

## Comparison of the UN, UNDP, WFP, UNICEF and UNFPA Whistleblower Policies \*

Standard	Ideal	UN	UNDP	WFP	UNICEF	UNFPA	Best
<b>Disclosure of Policy</b>	Whistleblowers can only be protected by a law if they know it exists. Whistleblower policies should be prominently posted in the workplace and easily accessible to potential whistleblowers and the public. A failure to post a transparency policy in a transparent manner is indicative of an institutional culture of secrecy that jeopardizes whistleblowers.	A copy of the policy is available online in English and French at <a href="http://www.un.org/Docs/journal/asp/ws.asp?m=ST/SG/B/2005/21">www.un.org/Docs/journal/asp/ws.asp?m=ST/SG/B/2005/21</a> .	Did not appear to be publicly available online as of February 14, 2008. UNDP has given the policy to at least one potential whistleblower; GAP analyzed the version that was given to this whistleblower.	Did not appear to be publicly available online as of February 14, 2008.	Did not appear to be publicly available online as of Feb. 14, 2008. A UNICEF representative told GAP that they would only provide the policy to us if we sent a letter stating why we wanted it. GAP wrote an e-mail listing our reasons, and the UNICEF Ethics Officer sent us a copy of the policy.	On Feb. 13, 2008, GAP sent an e-mail to UNFPA requesting a copy of its policy. On Feb. 22, UNFPA sent a "revised" copy of the policy, which was dated Feb. 15. This rewritten policy was significantly different from an earlier version (July 3, 2007) that GAP had obtained. UNFPA's policy is now posted online at <a href="http://www.unfpa.org/help/unfpa-whistle-policy-2008-02-22.pdf">www.unfpa.org/help/unfpa-whistle-policy-2008-02-22.pdf</a> .	The UN, as it makes its policy publicly available - in two languages - online. However, even this policy could be posted more prominently on the organization's website.
<b>Staff Protected</b>	Whistleblower protections (including protection from retaliation) should extend to all relevant applicants or personnel regardless of formal status, including full and part-time employees, interns, contractors, etc.	Coverage extends to all staff members (regardless of type of appointment or its duration), interns and UN volunteers.	Coverage explicitly <b>excludes</b> seconded staff members, independent contractors w/ Special Service Agreements, employees under Service Contracts, interns, volunteers, employees without a UNDP letter of appointment and some locally-recruited staff.	Coverage extends to all WFP national or international staff members (regardless of the type of appointment or its duration), consultants, interns, service contract holders or special service agreement holders, or volunteers.	Coverage extends to UNICEF "staff members." However, it is not clear exactly who is defined as a staff member and whether or not interns, volunteers, contractors, consultants, etc. are covered.	Coverage extends to "all staff members serving with UNFPA." However, it is not clear exactly who is defined as a staff member and whether or not interns, volunteers, consultants, contractors, etc. are covered.	WFP, as it explicitly extends coverage to consultants as well as to WFP staff members, volunteers and interns.
<b>Statute of Limitations</b>	One-year statutes of limitations for reporting retaliation or wrongdoing are consistent with common law rights. However, if the consequences of either the corruption disclosed or the retaliation are ongoing, there should be no statute of limitations.	In order to receive protection from retaliation, the report should be made "as soon as possible." This definition is not limited to a certain number of days. Reports of misconduct must be made within six years.	60-day statute of limitations to report retaliation.	One-year statute of limitations for reporting retaliation.	60-day statute of limitations to report retaliation.	60-day statute of limitations to report retaliation (was 30 days in the previous version of the policy).	UN SGB, as it has no explicit statute of limitations on reporting retaliation.

