

Transparency International Anti-Corruption Helpdesk Answer

Whistleblower protection at the United Nations

Author: Caitlin Maslen, tihelpdesk@transparency.org

Reviewers: Matthew Jenkins and Marie Terracol, Transparency International, Samantha Feinstein and Tom Devine, Government Accountability Project

Date: 15 December 2021

In recent years there have been several high-profile cases in the media of UN whistleblowers facing retaliation from their employer and fellow colleagues. These reports have claimed that staff who have made a disclosure then miss out on promotions, are denied renewal of employment contracts, are harassed by colleagues, have their protected whistleblower status retroactively revoked or are, on occasion, fired. Such incidents have been reported throughout the UN Secretariat, specialised agencies and other related offices, suggesting that this may be a systemic issue within the UN.

The literature points towards several causes of retaliation against whistleblowers at the UN. Firstly, the mechanisms for whistleblower disclosure and protection at the UN are particularly complex, with the secretariat and each specialised agency having different processes. This has been criticised by several sources as being a deterrent for whistleblowers and rendering them vulnerable if they do not follow the correct, albeit complicated, procedures for making disclosures. The jurisdiction that international organisations such as the UN operate under, and the culture within the UN specifically, is also identified as an issue. Staff are first and foremost international civil servants rather than that of a member state, and this can complicate matters for potential whistleblowers who may be concerned with compromising the organisation's reputation. Retaliation from senior staff and other colleagues has been reported and, when this retaliation is stated to the relevant oversight body, the number of cases approved for protection by these bodies has been notably low.

Recommendations have been put forward by several bodies and researchers on how to strengthen the system for whistleblower protection. These include improvements to the whistleblower protection policy and structural reforms within the UN and its justice system to ensure the international organisation is more effective in encouraging disclosures and protecting staff from retaliation. With these recommendations in mind, there is potential for the UN to create a working environment where staff are confident they can report misconduct without concerns for implications to their careers.

© 2021 Transparency International. All rights reserved.

This document should not be considered as representative of the Commission or Transparency International's official position. Neither the European Commission, Transparency International nor any person acting on behalf of the Commission is responsible for the use which might be made of the following information.

The Anti-Corruption Helpdesk is operated by Transparency International and funded by the European Union.



Query

Is there any research on whistleblower policies and protection against retaliation at the United Nations and recommendations for reform?

Contents

1. Introduction
2. Framework for whistleblowing at the UN
3. Problems facing UN whistleblowers
4. Case studies
5. Recommendations from the literature
6. Conclusion
7. References

Introduction

International organisations (IOs), such as the United Nations (UN), are mandated to tackle crucial global challenges ranging from climate change to peacekeeping, security, relations between states, sustainable development, and the protection of human rights. To fulfil these ambitious missions, they are allocated substantial volumes of money. The UN's total annual of contributions from member states in 2021 totalled US\$1,994,159,167 (General Assembly of the UN 2021). These two factors – central political importance and large budgets – mean that it is vital for citizens around the world that IOs have robust internal governance mechanisms in place. Strong checks and balances are required to prevent corruption and other forms of misconduct by staff from undermining these organisations' ability to protect people, the planet and prosperity (UN Department of Economic and Social Affairs, n.d.).

One of the most effective methods for preventing misconduct and detecting corruption within an organisation is the establishment of safe and reliable whistleblower channels. Whistleblowing offers both principled and material benefits. On one hand, it provides an important means of holding

Main points

- Given the size and complexity of the UN, it has relatively few reports of internal misconduct and fraud.
- Retaliation has been identified by researchers as one of the greatest deterrents for staff at the UN when it comes to reporting misconduct.
- The research points towards the jurisdiction that the UN works under, fragmented and unclear whistleblower policies, retaliation by staff, a lack of access to independent arbitration, and a “top down” culture at the UN for issues facing potential whistleblowers
- Recommendations for improvement include strengthening internal whistleblower protection policies and improving the workings of the oversight offices responsible for whistleblower protection at the UN.

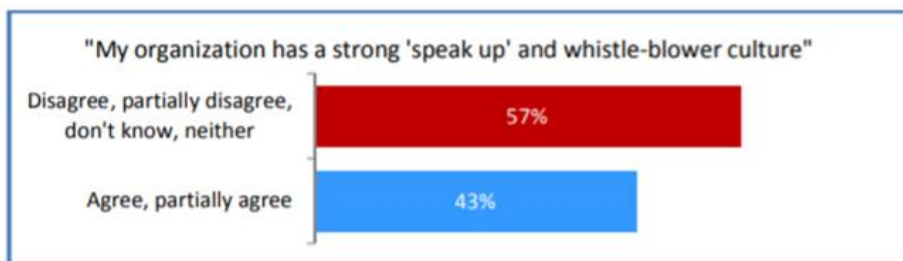
those in power to account where other oversight mechanisms fail. On the other hand, whistleblowers' exposure of wrongdoing and fraud saves millions in public funds and helps to avoid health and environmental disasters (Transparency

International, n.d.). Not only can whistleblowing alert authorities to wrongdoing after the fact but whistleblower disclosures can also act as a preventive measure by flagging malfeasance early and thereby reduce the costs of corruption to states, business and international organisations alike.

Research points to the fact that, within the UN system, “whistleblowers alone account for the uncovering of more fraud and corruption than all other measures of fraud detection combined” (Bartsiotas & Achamkulangare 2016). However, whistleblowers face unique challenges within IOs like the UN, given that they are highly complex organisations with little to no independent oversight by other authorities. Whistleblowers in IOs face a relative absence of legal protections and broad institutional immunities, alongside an internal justice system that is run by the organisation (Moloney et al. 2019). Staff have little to no recourse to national whistleblower protection systems and so are entirely reliant on a robust protection system at the organisation itself.

There are many obstacles for whistleblowers and one of the most prominent ones is the fear of retaliation, which is often cited as the greatest deterrent to those who are considering making a disclosure (Ethics Resource Center 2012, p.5). Such reprisals can come from line management, fellow colleagues and even the public. Retaliation against whistleblowers in the workplace can take either an active form, such as demotion and firing, or a passive form, such as the failure to renew an employment contract or exclusion from training (Bartsiotas & Achamkulangare 2016, p.ix). There are many reasons why retaliation occurs. It may be due to other employees being concerned about their own positions, a misguided attempt to uphold the organisation’s reputation or that the organisational culture actively discourages employees from speaking up about wrongdoing.

