



Representative Cases in Which the United Nations or its Funds, Programmes or Agencies have not Complied with Best Practices in Whistleblower Protection

The 2014 U.S. Consolidated Appropriations Act requires the State Department to report to Congress about the progress made by the United Nations and UN agencies in ***implementing*** best practices for protecting whistleblowers from retaliation.¹ According to the law, 15 percent of the U.S. contribution to the United Nations or any UN agency shall not be obligated until the Department reports that it is implementing best practices for whistleblower protection, including: “(i) protection against retaliation for internal and lawful public disclosures; (ii) legal burdens of proof; (iii) statutes of limitation for reporting retaliation; (iv) access to independent adjudicative bodies, including external arbitration; and (v) results that eliminate the effects of proven retaliation.”

The Government Accountability Project - the nation’s leading whistleblower protection organization - asserts that to comply with this mandate, the State Department must first determine whether each agency has a whistleblower protection policy in place that meets established best practices.² Then, the Department should determine if the policy is being implemented effectively by:

- Examining whether or not each Ethics Office is structured in a way that ensures its impartiality and is adequately staffed and funded.³
- Reviewing the record of each agency’s Ethics Office to determine how many retaliation complaints have been received and what percentage of those complaints resulted in action taken to protect the whistleblower and discipline the retaliator.
- Speaking with staff representatives to determine their confidence in the adequacy of the policy and the effectiveness of its enforcement.
- Examining the outcomes in prominent whistleblower cases and what they demonstrate about the organization’s commitment to protecting whistleblowers.

¹ Section 7048 (a) (1) (b). A list of best practices for protecting whistleblowers is available at: http://www.whistleblower.org/sites/default/files/Best_Practices_Document_for_website_revised_April_12_2013.pdf

² Some agencies have chosen to opt into the UN whistleblower protection policy (ST/SGB/2005/21) rather than adopt their own policy. Since the UN policy meets most established best practices, this is an acceptable - and indeed preferable - alternative to an agency having its own policy.

³ For more information about these standards and each agency’s compliance with them, see United Nations Joint Inspection Unit report 2010/3 (“Ethics in the United Nations System.”)

To assist the State Department, the Government Accountability Project has compiled a list of representative whistleblower cases from the United Nations and its funds, programmes and agencies. These sample cases demonstrate how the whistleblower policies are implemented in practice.

I. Cases from the Peacekeeping Missions

James Wasserstrom (UNMIK): James Wasserstrom is a former senior official (and American citizen) at the UN Interim Administration Mission in Kosovo (UNMIK) who disclosed a probable kickback scheme involving local politicians and senior UNMIK officials. After disclosing this information lawfully, Wasserstrom’s assignment was not extended, his passport was confiscated, his car and his apartment were searched, he was subjected to administrative and criminal investigations – the details of which were discussed publicly by UN and UNMIK press officers in violation of UN policy – and his photograph was placed at the entrances of his former workplace, to deny him access to the premises. The United Nations Dispute Tribunal (UNDT) – the court of first instance of the two-tier internal justice system through which UN employees contest violations of their administrative rights – reviewed Wasserstrom’s case and found that the UN Ethics Office failed to carry out a proper review of his complaint; misapplied the burden of proof; failed to address the UN’s “humiliating and degrading treatment of a member of its own staff;” and reached a “fundamentally flawed” conclusion when it found that Wasserstrom’s treatment was not retaliatory.⁴ The Tribunal concluded that the:

... [R]ecord would appear to indicate that as an institution charged with the responsibility of uncovering acts of retaliation the effectiveness of the Ethics Office leaves much to be desired... The Tribunal finds it difficult to envisage a worse case of insensitive, highhanded and arbitrary treatment in breach of the fundamental principles of the Universal Declaration of Human Rights, including arts. 1, 3, 6, 7, 8 and 9. The failures of the Ethics Office to recognize such gross violations calls seriously into question its suitability and effectiveness as a body charged with the duty ... to assist the Secretary-General in ensuring that all staff members observe and perform their functions consistent with the highest standards of integrity required by the Charter of the United Nations...⁵

Although Wasserstrom won his case before UNDT, the relief ordered did not eliminate the effects of retaliation; the Tribunal awarded \$65,000, less than 2% of Wasserstrom’s estimated losses, damages and costs. After nearly six years, James Wasserstrom has yet to receive any form of interim or final relief, as the Secretary General has appealed the

⁴ Judgment UNDT/2012/92, para. 48.