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<b>Subject Matter for Free Speech Rights</b>	Whistleblower systems should cover disclosures of any illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety, or any other activity that undermines the organization's mission and duties to its stakeholders.	Covers the failure of a staff member to comply with his/her obligations under the UN Charter, the Staff Regulations & Rules or other relevant administrative issuances, the Financial Regulations & Rules, or the Standards of Conduct of the International Civil Service. Also covers staff members who cooperate in good faith with a duly authorized investigation or audit and whistleblowers who disclose violations of national or international law or a significant threat to public health and safety.	The title of Chapter II suggests that the policy protects against retaliation for reporting allegations of wrongdoing or for cooperating w/ duly authorized audits or investigations, but the policy never explicitly provides protection. The policy does say that an individual who cooperates in good faith w/ an investigation is entitled to protection from retaliation, as are whistleblowers who disclose violations of law (w/qualifiers) or a significant threat to public health or safety. It also includes a lengthy definition of misconduct, though it's not clear if whistleblowers are protected for disclosing misconduct.	Covers the failure of an employee to comply with his or her obligation under WFP Regulations & Rules, Staff Regulations & Rules, WFP Financial Regulations & Rules, the Standards of Conduct for the International Civil Service, UN or UNDP regulations & rules or other relevant administrative issuances. Also covers people who provide information in good faith on wrongdoing or who cooperate with a duly authorized audit, inspection, investigation or evaluation. Also covers disclosures about violations of national or international law or significant threats to public health and safety.	Covers the failure of an individual to comply with his or her obligation under the Charter of the UN, UN Staff Regulations & Rules, UNICEF's Financial Regulations & Rules, the Standards of Conduct for the International Civil Service or other relevant administrative issuances. Also covers people who provide information in good faith on wrongdoing by one or more individuals or who cooperate in good faith with a duly authorized audit, inspection or other oversight activity. Also covers disclosures about violations of national or international laws (w/qualifiers) or significant threats to public health and safety.	Covers the failure of an individual to comply with his or her obligations under the Charter, UN Staff Regs. & Rules, UNFPA Financial Regs. & Rules, the Standards of Conduct for the International Civil Service or other relevant administrative issuances or policies. Also covers people who cooperate in good faith w/ a duly authorized fact-finding activity and whistleblowers who disclose violations of national or international law or significant threats to public health and safety.	All are roughly equivalent, with the exception of UNDP, which is the weakest.
<b>Interim Relief</b>	Interim relief should be awarded as needed, but only with the <i>consent</i> of the whistleblower.	Provides for interim relief, with the <i>consent</i> of the whistleblower.	Provides for interim relief, in <i>consultation</i> with the whistleblower, rather than with the consent. Thus, 'relief' (such as transfer) can be used as a retaliatory measure against a whistleblower. UNDP also inappropriately involves OHR in this decision-making process.	Provides for interim relief, in <i>consultation</i> with the whistleblower, rather than with the consent. Thus, 'relief' (such as transfer) can be used as a retaliatory measure against a whistleblower.	Provides for interim relief, in <i>consultation</i> with the whistleblower, rather than with consent. Thus, 'relief' can be used as a retaliatory measure against a whistleblower.	Provides for interim relief, in <i>consultation</i> with the whistleblower, rather than with the consent. Thus, 'relief' can be used as a retaliatory measure against a whistleblower.	UN SGB, as it provides for interim relief with the consent of the whistleblower.

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<b>Protection Against the Full Scope of Retaliation</b>	Should cover all retaliation scenarios that could have a chilling effect on responsible exercise of free expression rights, including passive retaliation such as the failure to renew a contract or denial of training/resources/access to information.	Covers any direct or indirect detrimental action recommended, threatened or taken because of protected conduct.	Does not sufficiently ban passive reprisals, as it requires that "the action ... did take place." This is insufficient, as often the retaliatory measure is a lack of action rather than an explicit action. It also inappropriately includes OHR and LSO - who may have a conflict of interest - in the process of formulating recommendations to protect the whistleblower.	Covers any direct or indirect detrimental action recommended, threatened or taken toward an individual who has reported misconduct or provided information concerning it.	Does not sufficiently ban passive reprisals, as it requires that "the action ... did take place." This is insufficient, as often the retaliatory measure is a lack of action rather than an explicit action.	Covers any direct or indirect detrimental action recommended, threatened or taken because an individual reported misconduct in good faith or cooperated with an authorized fact-finding activity.	UN SGB, WFP and UNFPA, as they better protect a whistleblower from passive retaliation.