Concerningly, the latter appears to be the case within the UN system as less than half of respondents to a survey conducted by the UN’s Joint Inspection Unit agreed that their organisation had a culture favourable to whistleblowers.



Source: JIU fraud survey.

Figure 1 Results from staff surveyed by the Joint Inspection Unit (Cronin & Afifi 2018)

Perhaps unsurprisingly then, there have been several high profile cases in recent years of whistleblowers who have faced retaliation within the UN system after making disclosures. As documented below, these have involved employees losing their positions, being denied promotions or contract renewals as well as facing harassment from other employees.

The potential chilling effect of these cases on other staff members considering blowing the whistle on wrongdoing is especially concerning given the importance of UN agencies and the considerable funds at stake. As evidenced by these instances and documented in the numerous studies mentioned in this paper, whistleblower protection

schemes within the UN system are fragmented, often inadequate and sometimes not fit for purpose.

This paper provides an overview of the whistleblowing framework within the UN system and considers the mechanisms in place to protect whistleblowers against retaliation. It also includes illustrative case studies of whistleblowers who have faced retaliation and the problems they faced, before concluding with a presentation of selected recommendations found in the literature on how to improve whistleblower protection at the UN.

Framework for whistleblowing at the UN

In 2006, the US government passed section 1505(a)(11) of the 2006 Foreign Operations, Export Financing and Related Programs Appropriation Act, which required the UN to implement whistleblower protection policies (Walden & Edwards 2014). In 2014, the US government also introduced the Consolidated Appropriations Act, which meant the State Department had to report on progress by UN agencies in implementing the best practices for whistleblower protection (Wasserstrom 2018). If the UN failed to do so, they would lose 15 per cent of the US contribution to their budget (Edwards 2018).

Today, all UN agencies and offices should adhere to a minimum standard for disclosures and whistleblower protection. The secretary-general's bulletin on the protection against retaliation for reporting misconduct at the secretariat Ethics Office sets out the minimum standards and states that:

- staff must report any breach of the organisation's regulations and rules to the

officials whose responsibility it is to take appropriate action (Section 1)

- an individual who makes such a report in good faith has the right to be protected against retaliation (Section 1)
- protection against retaliation applies to any staff member (regardless of the type of appointment or its duration), intern, volunteer, individual consultant or contractor who reports the failure of staff member(s) to comply with their obligations (Section 2)
- reports of misconduct should be made through established internal mechanisms and the administration will protect the individual's identity to the maximum extent possible (Section 3)
- protection against retaliation extends to staff who report misconduct through external channels, if a specific criterion is fulfilled (Section 4)
- the ethics office is responsible for consulting with the whistleblower with their consent on appropriate retaliation prevention action (Section 5) (United Nations Secretariat 2017)¹

It is important to note that this policy does not use the term "whistleblower", but instead refers to staff members who report misconduct (United Nations Secretariat, 2017, pp.1-2). In addition, while this organisation-wide retaliation policy is in place, in practice, the UN has several different mechanisms for reporting misconduct as well as various bodies that are responsible for ensuring whistleblower protection and for investigating cases of retaliation. These processes vary according to the organisational set up and reporting lines of the agency in question.² The following sections will outline the processes that exist within the UN system but principally focus on protection against retaliation.

¹ For the full policy, see: <https://undocs.org/ST/SGB/2017/2/Rev.1>

² For more information on the structure of the UN system, see: <https://www.un.org/en/delegate/page/un-system-chart>

Reporting misconduct

Reports of misconduct can be made internally through established mechanisms to the Office of Internal Oversight Services (OIOS), the assistant secretary-general for human resources management, the head of department or office concerned or the focal point appointed to receive reports of sexual exploitation and abuse (United Nations Secretariat 2017). Reporting protocols vary somewhat between the different agencies, but, by and large, all employees under the UN Secretariat, in theory, can make a disclosure to the OIOS (UN Office of Internal Oversight Services, n.d.). The Investigation Division of the OIOS then should review the reports and determine whether to investigate the matter or refer it to another entity for appropriate action (UN Office of Internal Oversight Services, n.d.).

Outside of the UN Secretariat system, the mechanisms for reporting misconduct differ considerably according to the entity in question. For example, the World Health Organization (WHO), which is a specialised agency, requires staff to either make a disclosure to their line manager or, if they fear retaliation, to the WHO Office of Compliant, Risk Management and Ethics (CRE) (World Health Organization 2015). Similarly, the United Nations Development Programme (UNDP), which is under the remit of the General Assembly, has a policy in place that obligates staff members to report wrongdoing to the UNDP Office of Audit and Investigations or to an immediate supervisor (UNDP 2017). Each office and agency has different internal policies that need to be observed by staff who are considering making a disclosure to ensure they qualify as a whistleblower making a protected disclosure.

It is also, in theory, possible to report externally if a significant threat to public health and safety or a violation of national or international law has

occurred (United Nations Secretariat 2017), and at least 18 different UN bodies have organisational policies that allow for this (Cronin & Afifi 2018). However, provisions for external reporting also vary across each office and agency and can be particularly restrictive, so potential whistleblowers need to carefully observe relevant protocols. For example, only UNHCR and UNRWA³ provide staff with a fully comprehensive and independent channels for reporting misconduct externally (Cronin & Afifi 2018).

Protection against retaliation

Protection against retaliation for staff from UN Secretariat bodies

The Secretariat Ethics Office was established in 2006 to promote the integrity of staff who work in a UN agency that forms part of the Secretariat (UN Ethics Office, n.d.). The office aims to ensure integrity through five strategic functions: advice, protection against retaliation, financial disclosure, ethics training and coherence to ethical standards (UN Ethics Office, n.d.).