⁵ Judgment UNDT/2013/53, para. 36.

decision.⁶ No disciplinary or other actions have been taken against any of the proven retaliators. Moreover, the United Nations has yet to release the Office of Internal Oversight Services (OIOS) separate investigative report into internal corruption in UMIK, which Wasserstrom risked his career to help expose.

Ms. X (UNPOL): Ms. X is an American who worked as a police officer with the UN Stabilization Mission in Haiti (MINUSTAH). She was hired through a private company (PAE) under contract with the State Department. While stationed in Haiti, Ms. X made several protected whistleblowing disclosures, including one about potential sexual exploitation and abuse by several UN police officers (UNPOL) of women living in a camp for earthquake victims. In retaliation for these reports, she was transferred, given a negative performance evaluation, threatened with an investigation and terminated without notice prior to the expiration of her contract.

Ms. X filed a retaliation complaint with the UN Ethics Office, but the Office refused to protect her from retaliation. It concluded that UNPOL officers are not protected by the UN whistleblower protection policy when they report misconduct, as the policy is limited to staff members, interns and UN volunteers. Therefore, even though police officers are on the frontlines and may have information regarding sexual exploitation and abuse, human trafficking and other serious crimes committed in peacekeeping missions, the United Nations offers them no protection when they come forward. The Ethics Office also declined to look into potential retaliation committed by UN staff members.

Recently, Ms. X was hired by Crucible, another contractor that provides policing services to the State Department. She reported for training and was scheduled to deploy to Mexico. However, on April 6, 2014, she was abruptly pulled aside and asked about what happened in Haiti. She informed the company's representative that she didn't want to talk about it, but at his insistence she briefly spoke about her whistleblowing. The next day she was told that the State Department would not issue her a security clearance and was terminated. She was not told the reasons for her ineligibility for clearance, which should be at the level of Moderate Risk, Public Trust, a level of clearance she had when she worked in Haiti.

Aicha Elbasri (UNAMID): Aicha Elbasri, an American-Moroccan citizen, served as spokesperson for the African Union-United Nations Mission in Darfur (UNAMID) between August 2012 and April 2013. Elbasri maintains that during her assignment, UNAMID and the Department of Peacekeeping Operations (DPKO) routinely misled the media and the UN Security Council members by covering up atrocious crimes committed by the Sudanese government forces, including ethnic targeting of Fur and Zaghawa populations; forced displacement of tens of thousands of civilians; indiscriminate bombing

⁶ The Secretary-General (SG) also failed to comply with orders in this case. Although the judge ordered the SG to provide Wasserstrom with a copy of the OIOS report that investigated his retaliation claims, the SG repeatedly ignored orders to produce it. Eventually, the presiding judge herself had to turn the document over to Wasserstrom after the SG failed to do so.

of civilians followed by systematic ground attacks by government forces; systematic and mass rape of women and girls; and fueling tribal wars in pursuit of government political interests. She accused UNAMID and DPKO of having lied to the public about the performance of UN troops that tragically failed to protect Darfur civilians in several incidents. She also accused UNAMID of having deliberately attributed the deadly attack on the mission peacekeepers in Muhajeria on April 18-19, 2013 to “unknown assailants,” while it possessed unimpeachable evidence that it was carried out by Sudanese government forces. The incident, she claims, is part of a series of attacks on UNAMID troops by the government forces that both UNAMID public statements and UN Secretary General reports – which are drafted by DPKO – concealed by either omitting them or by attributing them to “unknown gunmen.”

On April 4, 2013, Elbasri resigned from UNAMID and left Sudan three weeks later. On May 5, 2013 she wrote an end-of-mission report, in which she asked DPKO to look into breaches of the UN’s public information policy. After DPKO failed to do so, Elbasri formally requested, in August 2013, an OIOS investigation in several cover-up cases. After it, too, failed to investigate, Elbasri went to *Foreign Policy* with her disclosures.