<b>Burden of Proof</b>	An employee's burden should be to show that protected whistleblowing was relevant as a "contributing factor" to alleged retaliation. Once a whistleblower establishes that a disclosure of misconduct was a contributing factor in retaliation, the burden of proof should shift to the organization to demonstrate by <i>clear and convincing evidence</i> that it would have taken the same action for legitimate reasons in the absence of the protected activity.	An employee must show that protected whistleblowing was relevant as a "contributing factor" to alleged retaliation. The employee must make the report in good faith and submit information or evidence to support the allegation. Once the Ethics Office determines that a <i>prima facie</i> case of retaliation exists, the burden of proof shifts to the Administration to demonstrate by "clear and convincing evidence" that it would have taken the same action absent the protected activity.	The whistleblower must prove that whistleblowing was a "contributing factor" to the retaliatory action and that the action or threat of retaliation did take place. Like the UN policy, UNDP management must prove by "clear and convincing evidence" that it would have taken the same action absent the protected activity.	An employee must show that protected whistleblowing was relevant as a "contributing factor" to alleged retaliation. The employee must make a report in good faith and have a reasonable belief that misconduct has occurred. Once the Inspector General (IG) determines that a <i>prima facie</i> case of retaliation exists management must prove by "clear and convincing evidence" that it would have taken the same action absent the protected activity.	Section 4, "Reporting retaliation to the Ethics Office," is illogical and unclear. Unexplained omission of the corresponding phrase in the other policies ("to determine") has resulted in confusion about what must be established and by whom.	An employee must show that protected whistleblowing was relevant as a "contributing factor" in causing the alleged retaliation or threat of retaliation. The employee must also submit information or evidence to support a reasonable belief that misconduct has occurred. In applying regulations, UNFPA management must be able to show by "clear and convincing evidence" that the same action would have been taken absent the protected activity.	All have reasonable burdens of proof except UNICEF.

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<b>Public Freedom of Expression</b>	Whistleblowers should be able to make disclosures regardless of audience. They should be allowed to make their disclosures through external channels if necessary.	Allows whistleblowers, in certain instances, to make their disclosures outside internal channels, enabling them to go to the public, media or Congress.	Imposes greater restrictions on external disclosures and only allows some whistleblowers to report externally if they are seeking to avert a “violation of national or international laws w/ immediate adverse impact on life or property.” It cites a preference for ‘external’ disclosures directly to the Administrator or UN OIOS - one of which is internal to UNDP and the other of which is internal to the UN system - except if there is a significant threat to public health/safety; then the report can be made to an emergency service provider. It is unclear whether a whistleblower loses his/her rights when going to an external channel in non-emergency situations.	Uses the same criteria for when a whistleblower can make an external disclosure as the UN policy. However, it cites a preference for ‘external’ disclosures directly to a UN office (OIOS). It is unclear whether a whistleblower loses his/her rights when going to an external channel before going to OIOS.	Imposes greater restrictions on external disclosures and only lets some whistleblowers report externally if they are seeking to avert a “violation of national or international laws with immediate adverse impact on life or property.” It cites a preference for ‘external’ disclosures directly to the Executive Director or OIOS, one of which is internal to UNICEF and the other of which is internal to the UN system. It is unclear whether a whistleblower loses his/her rights when going to an external channel before going to OIOS.	The July 2007 policy had the broadest definition of external disclosures. The new policy is more restrictive, but conforms to the UN Secretariat policy w/ respect to subject matter for an ‘external’ disclosure. Unlike the other programs, it allows external disclosures if such reporting is necessary to avoid damage to UN operations. It cites a preference for external disclosures to OIOS, except if there is a significant threat to public health/safety; then the report can be made to an emergency service provider. It is unclear whether a whistleblower loses his/her rights when going to an external channel in non-emergency situations.	UN SGB, as it has a broad definition of when external disclosures can be made and allows disclosures to some channels that are truly external to the UN system.