The Ethics Office operates under the UN Secretariat policy on protection against retaliation, updated in 2017, which covers the scope of protected persons, activities, the mechanisms for reporting misconduct internally and externally, preventive action and how it deals with reports of retaliation. Protection against retaliation “applies to any staff member, intern, UN volunteer, individual contractor or consultant” who reports misconduct or who “cooperated in good faith with a duly authorised investigation” (United Nations Secretariat 2017). The Ethics Office website defines retaliation as “any direct or indirect detrimental action that adversely affects your employment or working conditions, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or

³ *United Nations High Commission for Refugees and United Nations Relief and Works Agency*

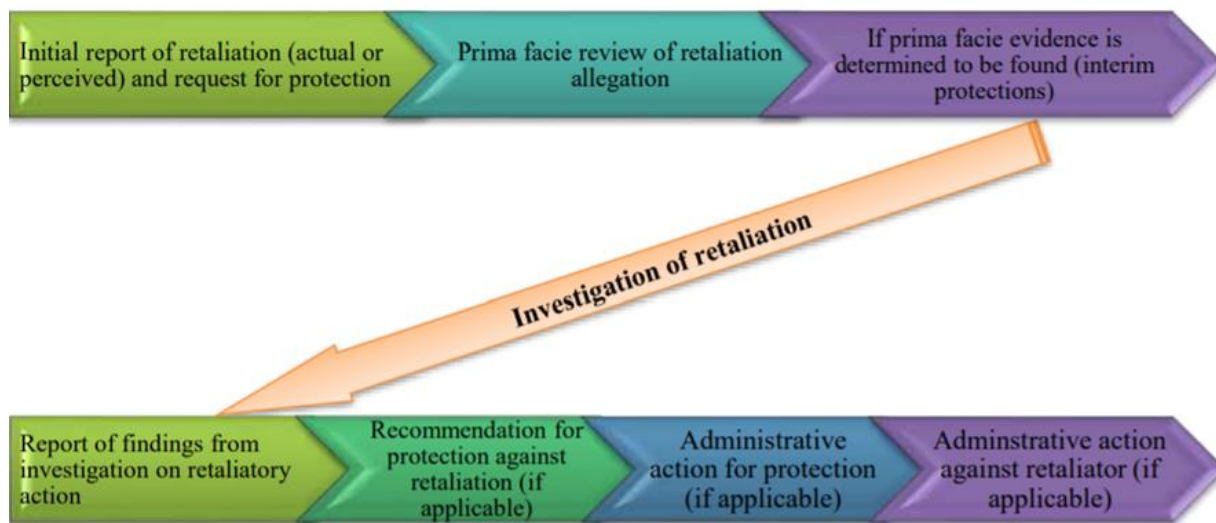
injuring you because you engaged in a protected activity” (UN Ethics Office, n.d.).

In terms of procedure, when a disclosure has been made to the OIOS that it determines entails a potential risk of retaliation, the OIOS should inform the UN Ethics Office after receiving consent from the whistleblower that the UN Ethics Office can be notified (United Nations Secretariat 2017). The Ethics Office then should consult with the whistleblower on appropriate retaliation prevention action and monitors the situation in case any future retaliation occurs (United Nations Secretariat 2017, p.3). Individuals can also submit a request for protection against retaliation to the Ethics Office. After a case has been submitted by a whistleblower or the OIOS, the Ethics Office will then conduct a preliminary review of the case and, if a prima facie case of retaliation is established, then the office will refer the matter back to OIOS for further investigation.

If the OIOS determines that “any direct or indirect detrimental action recommended, threatened or taken against an individual” has taken place, then this constitutes misconduct, and the retaliator will be subject to possible disciplinary sanction or administrative action by their organisation (UN Office of Internal Oversight Services, n.d.). Upon completion of the investigation, the Ethics Office may also recommend that the secretary-general take appropriate measures to safeguard the interests of the whistleblower (United Nations Secretariat 2017, p.4.).

Any decisions on retaliation related cases can be appealed against before the United Nations Dispute Tribunal (Cronin & Afifi 2018) if the whistleblower disagrees with the decision made by the Ethics Office or OIOS.

Protection against retaliation: typical process for seeking protection



Source: Information compiled by JIU

Figure 2 This diagram depicts the process for reporting retaliation through the Secretariat Ethics Office and the Office of Internal Oversight Services (Cronin & Afifi 2018).

Protection against retaliation outside the UN Secretariat

While the UN Ethics Office is responsible for protecting whistleblowers who work in any agency that forms part of the secretariat (such as UNODC), separately administered organs and programmes, such as those that report to the General Assembly, are entitled – but not obligated – to establish their own ethics offices (United Nations 2007). Whistleblowers employed by the separately administered organs and programmes that have not set up their own ethics office, such as UN WOMEN, appear to be covered by the UN Secretariat's Ethics Office (United Nations 2007).

However, most UN funds and programmes entitled to establish their own separate ethics office seem to have done so, including UNDP (UNDP 2018), UNFPA, UNHCR, UNOPS, UNICEF, WFP and UNRWA (United Nations 2007).

These other programme specific ethics offices are responsible for investigating and monitoring reports of retaliation in a similar manner to the Secretariat Office. They are required to be independent, impartial and keep disclosures confidential to other UN officials or bodies (United Nations 2007). The responsibilities of these separately run ethics offices are to: develop standards and training on ethics issues; provide guidance to management of the programme to ensure the standards of integrity are upheld (under the Charter of the United Nations); provide confidential advice; raise awareness; protect staff against retaliation; administer the financial disclosure programme; and produce annual reports (United Nations 2007).

The United Nations Ethics Panel was also established in 2007, and this consists of the seven heads of the ethics offices of the separately administered programmes of the UN in addition to the Ethics Office of the UN Secretariat. The panel is chaired by the head of the Ethics Office of the Secretariat (United Nations 2007). Its purpose is to

establish “a unified set of ethics standards and policies for the UN Secretariat and the separately administered funds and programmes” (UN Ethics Office, n.d.). At an operational level, it is expected to consult on important and particularly complex cases and issues raised by any of the ethics offices represented on the panel (United Nations 2007). It also reviews the annual reports of the ethics offices and makes recommendations for their future work, where appropriate (United Nations 2007) and receives appeals of non-determination of prima facie cases by the ethics offices from the Secretariat Ethics Office and several other UN agency ethics offices.