According to Elbasri, OIOS considered “the matter closed” without investigation on January 17, 2014 and there are no prospects of an investigation into her misconduct disclosures by any other UN entity. Therefore, Elbasri is requesting that the U.S. government call on UN Secretary-General Ban Ki-moon to establish an external and independent inquiry to investigate the charges she is pressing against UNAMID and DPKO in view of holding the responsible UN officials to account.

II. Other UN Secretariat Cases

Ai Loan Nguyen-Kropp and Florin Postica (OIOS): Ai Loan Nguyen-Kropp is an American citizen and former investigator with the Investigations Division of the United Nations Office of Internal Oversight Services (OIOS-ID). In 2009, Nguyen-Kropp and her then supervisor, Florin Postica, disclosed that OIOS-ID acting director Michael Dudley withheld and tampered with evidence in a case officially assigned to them. Dudley subsequently retaliated against Nguyen-Kropp by expelling her from her office, influencing her performance evaluation negatively and creating a hostile work environment.⁷

Instead of recusing themselves, the two OIOS-ID investigators (also under Dudley’s supervision) who reviewed Postica’s and Nguyen-Kropp’s disclosures inappropriately devoted a significant portion of their report on the issue to attacking the whistleblowers, questioning their competence and suggesting that minor alleged shortcomings amounted to

⁷ UNDT/2013/176, para. 156.

misconduct, while exonerating Dudley. Both investigators were eligible for promotion within OIOS-ID. Their allegations against Postica and Nguyen-Kropp were forwarded to the Department of Management (DM). DM then escalated the retaliation against Nguyen-Kropp and Postica by initiating an investigation of their conduct and requesting that several intergovernmental organizations – including the World Bank, European Anti-Fraud Office and International Criminal Tribunal for the Former Yugoslavia – supply a specialist to lead the investigation. Neither Nguyen-Kropp nor Postica were notified of the investigation requests or given notice, right to comment or opportunity to respond.

In July 2010, Nguyen-Kropp filed a retaliation complaint with the Ethics Office. The office found a *prima facie* case of retaliation, but did not substantiate retaliation after a formal investigation. Nguyen-Kropp and Postica have since filed two cases before the UN Dispute Tribunal: One challenging the retaliation against them and one challenging the Ethics Office’s decision and its failure to properly apply the burden of proof in their cases. The judge ruled in their favor in the first case, concluding that their disclosures were not “fairly considered” and that “the decision to investigate them for possible misconduct was not only unjustified but tainted by retaliatory intent and breach of due process.”⁸ He added: “it is difficult to find a more direct causal link between a protected activity and an adverse action... the nature of the complaint against the Applicants should have rung alarm bells.”⁹

The Secretary-General has appealed UNDT’s decision in the first case. The second case is still pending. Meanwhile, Nguyen-Kropp went to work on another continent, on a much less secure contract of employment, in order to escape the harm caused by the retaliation. She would like to return to OIOS but has not been invited back to her original post. Dudley was transferred, for reasons officially unrelated to his misconduct, but has not been disciplined.

Georges Tadonki (OCHA): Georges Tadonki worked for the Office for the Coordination of Humanitarian Affairs (OCHA) as head of office in Zimbabwe. In April 2008, Tadonki wrote an early warning assessment in which he raised numerous concerns regarding the humanitarian preparedness of Zimbabwe in the face of an acute deterioration of the economy. In the memo, which was distributed to numerous people in OCHA, Tadonki warned that the UN country team was “not prepared to face the consequences of an emergency silently in the making” and described “hesitations of the UN in responding to acts of political violence.”

Tadonki also warned UN Resident Coordinator and Humanitarian Coordinator Agostinho Zacarias of the severe risk of cholera in the country. Zacarias ignored Tadonki’s warning that at least 30,000 people could catch the disease. Instead, Tadonki claims that Zacarias opted for a much lower estimate, as desired by the government. An unmitigated cholera

⁸ Ibid, para. 154.

⁹ Judgment UNDT/2013/176, para 138.

epidemic resulted that could have been addressed if the UN had accurately predicted the epidemic and appealed for sufficient aid.