<b>Option for Alternative Dispute Resolution With an Independent Party of Mutual Consent</b>	Arbitration can be an expedited, less costly forum for whistleblowers, if the parties share costs and select the decision maker by mutual consent through a "strike" process. It can provide an independent, fair resolution of whistleblower disputes.	Does not explicitly provide for alternative dispute resolution.	Encourages the informal resolution of conflicts. A staff member may contact the Office of the Joint Ombudsperson to seek a resolution. The staff member may also request a third person to mediate. It is not clear how arbitration is financed or where the final decision is made.	Does not explicitly provide for alternative dispute resolution.	Does not explicitly provide for alternative dispute resolution.	Encourages the informal resolution of conflicts. A staff member may contact the Office of the Joint Ombudsperson to seek a resolution. The staff member may also request a third person to mediate. It is not clear how arbitration is financed or where the final decision is made.	UNDP & UNFPA allow for third-person mediation. These arbitration systems, however, lack enforcement and may not guarantee implementation of a resolution.

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<b>Independence of Informal Channels</b>	The investigation of reprisal must be free from institutionalized conflicts of interest. This is particularly significant for preliminary stages of review that are inherently compromised by conflicts. Whistleblower complaints must exclude Human Resources because retaliation often occurs as an administrative action that is implemented by H.R.	While impartiality in the investigation process is difficult to ensure, the establishment of the UN Ethics Office independent of both the Office of Human Resources (OHR) and the Office of Legal Counsel was an important step in protecting internal review from improper influences.	Institutionalizes a conflict of interest, as the internal ethics office can consult w/ OHR to determine if a <i>prima facie</i> case of retaliation exists. Also, LSO recommends discipline for a retaliator, although LSO represents the alleged retaliator in the dispute. Selection criteria for the Ethics Advisor do not preclude appointing an internal candidate. This is not ideal.	Establishes an Ethics Office that is independent of H.R. Selection criteria for the Ethics Officer do not preclude appointing an internal candidate. This is not ideal.	Establishes an Ethics Office that is independent of H.R. Selection criteria for the Ethics Officer do not preclude appointing an internal candidate. This is not ideal.	Establishes an Ethics Office that is independent of H.R. Selection criteria for the Ethics Officer do not preclude appointing an internal candidate. This is not ideal.	UN SGB, as it creates an Ethics Office that was designed to be independent of H.R. and has an external Ethics Officer who is less likely to have a conflict of interest.
<b>Right to a Genuine Day in Court</b>	Whistleblowers must be granted normal judicial due process rights. The elements include timely decisions, a day in court with witnesses and the right to confront the accusers, objective and balanced rules of procedure, reasonable deadlines and decisionmakers independent from institutional conflicts of interest. In the UN context, this means that whistleblowers must have access to the formal justice system.	Allows whistleblowers to seek redress through the internal due process mechanisms and to raise any violation of the policy by the Administration in those proceedings. An independent panel found the justice system to be ineffective, lacking independence and prejudiced by routine delays. A new, professionalized system is being created, but will not become operational until 2009.	Allows whistleblowers to seek redress through the UN institution-wide internal recourse mechanisms and to raise any violation of the policy in those proceedings.	Allows whistleblowers to seek redress through the internal recourse mechanisms and to raise any violation of the policy by WFP in those proceedings. Unlike the other programs in this chart, WFP whistleblowers do not presently go through the UN's internal justice system, but rather to ILOAT.	Allows whistleblowers to seek redress through the UN institution-wide internal recourse mechanisms and to raise any violation of the policy in those proceedings.	Allows whistleblowers to seek redress through the UN institution-wide internal recourse mechanisms and to raise any violation of the policy in those proceedings.	All allow the whistleblower to access a formal justice system. However, this system, in its current form, does not provide an impartial adjudication forum.