Problems facing UN whistleblowers

Despite the UN establishing whistleblower disclosure channels, and the ethics offices being set up to protect whistleblowers from retaliation, numerous independent reports and high profile case studies indicate that protection for UN whistleblowers is patchy and often inadequate. One study on organisational fraud notes that the number of disclosures is unusually low within the UN system given the size and complexity of its operations and the high risk environments in which these operations take place (Bartsiotas & Achamkulangare 2016). When disclosures are made, UN whistleblowers appear to face a high risk of retaliation: 57 per cent of staff surveyed in the same study stated that the UN does not have a strong “speak up” and whistleblower culture (Bartsiotas & Achamkulangare 2016).

This section reviews the literature to examine why whistleblowing is unusually low in the UN system and retaliation against whistleblowers continues to occur despite the steps that have been taken to strengthen whistleblower protection.

The jurisdiction under which the UN operates

Whistleblowers in IOs face a unique set of problems when reporting misconduct compared to typical organisations. Usually, whistleblowers can make disclosures through internal channels and there are mechanisms in place to follow up on the whistleblowers' complaints (including a process for disciplining perpetrators of retaliation) (Transparency International 2013). Employees are encouraged to use these internal reporting mechanisms as a first step if possible.

Alternatively, employees can make disclosures to regulatory or oversight agencies outside of their organisation in specific and limited circumstances. These include regulatory authorities, law enforcement or investigative agencies, elected officials or specialised agencies established to receive such disclosures (Transparency International 2013).

However, this process differs in IOs such as the UN because IOs operate on a transnational level, and there is no global democratic and representative parliamentary structure to exercise oversight over them (Moloney et al. 2019b). International civil servants may not have access to the external reporting mechanisms in nation states, and there are few independent judicial mechanisms for dispute resolution, while the leaders of these bodies have the authority to decide whether they are referred to state authorities (Bowman et al. 2019). Moreover, for national-level employees there are typically legal sanctions against retaliators, and these can be enforced in national courts, yet these do not apply to UN employees as they have immunity from such actions. Instead, the entire justice system within the UN is internal, within the wider UN system, and there is very little to no access to independent judicial processes at a national level. And, when cases of retaliation are referred there is often a reluctance by states to prosecute international civil

servants (Bowman et al. 2019). The experts consulted for this paper also highlighted the restrictions on staff speech to the media and other external channels, even after their employment with the UN ends.

Fragmented whistleblower policies

UN staff are duty bound to report any breach of rules and regulations in accordance with the secretary-general's protection against retaliation policy (United Nations Secretariat 2017), but doing so in reality is often a difficult matter. The literature on the subject notes that, while most UN agencies and offices have adopted provisions that include instruction on whistleblower hotlines and other fraud reporting mechanisms, these are fragmented and not easily accessible to staff (Bartsiotas & Achamkulangare 2016).

A review by the Government Accountability Project in 2016 of the independent ethics offices concluded that their policies were inconsistent, flawed by loopholes and less comprehensible than the original UN policy (Hunt-Matthes & Gallo 2017).

Similarly, a 2018 report by the UN's Joint Inspection Unit noted that at least 23 UN entities had produced "stand-alone protection against retaliation policies", most of which were developed as "ad-hoc responses to high profile whistleblower cases or were adopted in response to member states' requests" (Cronin & Afifi 2018). As a result, the report concluded:

"Existing protection against retaliation policies are consequently marked by inconsistencies and limitations in operational effectiveness and tend to vary in terms of the scope of activities and personnel covered, mechanisms and channels for reporting and processes and procedures for mitigating retaliation and handling related claims. They also vary in terms of provisions for confidential and anonymous reporting misconduct and wrongdoing." (Cronin & Afifi 2018).

Having such a large number of different channels and authorities can be confusing to whistleblowers considering making a disclosure (Bartsiotas & Achamkulangare, 2016) and may act as a deterrent to potential whistleblowers within the system.

There is also no organisation-wide definition of whistleblower, and the protection against retaliation policy instead refers to staff who report misconduct, without any mention of the term “whistleblower” (United Nations Secretariat 2017). And, according to an expert interviewed for the purpose of this paper, some UN agencies have yet to make their whistleblower policy – if one exists – publicly available.⁴

Fear of retaliation

As well as the process of making a disclosure being onerous and confusing in the UN system, the fear of retaliation is also considered a significant barrier to whistleblowers. A 2017 survey of UN staff conducted by the UN Joint Investigations Unit revealed a widespread perception among staff that no action had been taken in the past to protect those reporting retaliation, and that this was a strong deterrent for them reporting misconduct (Cronin & Afifi 2018). The same survey showed that of those who reported misconduct and wrongdoing, 12.8 per cent reported experiencing retaliation as a consequence of their disclosure (Cronin & Afifi, 2018). Of those who experienced retaliation, only 40 per cent then went on to report it to the relevant authority (typically the relevant ethics office) (Cronin & Afifi 2018).

Even when UN staff report retaliation to the relevant authority, such as the Secretariat Ethics Office, there seems to be a lack of confidence that there will be any positive outcome from the

process. In the 10 years after the founding of the Secretariat Ethics Office in 2006, it rejected 96 per cent of protection applications (Hunt-Matthes & Gallo 2017). Another study found that, of the 403 cases referred to the Secretariat Ethics Office between 2006 and 2014, only four were considered by the Ethics Office to be cases of retaliation (Edwards 2018).

A review of the Ethics Office decisions by the UN Dispute Tribunal (UNDT) found that, between 2011 and 2014, the Ethics Office had failed to protect UN staff and that the ethics director had even ignored an order from the tribunal to protect a whistleblower from retaliation (Hunt-Matthes & Gallo 2017).

There are several factors that seem to be preventing the Ethics Office from achieving its objectives in providing protection for whistleblowers. The Secretariat Ethics Office lacks independence as the appointment of posts and funding is under the control of the Office of the Secretary-General, and the written performance evaluations of the Ethics Office director are completed by the Executive Office of the Secretary-General (Feinstein 2020). Reviews of personnel cases of other ethics offices revealed that operational independence was being compromised and influenced by senior management to avoid accountability and mitigate reputational damage (Cronin & Afifi 2018, p.60). This is partly due to the fact that these ethics offices report to the head of the organisation in question.