After he wrote his assessment, Tadonki was admonished, subjected to an investigation and informed that his contract would not be renewed, despite the fact that he was a hard worker who was described by one witness as the “first to come, last to leave” the office.¹⁰ He was also abruptly removed from Zimbabwe even though a major humanitarian crisis was occurring in the country and a country director was urgently needed there.

The Dispute Tribunal found that Tadonki’s assessment was the precipitating event that led to the negative actions taken against him, including the decision not to renew his contract. The Tribunal also found that Tadonki’s removal from the Zimbabwe office was “not so much in the interest of the Organization,” but rather in the interest of the retaliators. The judges found “bad faith from top management of OCHA”¹¹ and ordered senior OCHA management to issue an apology and conduct a formal investigation into the harassment against Tadonki. The judges also referred the cases of several senior officials – including the OCHA Under-Secretary-General – to Secretary-General Ban Ki-moon for possible action to enforce accountability.

Rather than act on this referral, the Secretary-General appealed the verdict to the UN Appeals Tribunal (UNAT). UNAT upheld UNDT’s decision to make these accountability referrals. But despite this verdict, the Secretary-General has not disciplined the people referred to him by UNDT. And although UNAT recognized the retaliation Tadonki suffered, it greatly reduced the compensation awarded to him. As a result, the compensation he received did not address or eliminate the effects of the retaliation to which he was subjected.

III. UN Funds and Programmes

Although these cases originated with a UN fund or programme, many of them involved the UN Ethics Office, OIOS or the UN Secretary-General.

Mr. Y (UNCTAD): Mr. Y’s case represents the first instance, and one of only two cases, in which the UN Ethics Office confirmed retaliation based on the findings of an internal investigation. As such, it represented a test case for the United Nations to uphold best practices for whistleblower protection. In March 2010 the Ethics Office found that severe retaliation was committed against Mr. Y by several high-level officials of the United Nations Conference on Trade and Development (UNCTAD) for having reported serious misconduct by a senior official. The Ethics Office recommended that Mr. Y be transferred

¹⁰ UNDT/2013/32, para. 193.

¹¹ Ibid, para. 307.

to another UN office with his D-1 level post while maintaining his managerial responsibilities, and that disciplinary action be taken against the perpetrators. The United Nations secretariat, however, failed to act in compliance with best practices on the following counts:

(i) *Interim relief:* In 2010 Mr. Y was temporarily transferred from Geneva to New York as a form of interim relief recommended by the Ethics Office. During this time, he was separated from his family and forced to maintain two households. This arrangement lasted two years imposing a substantial financial and psychological burden on him.

(ii) *Enforcement of the Ethics Office's decision:* The UN secretariat rejected the Ethics Office's recommendation and ordered Mr. Y to return to UNCTAD without any protections. After legally challenging that decision it was decided that he would remain in New York without a post.

(iii) *Results that eliminate the effects of proven retaliation:* The UN refused to compensate Mr. Y for his damages and thereby failed to eliminate the effects of proven retaliation.

(iv) *Protection against spillover retaliation:* Mr. Y has been subjected to further retaliatory actions in his new department, the Office of High Representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (OHRLLS). He was not provided with a classified job description and continues to be housed in a building away from OHRLLS. When he asked why he was not allowed to carry out his managerial functions, he was removed from the organizational chart of OHRLLS.

(v) *UNCTAD's commitment to implementing the UN whistleblower policy:* UNCTAD failed to protect Mr. Y from retaliation. In fact, Mr. Y was specifically informed that UNCTAD could not "ensure that your rights as a staff member would be fully respected" if he were to return there. This demonstrates UNCTAD's lack of commitment to protecting whistleblowers from retaliation.

(vi) *Personal accountability for reprisals:* One of the retaliators was promoted to UNCTAD's Chief of Administration after his guilt was established by an OIOS retaliation investigation. Another retaliator was allowed to continue in a highly visible D-2 level post. Both were assessed minimal fines and employed by UNCTAD post-retirement. No one in UNCTAD was disciplined for refusing to guarantee Mr. Y's staff rights.

