevertheless, the Head, HRS, might decide to reprimand the staff member or recommend such action to the latter’s supervisor.

4.2.3 All actions set out in 4.2.2 above will be communicated to the Inspector General and to the High Commissioner for their information.

4.3 Need for additional information

4.3.1 The Head, HRS, may conclude from the Reply that there is a need for additional information. He or she will then address such a request to the official who conducted the preliminary investigation and was responsible for the preliminary investigation report, i.e. the official designated by the Inspector General to conduct
the preliminary investigation (see paragraph 3.5.1 of IOM/37/2002-FOM/35/2002). Such a request will be copied to the Inspector General.

4.3.2 A request for additional information might in some cases necessitate a further investigation which will be conducted according to the same procedure as the preliminary investigation (see paragraphs 3.5 and 3.7 of IOM/37/2002-FOM/35/2002).

4.3.3 If the additional information includes new facts, which the Head, HRS, considers to be relevant for evaluating the staff member’s conduct in connection with the allegations already brought to the latter’s attention, it has to be shared with the staff member for comments. As in the case of the initial allegations, the staff member has the right to submit a reply within a given time limit. A second Charge Letter would be issued, if the further investigation gave rise to additional allegations.

4.4 Referral to a Joint Disciplinary Committee (JDC)

4.4.1 According to Staff Rule 110.4 (b) “[n]o staff member shall be subject to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate”. There are only two exceptions to this rule, namely:

(a) If referral to the JDC is waived by mutual agreement of the staff member concerned and the Secretary-General, and

(b) In respect of summary dismissal imposed by the Secretary-General in cases where the seriousness of the misconduct warrants immediate separation from service.

4.4.2 If neither of the above exceptions applies, the Head, HRS, having concluded that a disciplinary measure is called for, will submit the case to the Geneva JDC, which will in turn advise the Secretary-General on the appropriate disciplinary measure. At the same time the Head, HRS, shall inform the staff member and provide him or her with a copy of the entire dossier submitted to the JDC, advising the staff member of his or her right to be represented by a serving or retired staff member.

4.4.3 The JDC will consider the case under the procedure set out in paragraphs 17 to 20 of ST/AI/371. The meetings of the JDC take place in closed sessions to which only the parties are admitted. The JDC’s findings are reflected in a confidential report to the Secretary-General which normally also contains a recommendation on the disciplinary measure that the JDC considers appropriate.

4.4.4 The Secretary-General will inform the Head, HRS, of the disciplinary measure he has decided to impose. That decision will be implemented by HRS. Any appeal against the disciplinary measure imposed by the Secretary-General should be submitted directly to the United Nations Administrative Tribunal (ST/AI/371, paragraph 23).

4.5 Recommendation to the Secretary-General for summary dismissal

4.5.1 In cases “where the seriousness of the misconduct warrants immediate separation from service,” the Head, HRS, in consultation with the High Commissioner, will recommend that the staff member be summarily dismissed. Such a recommendation is addressed to the Secretary-General through The Legal Counsel of the United Nations and the Under-Secretary-General for Management.

4.5.2 If the Secretary-General decides to follow the recommendation and to summarily dismiss the staff member, the latter may, in accordance with Staff Rule 110.4 (c), within two months of receipt of written notification of the decision, request a review by a JDC. However, such a request will not suspend implementation of the decision. The review will be carried out by the JDC in New York (ST/AI/371, paragraph 24).

4.6 Proposal of an agreed disciplinary measure
4.6.1 As mentioned above (4.1.3 and 4.4.1), Staff Rule 110.4, sub-paragraph (b) (i) provides that referral to a JDC may be waived by mutual agreement between the staff member concerned and the Secretary-General.

4.6.2 A waiver means that the staff member agrees to forego his or her right to have the case heard by a JDC and that he or she accepts the imposition of “one or more of the disciplinary measures listed in Staff Rule 110.3 (a)” (ST/AI/371, paragraph 11).

4.6.3 In practice, and after evaluating the case in the light of all the available documentation, including the staff member’s replies, the Head, HRS, will, in consultation with the High Commissioner, write to the staff member and propose the disciplinary measure considered the most appropriate. The staff member will be requested to waive his or her right to a JDC and advised that if he or she accepts the proposed disciplinary measure the Head, HRS, shall recommend that measure to the Secretary-General for approval.

4.6.4 The Head, HRS will, in the letter to the staff member, impose a time limit for acceptance of the proposal. If the staff member does not accept the proposal, the Head, HRS, will submit the case to the JDC (see 4.4. above) or recommend summary dismissal (4.5 above), depending on the circumstances of the case.

4.6.5 If the staff member agrees in writing to the proposal, the Head, HRS will recommend to the Secretary-General, through the Under-Secretary-General for Management, approval of the disciplinary measure.

4.6.6 If the Secretary-General approves the agreed disciplinary measure, the High Commissioner, the staff member concerned, and the Human Resources Officer responsible for its implementation, will be informed by the Head, HRS, of that decision.

4.6.7 If the Secretary-General does not approve the disciplinary measure agreed upon with the staff member, he will normally suggest that the case be submitted to the JDC in Geneva. The Head HRS will inform both the High Commissioner and the staff member concerned of that decision and the matter will proceed as described under 4.4 above.