There are other conflicts of interest within the structure of the system. For example, the Alternate Chair of the UN Ethics Panel, who is responsible for reviewing the ethics offices’ decisions, is a professional colleague of the ethics director (Hunt-Matthes & Gallo 2017). Therefore, their professional relationship could create a potential conflict of interest (Hunt-Matthes & Gallo 2017) as the ethics

⁴ *The UN Institute for Disarmament Research, UN System Staff College, UN University and UN Institute for Training and Research*

director could exercise undue influence over the decisions related to particularly complicated cases. If, for example, the director rejects an application for protection that is then reviewed by the Ethics Panel, the director will be able to influence the outcome of that review.

Another potential conflict of interest is that, during investigation by the Ethics Office, the manager who is named in the complaint may be responsible for coordinating the temporary placement of the whistleblower to another department or office (Feinstein 2020, p.15). This may also disincentivise potential whistleblowers as it could simply give the manager further opportunity to retaliate against the employee through the choice of their redeployment.

Experts on the topic and the literature also highlight that the UN ethics offices are often understaffed and lack resources, leading to a delay on decisions made in retaliation cases (Cronin & Afifi 2018, p.50).

Access to impartial and independent arbitration

While the 1948 Universal Declaration of Human Rights stated that citizens and civil servants should have access to independent courts, there is no expectation that international civil servants have the same access (Moloney et al. 2019). When, for example, the Ethics Office rejects a claim for protection against retaliation, the employee may contest this decision before the UN Dispute Tribunal (UNDT) and eventually, if needed, to the UN Appeals Tribunal (UNAT). However, the final decision in the UN justice system is taken by the secretary-general, who also has ultimate authority over the Ethics Office (Martel 2017). This undermines the impartiality of the tribunal system as it is the same figure who makes the ultimate decisions of both bodies. According to a report by the Government Accountability Project (2020), both UNDT and UNAT have failed to act impartially in past cases and have a substantial backlog of cases that delays timely justice for whistleblowers

(Feinstein 2020, p.8). The process of appeal to the UNDT and UNAT may also last many years and end up having no results for the individual at the end (Edwards 2016), creating further disincentives for potential whistleblowers.

Cultural factors

A “top-down” culture at the UN has often been cited as a problem that faces whistleblowers. This culture is in part intrinsically linked to the nature of an IO because, while country-level civil servants are loyal to the state, international staff loyalty is to the institution (Moloney et al. 2019). Regulation 1.1 (a) of the UN Status, Basic Rights and Duties of Staff states that: “staff members are international civil servants. Their responsibilities as staff members are not national but exclusively international” (United Nations 2016). The emphasis on “exclusively international” responsibilities implies that staff should be loyal to the organisation first and foremost, ahead of other loyalties, and could encourage a “top-down” culture from senior members of staff.

This may cause staff to be hesitant when considering disclosing misconduct. Even internally, it may be interpreted that the UN discourages whistleblowing, as exemplified by the special rapporteur on the right to freedom of opinion and expression statement. The special rapporteur cautioned against reliance by ethics offices on the provision of the International Civil Service Commission (ICSC) standard of conduct, which states that “it would not be proper for international civil servants to air personal grievances or criticise their organisations in public” (Cronin & Afifi 2018). This both sets a tone to uphold a good organisational image and discourages employees from using external whistleblowing channels, if available to them (Cronin & Afifi 2018, p.33).

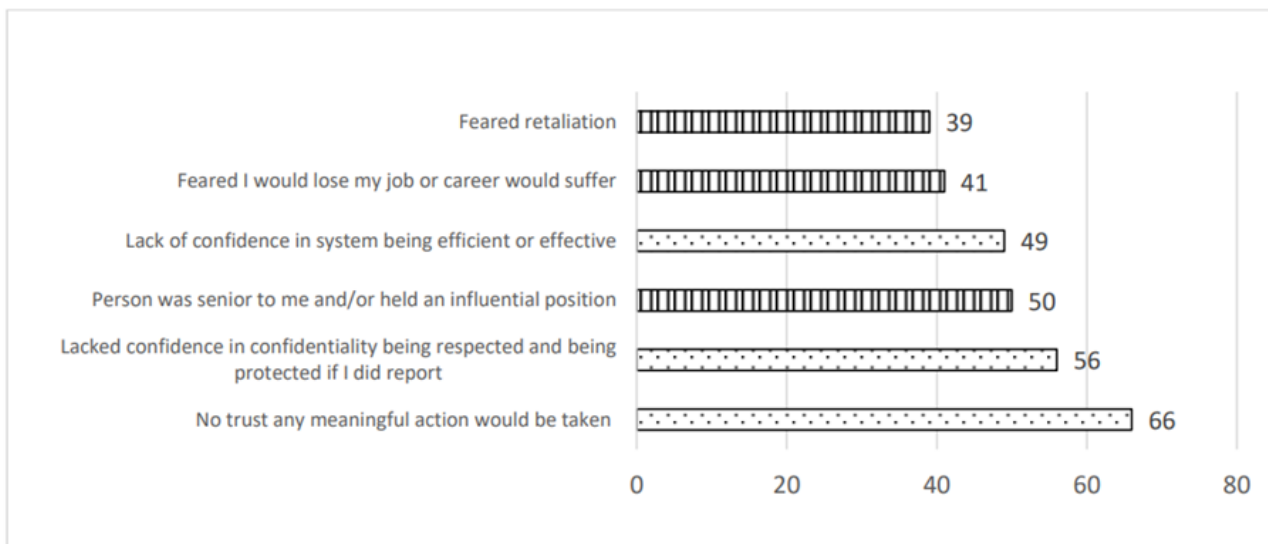
In addition, the fact that international civil servants enjoy considerable immunity when accused of corruption causes a number of issues (Hunt-Matthes & Gallo 2017) and may explain why senior members of staff have undue influence over the

whistleblower protection system. The UN's unique legal status means that staff are not subject to national laws and, according to Hunt-Matthes and Gallo (2017), this can result in senior members of staff believing accountability does not apply to them (Hunt-Matthes & Gallo 2017, p.5).

Interference from senior staff members has been reported throughout the system designed to protect whistleblowers. The outgoing under-secretary-general of the OIOS, for instance, claimed at the end of her assignment in 2010 that the secretariat had never protected the OIOS from

the political pressures exerted by member states when their interests were threatened (Hunt-Matthes & Gallo 2017). She stated that there was no operational independence from the secretary-general during investigations, audits or evaluations, nor transparency or accountability (Lynch 2010). While immunity is designed to prevent member states from having influence over the inner workings of the UN, it can result in a deficit of internal accountability from within the UN system and encourages the "top-down" culture described in the literature.