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<b>Reliable Anonymity Protection</b>	To maximize the flow of information necessary for accountability, reliable protected channels must be available for those who choose to make confidential or anonymous disclosures. Denying this option creates a severe chilling effect. There should also be ways to protect the identity of the whistleblower once he or she comes forward. The whistleblower's identity should not be disclosed without his or her express written permission, unless there is an imminent threat to public health or safety from corruption, in which case there should be reasonable prior written notice to the person.	Complaints may be made in person or via e-mail, fax, mail or phone (it's not clear if they can be anonymous). States that it is the duty of the Administration to protect the confidentiality of the individual's identity and all communications to the maximum extent possible. Does not specify if a whistleblower's identity will ever be revealed or explicitly require written permission or notice to disclose it.	Allows for anonymous disclosures (via e-mail or telephone). Says that the identity of the investigation subject should remain confidential to the extent possible but that identities may become known for reasons outside of the control of the investigators. If a staff member discloses that he or she is subject to an investigation to someone who is "not otherwise authorized to know," UNDP is no longer obligated to maintain confidentiality. This exception is too broad (i.e. are counsel/unions "authorized to know?") Does not specify if a whistleblower's identity will ever be revealed or explicitly require written permission or notice to disclose it.	Complaints may be made in person or by telephone, mail, e-mail or fax (it's not clear if they can be anonymous). It is the duty of the body receiving the report to protect the confidentiality of the whistleblower and all communications w/him or her to the maximum extent possible. The individual's identity should not be disclosed without his or her permission, and only if it is necessary for administrative, disciplinary or judicial action or in order to ensure due process in the investigation of the allegations made.	Complaints of retaliation may be made in person, by telephone, by mail, by e-mail or fax (it's not clear if they can be anonymous). States that the identity of the individual reporting misconduct should remain confidential "to the maximum extent possible", as should all communication with the UNICEF staff members in questions relating to the report. Does not specify if a whistleblower's identity will ever be revealed or explicitly require written permission or notice to disclose it.	Complaints of retaliation may be made by any means, including in person, by telephone or e-mail. The Ethics Office may afterwards request that a written and signed complaint be submitted. The Ethics Office shall maintain a confidential record of retaliation complaints received. Does not specify if a whistleblower's identity will ever be revealed or explicitly require written permission or notice to disclose it. There are no other confidentiality/anonymity guarantees.	WFP, as it explicitly says that an individual's identity will not be disclosed without his or her permission.
<b>Shielding Whistle-blowers from Gag Orders</b>	A whistleblower policy should include a ban on "gag" orders through an employer's rules, policies or nondisclosure agreements that would otherwise override free speech rights and impose prior restraint.	Does not expressly ban gag orders.	Does not expressly ban gag orders.	States that confidentiality clauses and oaths in contracts of employment do not preclude a duty to disclose, thereby expressly banning gag orders on whistleblowers.	Does not expressly ban gag orders.	Does not expressly ban gag orders.	WFP, as it exempts whistleblowers from confidentiality clauses & oaths in contracts.

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<b>Relief for Whistle-blowers Who Win</b>	If a whistleblower prevails, the relief must be comprehensive to cover all the direct, indirect and future consequences of the reprisal. In some instances this means relocation or transfer and payment of medical bills or attorney fees.	The Ethics Office, after taking into account any recommendations made by OIOS or other concerned offices & in consultation with the whistleblower, may recommend to the head of the department or office concerned appropriate measures aimed at correcting negative consequences suffered. Such measures may include, but are not limited to, the rescission of the retaliatory decision, including reinstatement, or transfer to another office or function. If the head of the department does not act, the Ethics Office can make recommendations to the Secretary-General.	The Ethics Advisor, in consultation w/ OHR and LSO, makes recommendations to the Administrator for appropriate measures aimed at correcting negative consequences suffered. This process inappropriately involves OHR and LSO, both of which could have a conflict of interest. According to ST/SGB/2007/11, the whistleblower can refer the case to the UN Ethics Committee following a final determination, which can then make recommendations to the Executive Head. Thus the Administrator /Associate Admin. have the final say on relief in all informal processes.	