



**Presidential Directive – Directive de la Présidence**

**Ref: ICC/PRES/D/G/2014/003**

Date: 8 October 2014

The President, in consultation with the Prosecutor, for the purposes of exercising their respective oversight responsibilities and in accordance with Section 2 of ICC/PRES/D/G/2003/1, promulgates the following:

**ICC Whistleblowing and Whistleblower Protection Policy**

**Section 1**

**Purpose**

1.1 The purpose of this Presidential Directive is to:

- a) provide elected officials, staff members and other persons serving the International Criminal Court (“ICC”) such as counsel, contractors, consultants, visiting professionals, interns and vendors with an avenue to report in good faith suspected misconduct;
- b) establish a framework of protection and procedures within which internal and external parties may in good faith report and cooperate with fact finding activities, such as audits, investigations, evaluations, inspections and inquiries related to alleged misconduct, and
- c) protect such persons against retaliation committed by internal or external parties.

1.2 The Court is committed to maintaining the highest standards of integrity, transparency and accountability in its management, operations and use of resources. Elected officials, staff members and other persons serving the ICC have an important role to play in achieving this goal.

1.3 They share a responsibility to:

- a) report suspected ICC-related misconduct, past or present; and
- b) cooperate with duly authorised fact finding activities, such as audits, investigations, evaluations, inspections and inquiries.

## **Section 2**

### **Whistleblowers**

2.1 Whistleblowers are individuals who for the benefit of the ICC fulfil their responsibility by reporting, in good faith, suspected misconduct, as defined in the Operational Mandate of the Independent Oversight Mechanism, either on their own initiative or when cooperating with duly authorised fact finding activities, such as audits, investigations, evaluations, inspections and inquiries.

2.2 Whistleblowers are entitled to protection by the ICC against retaliation.

## **Section 3**

### **Procedure**

3.1 Concerns in good faith about suspected ICC-related misconduct may be reported as follows. For concerns regarding the conduct of:

- a) an elected official, to the President;
- b) staff of or other persons serving the Office of the Prosecutor, to the Prosecutor, Deputy Prosecutor or any other person designated by the Prosecutor;
- c) staff of or other persons serving the other organs of the ICC as well as offices administratively linked to the Registry such as the Secretariat of the Assembly of States Parties (“ASP”) and the Secretariat of the Trust Fund for Victims, to the Registrar or any other person designated by the Registrar; and

d) persons serving other bodies of the Rome Statute system, including individuals selected or elected by or reporting primarily to the ASP or its subsidiary bodies and their members, to the President of the ASP.

3.2 Where for any reason the channels above are not appropriate, concerns may be raised directly with the Independent Oversight Mechanism (“IOM”).

3.3 The heads of organs of the ICC shall designate additional persons who are authorised to receive relevant information from whistleblowers, as well as complaints of retaliation. The list of designated individuals will be accessible to all persons serving the ICC.

3.4 The person to whom the whistleblower reports his or her concerns in accordance with this Section shall be responsible for:

a) ensuring that the applicable procedure as outlined in the relevant provisions of the ICC’s legal framework is initiated; and

b) initiating appropriate steps to ensure that the whistleblower’s identity is protected to the fullest extent possible, consistent with the requirements of a thorough investigation in accordance with the ICC’s legal framework.

3.5 Whistleblowers who have substantial grounds to believe that the person responsible is not taking the appropriate action, may raise this with the IOM.

## **Section 4**

### **Prevention and protection against retaliation**

4.1 The ICC has zero tolerance for retaliation against whistleblowers. Retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in an activity protected by the present policy.

4.2 Retaliation is not to be confused with the assessment of an individual's work performance made as part of, for example, the Performance Appraisal System. However, such feedback shall not be used as a means to demean or harass an individual or as retaliation for reporting suspected misconduct. Retaliation also does not include the mere expression of disagreement, admonishment, or

criticism regarding work performance, conduct or related issues, unless these are exercised in bad faith for the purpose of retaliation.

- 4.3 The ICC considers retaliation against whistleblowers to be misconduct. The ICC will take prompt action against anyone found to have retaliated against a whistleblower.
- 4.4 The ICC is committed to the professional, prompt and confidential investigation of any suspected retaliation and to the full respect of due process in that context. If allegations of retaliation are substantiated, the ICC will take appropriate action against those responsible for the retaliation through its internal disciplinary procedures or by referring the case to relevant domestic jurisdictions.
- 4.5 Whistleblowers are entitled to preventive and protective measures against retaliation, which will be discussed confidentially with the whistleblower before implementation.
- 4.6 Whistleblowers who believe in good faith that they are being subjected to retaliation should document the relevant events as soon as possible and report them in accordance with Subsections 3.1 and 3.2 above.
- 4.7 Reporting of suspected retaliation and the identities of those implicated will be kept confidential to the fullest extent possible, consistent with the requirements of a thorough investigation in accordance with the ICC's legal framework and, where relevant, that of any State .
- 4.8 Where there has been a determination that retaliation has taken place, the ICC will, to the extent possible, mitigate the impact of the retaliation on the whistleblower. In addition, where possible, the ICC will recover the costs of any remedy from the person or persons responsible for the retaliation.

## Section 5

### **Final provisions**

- 5.1 This Presidential Directive shall be translated into relevant administrative issuances so as to ensure a comprehensive system for the encouragement and protection of whistleblowers.
- 5.2 Advice regarding whistleblowing, this Policy or the relevant processes described in the ICC's legal framework, as well as on actions that could be

taken in the event of suspected retaliation can be sought from the Human Resources Section, the IOM or the Staff Union Council, in addition to any other individuals or offices who will be responsible for receiving reports from whistleblowers in general.

5.3 This Presidential Directive shall enter into force on 8 October 2014.

  
Sang-Hyun Song  
President