Figure VII
Top reasons for not reporting cited by respondents witnessing misconduct/wrongdoing (Percentage)



Source: JIU 2017 Global Staff Survey for Whistle-Blower Policies.

Note: Vertical striped bars represent personal fears/risks. Dotted pattern bars represent lack of confidence in system.

Figure 3 UN staff surveyed by the Joint Inspection Unit on the main reasons for not reporting misconduct/wrongdoing (Cronin & Afifi 2018).

Case studies

The following case studies were reported on by various sources in recent years. They all exemplify the problems facing whistleblowers at the UN, including denial of protection by the Ethics Office, loss of position, failure of protection procedures, ostracization and harassment from colleagues, lack of independent judicial review, and failure to incorporate whistleblower policies into code of conduct.

Caroline Hunt-Matthes was a senior investigation officer who became the first UN staff member to apply to the UN Ethics Office for protection against retaliation. According to her own testimony, she provided evidence of obstruction and interference by officials in the conduct of investigations at the United Nations High Commissioner for Refugees (UNHCR) (Hunt-Matthes & Gallo 2017). She subsequently lost her position due to a negative performance appraisal, and her request for protection from the Ethics Office was then denied

as they stated that the performance evaluation outcome meant they could not protect her (Hunt-Matthes & Gallo 2017).

Hunt-Matthes brought her case before the UNDT, which found that the performance appraisal constituted an act of retaliation for being a whistleblower, and her UNHCR supervisors were referred to the secretary-general for accountability, but no action was taken (Hunt-Matthes & Gallo 2017). The judges at the UNAT dismissed her case, arguing that retaliation occurred before the UN Ethics Office was created in 2006, despite the original complaint being made to the OIOS, who recommended the transfer of it to the Ethics Office in 2006 (Hunt-Matthes & Gallo 2017). Ultimately, the case was referred to UNDT for a retrial, and eventually she was vindicated in 2018. The judge concluded that the Ethics Office did not assess her claim for protection correctly and applied the wrong criteria, and that it ultimately failed to identify the retaliatory acts against her (Walden 2018).

Emma Reilly is a lawyer who worked at UNHCR. In 2013, she used internal whistleblowing channels to file a complaint that her employer had shared the names of Chinese government opponents who took part in UN activities with Chinese officials (Altug & Kenny 2021). She was originally recognised as a whistleblower, and therefore protected under the protection against retaliation policy. Reilly kept her position at the UN, but claimed she was ostracised and harassed internally through being excluded from meetings, false rumours being spread and having performance reviews that contained “false and prejudicial information” (Edwards 2018). Her case and name were then leaked to the press in 2017, but she says that was not by her (Edwards 2018).

In July 2021, the UN Ethics Panel sent Reilly a communication that they have retrospectively removed her protected whistleblower status, and then she received a judgement from the UNDT that only partially upheld her claims of negative treatment, and thus failed to protect her

employment position (Whistleblowing International Network 2021). Shortly afterwards, in November 2021, Reilly was fired from her position at the UN for making unauthorised disclosures to the press, due to the fact that her protected whistleblower status had been removed (Whistleblower International Network 2021).

Kailur Rahman reported misconduct by the then special adviser to the secretary-general of United Nations Conference on Trade and Development (UNCTAD) in 2009. After investigation, the Ethics Office found Rahman to have been victim of severe retaliatory action by two senior officials of UNCTAD and recommended that disciplinary actions be taken against them and Rahman be transferred to another UN agency (Blaylock 2014). However, the top management at the UN rejected the Ethics Office’s recommendations and returned him to UNCTAD (Hunt-Matthes & Gallo 2017). There, he claims he was not selected for a promotion due to the retaliatory work environment (Hunt-Matthes & Gallo 2017). He appealed to UNDT, and subsequently the UNAT, over the failure to restore him to the professional standing he had prior to making the disclosures, but both dismissed his appeal without a hearing (Hunt-Matthes & Gallo 2017).

Francesco Zambon worked at the World Health Organization (WHO) and led a report on Italy’s pandemic preparedness that showed concerning results. The report was withdrawn the next day due to the WHO assistant director pressuring Zambon to suppress the report’s findings (Transparency International 2021). Zambon reported misconduct internally, but his disclosures were ignored, leading him to resign from his position, highlighting the WHO’s lack of effective whistleblower protection (Transparency International 2021).

Vincent Smith was fired from his position as the Director of the Bureau of Administration and Services at the International Civil Aviation Organization (ICAO) in 2019 after making internal

disclosures related to breaches of safeguards that threatened the civil aviation security worldwide (Feinstein 2019). Years of ignored complaints, cover-ups and inaction led to Smith making disclosures to CBC News, along with additional ICAO whistleblowers (Feinstein 2019). After this, sources claim the secretary-general and council president blamed Smith for all the content of CBC's reporting. Ultimately, he was fired for pretextual reasons. He appealed the decision to terminate his employment in March 2020 with the internal review board. As of the date of this report Smith has not had a hearing on his appeal. Smith is unable to utilize the UN Appeals Tribunal's jurisdiction until the Board issues a decision. Secretary General Fang Liu, who was the deciding official responsible for the alleged retaliation and alleged misconduct, has since retired from her position as her term expired. ICAO's policy does not allow staff with complaints before the internal review board to utilize qualified counsel unless their counsel is ICAO staff or former staff, which is both a due process and conflict of interest issue (Feinstein 2019).

Recommendations

This section draws on the recent recommendations to prevent retaliation against whistleblowers within the UN system made by the Joint Inspection Unit in 2018, the UN Internal Justice Council in 2020, the Government Accountability Project also in 2020, as well as several other reviews of the whistleblower policies and structure within the UN system. It focuses primarily on the Secretariat Office, but due to the underlying similarities in their structures and challenges, it could also be considered to apply separately to administered ethics offices.

Amending the protection against retaliation policy

In its 2018 review of 23 UN whistleblower policies against best practices criteria, the JIU found that

none met best practice and that less than 60 per cent of the indicators were rated as fully met. Consequently, they recommended the UN organizations to update their policies by 2020 to address shortcomings and Government Accountability Projects identified (Cronin & Afifi 2018).