Artjon Shkurtaj (UNDP): Artjon Shkurtaj disclosed financial and administrative irregularities in the United Nations Development Programme's (UNDP) operations in the Democratic People's Republic of Korea (DPRK), including the apparent transfer of hard currencies to North Korean officials and entities in violation of UNDP rules and regulations. The issues that Shkurtaj raised, related to the use of hard currency, local staff

hiring and project monitoring, were ultimately substantiated. But Shkurtaĵ's appointment was rescinded and his photo was added to an array of pictures used to bar 'threatening' individuals from UN grounds.

In August 2007, the UN Ethics Office Director asserted that a *prima facie* case of retaliation against Skurtaĵ existed after he made his disclosures at UNDP. In response, then UNDP Administrator Kemal Dervis claimed that UNDP was not subject to either the jurisdiction of the Ethics Office or the UN anti-retaliation policy, and would therefore create its own policy and Ethics Office.¹² Rather than following the procedures established in its new whistleblower policy, however, UNDP created an ad hoc "External Independent Investigative Review Panel" to review the Shkurtaĵ case. Dervis himself selected the panel without consultation and included a member of a UNDP advisory board. Because Dervis, as Executive Head of UNDP, was a party to the complaint, the investigation was structurally compromised by his conflict of interest. Moreover, before the panel began its work, Dervis announced that it would conclude that Shkurtaĵ was not a whistleblower. Although Shkurtaĵ was not supposed to be the subject of the investigation, the panel's final report inappropriately attacked his character, competence, conduct and veracity. UNDP released the report publicly without informing Shkurtaĵ about the critical findings or giving him an opportunity to respond.

The Panel's Terms of Reference required that the report's findings be transmitted to the director of the UN Ethics Office. After reviewing the report, the director recommended that UNDP compensate Shkurtaĵ for having violated his rights by releasing negative findings about him without first notifying him or allowing him to respond. UNDP refused to comply with the order, forcing Shkurtaĵ to appeal to UNDT. Both the UN Dispute Tribunal and Appeals Tribunal upheld the Ethics Office's decision, but UNAT reduced the compensation awarded to six months net base salary. UNAT's award barely covered Shkurtaĵ's costs, let alone the financial hardship he faced while the case was adjudicated.

Shkurtaĵ's disclosures and his cooperation with the U.S. Mission to the UN, NY Southern District Attorney's office and the U.S. Senate resulted in the U.S. government gaining important intelligence on the DPRK's manipulation of UNDP. The Senate Permanent Subcommittee on Investigations conducted a review of Shkurtaĵ's case and disclosures and concluded that by "not submitting to the jurisdiction of the UN Ethics Office, UNDP impeded reasonable oversight and undermined its whistleblower protections."¹³ According to Senator Carl Levin, "UNDP's treatment of Mr. Shkurtaĵ is the latest blow to U.N. whistleblower protections, and it does not inspire confidence in UNDP's willingness to hear negative reports about its operations."¹⁴

¹² In reaction to Dervis' decision, Secretary-General Ban Ki-moon issued a policy that allowed the Funds and Programs to exempt themselves from the rulings of the Ethics Office, leading to a proliferation of ad hoc internal whistleblower policies and ethics offices that lacked the autonomy needed to be impartial.

¹³ 'United Nations development program: A case study of North Korea.' p. 1.

¹⁴ <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg41447/html/CHRG-110shrg41447.htm>

Caroline Hunt-Matthes (UNHCR): Caroline Hunt-Matthes is a former senior investigation officer with The Office of the United Nations High Commissioner for Refugees (UNHCR's) Inspector General's Office who suffered retaliation after making numerous disclosures. She reported interference/obstruction into an investigation of an alleged rape of a UN staff member in Sri Lanka by another staff member; her supervisor's decision to investigate a colleague without disclosing to him that he was under investigation; the organization's failure to register a sexual harassment complaint against the High Commissioner; and the unlawful detention of refugees by senior UNHCR staff, leading to the death of a refugee while in detention.¹⁵ After making her disclosures, she was fired by email with one day's notice while she was on medical leave recovering from a work-related accident.

In 2006 Hunt-Matthes filed a request for protection against retaliation with the UN Ethics Office. The Ethics Office found that she engaged in a protected activity but concluded that there was no *prima facie* case of retaliation because there was allegedly no connection between the retaliation and her whistleblowing.