The Executive Director (ED), after taking into account recommendations made by the IG & in consultation w/ the complainant, may take appropriate measures aimed at correcting the negative consequences suffered. These measures may include, but are not limited to, the rescission of the retaliatory decision, including reinstatement or transfer to another office or function. According to ST/SGB/2007/11, the whistleblower can refer the case to the UN Ethics Committee following a final determination, which can then make recommendations to the Executive Head. Thus the ED has the final say on relief in all informal processes.	The ED, taking into account the recommendations by the Ethics Office or other concerned office(s) & in consultation w/ the complainant, may take appropriate measures aimed at correcting negative consequences suffered. Such measures may include, but are not limited to, the rescission of the retaliatory decision, including reinstatement and transfer to another office or function. According to ST/SGB/2007/11, the whistleblower can refer the case to the UN Ethics Committee following a final determination, which can then make recommendations to the Executive Head. Thus the ED has the final say on relief in all informal processes.	The ED, after taking into account the recommendations made by the Ethics Office or other concerned office(s) and in consultation w/ the complainant, may take appropriate measures to rectify the negative consequences suffered as a result of the retaliatory decision, including reinstatement and transfer to another office or function. According to ST/SGB/2007/11, the whistleblower can refer the case to the UN Ethics Committee following a final determination, which can then make recommendations to the Executive Head. Thus the ED has the final say on relief in all informal processes.	All the policies are flawed by structural conflicts of interest because the Ethics Officer reports directly to the head of his or her agency, who is potentially the defendant. However, the UN policy minimizes this, as the UN Ethics Officer first makes recommendations on relief to the department. The SG only intervenes if the department fails to act.

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<b>Credible Internal Corrective Action Process</b>	The point of whistleblowing through an internal system is to give the employer the opportunity to clean house, before matters deteriorate into a public scandal. In addition to conducting a good faith investigation, an organization should allow the whistleblower to review and comment on the investigation and report, to assess whether there has been a good faith resolution.	Requires the Ethics Office to provide the outcome of the investigative report, in writing, to the whistleblower, though not necessarily the actual report.	Requires the LSO Director to provide investigation reports to the "investigation subject," which appears to refer to the retaliator, not the whistleblower. It is not clear if whistleblowers are allowed to see the reports and respond.	Does not expressly require that the whistleblower be informed of the results of the investigation.	Requires the Ethics Office to provide the outcome of the investigation, in writing, to the complainant, though not necessarily the actual report.	Requires the Ethics Office to provide the outcome of the investigation, in writing, to the complainant, though not necessarily the actual report.	All are insufficient, but UN SGB, UNICEF and UNFPA are best, as they expressly require the Ethics Office to provide the outcome of the investigative report to the whistleblower.
<b>Accountability for Reprisals</b>	To deter repetitive violations, it is indispensable to hold accountable those responsible for whistleblower reprisal. The most effective option to prevent retaliation is personal liability for punitive damages by those found responsible for violating whistleblower laws.	Retaliators will be subject to disciplinary action and/or transfer to other functions in the same or a different office.	Retaliators will be subject to administrative and/or disciplinary action.	Retaliators <i>may</i> be subject to administrative or disciplinary action.	Retaliators will be subject to administrative and/or disciplinary action.	Retaliators will be subject to disciplinary or other appropriate action.	UN, UNDP, UNICEF & UNFPA, as retaliators "will be" rather than "may" be subject to disciplinary action.

\* The UN policy that is referred to in this document is the December 19, 2005, Secretary-General Bulletin 2005/21, "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations." The United Nations Development Programme (UNDP) policy referred to is the November 6, 2007 "Updated UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct. The World Food Programme (WFP) policy is the November 30, 2006 "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits, inspections, investigations and evaluations." The UN Children's Fund (UNICEF) policy is the January 16, 2008 "Protection against retaliation for reporting misconduct or for cooperating with duly authorized audits, investigations and other oversight activities." The UN Population Fund (UNFPA) policy is the February 15, 2008 "Protection against retaliation for reporting misconduct or for cooperating with an authorized fact-finding activity." Although more current versions of some of these policies may be available, GAP has been unable to obtain them.