Scope and conditions for protection

Government Accountability Project recommends that the whistleblower protection against retaliation policy of all UN agencies should cover a wider scope of individuals to ensure that potential whistleblowers do not fall through loopholes, and thus lose protection against retaliation. Protection against retaliation should cover staff but also consultants, contractors, interns, junior professional officers and United Nations Volunteers. Even though these "non-staff" categories constitute almost half of the UN workforce and are more vulnerable to retaliation, a majority of UN anti-retaliation policies do not cover them (Cronin & Afifi 2018). Applicants, those who are perceived as whistleblowers, and witnesses and third parties should also be covered in the whistleblower protection policy (Feinstein 2020).

45% of the UN workforce is categorised as non-staff, as they are contracted as consultants, contractors, interns, junior professional officers and volunteers and these are even more vulnerable to retaliation due to the threat of blacklisting and non-renewal of contracts (Cronin & Afifi 2018). However, less than half the protection against retaliation policies to non-staff (Cronin & Afifi 2018). The literature recommends that all policies ensure they apply to non-staff as well as staff members, to protect those most vulnerable.

Furthermore, the requirement that an individual reports in "good faith" to benefit from protection should also be removed from all UN whistleblower policies and replaced by "reasonable belief". The concept of "good faith" could be interpreted as

referring to the personal motivation of the whistleblower for reporting wrongdoing, which would be against global standards. Motives of the reporting person should be irrelevant as to whether they should receive protection. Reversely, references to "bad faith disclosures" should be removed from all whistleblower policies or be defined narrowly as "knowingly false disclosures" (Feinstein 2020, p.7).

Establishing retaliation

The Secretary-General's retaliation policy defines retaliation as "any direct or indirect action... taken for the purpose of punishing, intimidating, or injuring an individual because that individual engaged in a [protected] activity" (United Nations Secretariat 2017, p.1).

First, the definition of retaliation should be strengthened to cover both active and passive retaliation, whether direct or indirect, taken, attempted, threatened or tolerated (Feinstein 2020, pp.6-7).

Second, the emphasis on the purpose of the retaliator's actions allows for excuse on the grounds that the retaliator had an alternative motive for the action taken against the whistleblower, such as performance issues or restructuring (Hunt-Matthes & Gallo 2017). In addition, most UN policy requires that the Ethics Officer find there is a prima facie case that reporting wrongdoing "was a contributing factor in causing the alleged retaliation or threat of retaliation" to refer a retaliation complaint for a full investigation, without an objective standard. Government Accountability Project recommends establishing that if the whistleblower demonstrates protected activity under the policy and a subsequent prejudicial personnel action, the burden of proof shall shift to the employer to show by clear and convincing evidence that it would have taken the same action in the absence of whistleblowing by demonstrating that the action was not linked in any way to protected activity.

Relief

There is also no injunctive relief available to staff who are not kept on the payroll after making a disclosure and a lack of reinstatement of the staff member (Feinstein 2020). Government Accountability Project recommends that both injunctive reliefs be available to staff as well as reinstatement with back pay and seniority (Feinstein 2020).

Whistleblowers who have been identified as having suffered retaliation should be entitled to reimbursement for costs and attorney fees, lost wages, comprehensive damages, and any other relief necessary to eliminate all the direct and indirect consequences of the retaliation, including reinstatement (Feinstein 2020, p.10).

Furthermore, after placement in a permanent post, under the current system, the whistleblower's case is closed and protections no longer continue, meaning a new case would have to be opened with the Ethics Office if retaliation continues (Feinstein 2020, p.11). To remedy this, protection against retaliation should continue for a set period, regardless of the new posts that the individual may take up.

Prevention of retaliation

The JIU recommend the development of standard operating procedures for proactively protecting those who report misconduct/wrongdoing from retaliation, which should include undertaking relevant risk assessments and clearly identifying available support mechanisms and resources

Sanctions against retaliators

Sanctions against the perpetrator should also be implemented where cases of retaliation have been established as this is not always mandatory and happens infrequently across the UN (Feinstein 2020, p.20). Perpetrators of retaliation should be subject to professional sanctions and civil penalties (Hunt-Matthes & Gallo 2017).

Transparency and accountability

The literature recommends that all policies relating to whistleblowers within the UN system should be consolidated and made more accessible as well as readily available on external websites (Bartsiotas & Achamkulangare 2016). Former employees should also still have access to the whistleblower policy as, in some cases, once an employee has been fired, they lose access to policies that can reinstate them to their previous position (Judge 2020).

Both Government Accountability Project and the JIU recommend the publication of annual reports with information on whistleblowing and retaliation cases (Cronin & Afifi 2018). Government Accountability Project further recommends that policies foresee an annual process for regularly making changes to policies and procedures based on lessons learned. (Feinstein 2020, p.10).

Structural reforms

The recommendations that the literature proposes also involve implementing changes to improve the whistleblower protection system through restructuring the Ethics Office and panel. Through its current arrangement, the ethics infrastructure lacks independence from the secretary-general (Feinstein 2020, p.15, United Nations 2015). Therefore, it should be restructured to deter undue influence, thus removing any potential bias against whistleblowers who make disclosures. This could be achieved by removing the secretary-general and UN executive heads' roles in making recommendations for retaliation findings (Feinstein 2020). The literature also recommends that the Ethics Panel's work and decisions be assessed by an independent judicial review, rather than the UNDT, to strengthen its independence and accountability (Hunt-Matthes & Gallo 2017).

Other conflicts of interest should be rectified within the system. For example, during an investigation by the Ethics Office, the manager who is named in the complaint may be responsible for coordinating the temporary placement of the person who has a

pending case against them (Feinstein 2020, p.15). This also should also be amended to ensure no conflicts of interests occur throughout the period of investigation. Interim measures also include placing the whistleblower in a different department or assigned a different supervisor, but this should be taken with the consent of the whistleblower, so they are not used for disguised retaliatory purposes (Bartsiotas & Achamkulangare 2016).