In 2013 UNDT issued a verdict in Hunt-Matthes' favor. The decision was highly critical of the UN's Ethics Office. Judge Coral Shaw noted that the Office "overlooked or ignored" information and evidence provided by Hunt-Matthes; "took into account unverified facts and opinions about the Applicant and her performance;" had a "negative attitude" toward the case;" and wrote information in her case file that was factually incorrect. The judge found that the Ethics Office "did not assess the Applicant's claim in conformity with the correct obligations, principles and standards..." and that "by failing to properly assess whether there was a link between the reporting of misconduct and the alleged retaliation the Ethics Office denied or radically limited the protections that the Secretary-General clearly intended to afford to United Nations staff members."¹⁶

In a separate decision, Judge Shaw upheld Hunt-Matthes' claim that the negative Performance Appraisal Report and the non-renewal of her fixed-term appointment were acts of retaliation against her for her whistleblowing.¹⁷ The judge found that the administration chose to mischaracterize her "allegations as poor performance rather than to properly investigate them..."¹⁸ The judge also pointed out the failure of OIOS to investigate the case and to call the wrongdoers to account, a shortcoming that has yet to be remedied. In addition, the judge found that attempts were made to "interfere in the Applicant's rebuttal process by: a. The Executive office of UNHCR; b. The UNHCR

¹⁵ See UNDT judgment 2013/85, para. 34.

¹⁶ Ibid, para. 88-89.

¹⁷ UNDT 2013/84, para. 110.

¹⁸ Ibid, para. 108.

Department of Human Resources Management; and c. The UNHCR Legal Affairs Unit”¹⁹ and she referred the matter to the Secretary-General for possible action to enforce accountability against these parties. To date no action has been taken by the Secretary-General on this referral. Instead, the administration appealed these judgments to UNAT. Hunt-Matthes continues to wait for relief after 10 years of legal disputes.²⁰

Vesna Dzuverovic (UN-HABITAT): As a former employee of the United Nations Centre for Human Settlements (now UN-HABITAT), Vesna Dzuverovic contested before UNDT OIOS' refusal to investigate her disclosure of irregularities in her workplace and the retaliation she suffered as a consequence.²¹ This retaliation included, but was not limited to, her forced transfer to another department (immediately after she reported misconduct to OIOS); the replacement of her two-year contract with insecure, short-term contracts; the non-renewal of her contract; and the failure – over a period of 10 years – to consider her for hundreds of posts for which she was well-qualified. These retaliatory actions destroyed her career and deprived her of her UN pension.

Judge Izuako found that Dzuverovic's case was inadmissible for procedural reasons, but recommended it to the Secretary-General for review, taking into account the constraints of both the formal and informal UN justice systems. The judge recommended that the Secretary-General bring “substantive justice” to the applicant, “bearing in mind the special measures that have been put in place with regards to the protection of whistleblowers who risk their jobs, professional lives and livelihoods by courageously seeking to expose wrong-doings within the Organization.” The judge added that “the United Nations... needs to review the case of this Applicant as this will serve not only the ends of justice but also to reassure whistleblowers that they are indeed protected.”²²

Nearly two years have passed since that judgment was issued, but the Secretary-General has not taken any action yet in response to the judge’s recommendation. Instead, the administration requested that UNAT redact the portion of the judgment that contained this recommendation. UNAT found this request to be without merit,²³ but the Secretary-General has yet to take action to address the retaliation suffered by Dzuverovic.

¹⁹ Ibid, para. 127.

²⁰ Meanwhile, a 2011 survey of 7,000 UNHCR staff members found that 70 percent of respondents reported fear of speaking up — a dramatic increase from previous years.

²¹ Under the previous justice system, the UN Joint Appeals Board found that the organization’s decision to transfer Dzuverovic after she blew the whistle was not “a sound management practice” and that the failure of OIOS to investigate her initial disclosures due to “resource constraints” was “difficult to understand” and raised questions about “due process and justice.” The Panel recommended that OIOS investigate her disclosures. In addition, the former Administrative Tribunal found that throughout the applicant’s career with the UN, “decisions were taken which proved to be to the detriment of her career opportunities and which raise serious questions regarding management practices.” (UNDT/2012/105, paras. 15 & 18)

²² Ibid, paras. 60, 75 and 76.

²³ See judgment UNAT/2013/338.