To improve the handling of retaliation complaints, the 2018 report by the Joint Inspection Unit recommends the development of standard operating procedures, with specific checklists and protocols for investigation, support services and communication (Cronin & Afifi 2018). Government Accountability Project further recommended mandatory training of Ethics Office and OIOS staffs on whistleblower rights and how to improve communication and working relationships with whistleblowers (Feinstein 2020, p.13).

Finally, according to Government Accountability Project (2020), the Ethics Office's work should be conducted in a more transparent and independent manner. This could be implemented through sending the preliminary determination letters, and even full investigative reports, of the findings to the whistleblower so they can challenge any issues in the investigation before the final recommendation is submitted (Feinstein 2020, p.16). Currently, staff cannot challenge the preliminary review decision, yet 96 per cent of applications for protection were rejected at the preliminary review stage (Hunt-Matthes & Gallo 2017). The Joint Inspection Unit found it a significant deficiency in the whistleblower protection system in many UN organizations, as the absence of external and independent mechanisms for handling appeals when a prima facie case of retaliation is not determined makes the ethics office the final adjudicator (Cronin & Afifi 2018).

The Joint Inspection Unit also recommends for independence of ethics offices to be achieved through having term limits for ethics officers, annual reports that are submitted to an independent

governing body, and the ethics officers barred from having dual roles (Cronin & Afifi 2018 pp.36-37). Government Accountability Project's recommendations to improve the independence of the Ethics Office include a restructure to ensure they are free from the Secretary General or Executive Agency Head's influence, through separating their financial resources, posts, promotions, performance evaluations and contract renewals (Feinstein 2020, p.15).

Conclusion

International organisations play a vital role in tackling global issues and, as such, it is essential that they have robust internal accountability mechanisms. Ensuring that staff can report misconduct through safe reporting mechanisms and are protected against retaliation are key components of ensuring accountability. However, as illustrated by several high profile cases of retaliation against whistleblowers and numerous studies, the UN system lacks effective protection for whistleblowers. Although the secretary-general formed the Ethics Office in response to such claims in 2006, there is nonetheless still several weaknesses in the protection process. These include structural barriers, flaws in the whistleblower protection policy, conflicts of interest and institutional cultural problems that permit retaliation to continue.

There are a number of recommendations made by the UN Joint Inspection Unit, UN Internal Justice Council, Government Accountability Project and other researchers have made a number of recommendations to improve this system and strengthen protection for whistleblowers. The protection system in the UN is still highly complex for staff, and the research indicates a need for all policies and processes to be clearer, more streamlined and easily accessible. The Secretariat Ethics Office (and other separately administered ethics offices) currently lack independence to make sound decisions on retaliation cases and to rectify this, the literature recommends the Ethics Office be

fully impartial and potential conflicts of interest with staff be removed.

The literature concludes that if these structural and policy changes are implemented, it is possible for the UN system to provide strong whistleblower protection for its staff. If it succeeds in doing so, more staff will come forward to report misconduct, which ultimately will improve the work of the UN and its ability to achieve its aims in peacekeeping, security, relations between states, sustainable development, and the protection of human rights and maintain its strong reputation worldwide.

References

Administration of Justice and the United Nations, 2019. *Report of the Internal Justice Council*. <https://undocs.org/en/A/74/169>

Altug, B & Kenny P. 2021. *Human Rights Whistleblower Claims UN Wants to Fire Her*. <https://www.aa.com.tr/en/americas/human-rights-whistleblower-claims-un-wants-to-fire-her/2109271>

Bartsiotas, G. A., & Achamkulangare, G. 2016. *Fraud Prevention, Detection and Response in United Nations System Organizations*.

Blaylock, Dylan. 2014. *UN Tribunal to Hear Final Appeals in Three Key Whistleblower Cases*. <https://whistleblower.org/uncategorized/un-tribunal-to-hear-final-appeals-in-three-key-whistleblower-cases/>

Bowman, J. S., West, J. P., & Moloney, K. 2019. International Organizations, Civil Servants, and Whistleblowing. In *The Oxford Handbook of Global Policy and Transnational Administration* (pp. 709–728). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780198758648.013.40>

Cronin, E. A., & Afifi, A. 2018. *Review of Whistleblower Policies and Practices in United Nations System Organizations*.

Edwards, Bea. 2016. *UN Special: the UN Whistleblower Protection Policy*. <https://whistleblower.org/in-the-news/un-special-un-whistleblower-protection-policy/>

Edwards, Sophie. 2018. *The High Price of Being a UN Whistleblower*. <https://www.devex.com/news/the-high-price-of-being-a-un-whistleblower-92752>

Ethics Resource Center. 2012. *Retaliation: When Whistleblowers become Victims*. www.ethics.org/nbes.

Feinstein, S. 2020. *Letter to UN Internal Justice Council*. <https://whistleblower.org/wp-content/uploads/2020/05/GOVERNMENT-ACCOUNTABILITY-PROJECT-SUPPLEMENTAL-Letter-to-UN-Internal-Justice-Council-1-1.pdf>

Feinstein, Samantha. 2019. <https://whistleblower.org/press-release/press-release-un-international-civil-aviation-organization-fires-cyber-security-whistleblower-after-u-s-withdraws/>

Hunt-Matthes, C., & Gallo, P. 2017. *The UN Whistleblowing Protection Government Accountability Project: Implications for Governance, Human Rights and Risk Management*.

Judge, Brooke. 2020. *The UN Whistleblower Protection System Does Little to Protect Whistleblowers in Policy or Practice*. <https://whistleblowingnetwork.org/Our-Work/Spotlight/Stories/A-Gross-Institutional-Failure-The-UN-Whistleblower>

Lynch, Colum. 2010. *Departing U.N. Official Calls Ban's Leadership 'deplorable' in 50-Page Memo*. <https://archive.globalpolicy.org/un-reform/general-analysis-un-reform/49319-departing-un-official-calls-bans-leadership-deplorable-in-50-page-memo.html>

Martel, B. 2017. *The Protection of United Nations Whistleblowers against Retaliation*.

Moloney, K., Bowman, J. S., & West, J. P. 2019. Challenges Confronting Whistleblowing and the International Civil Servant. *Review of Public Personnel Administration*, 39(4), 611–634. <https://doi.org/10.1177/0734371X18767247>

Transparency International, n.d. *Whistleblowing*. <https://www.transparency.org/en/our-priorities/whistleblowing>

Transparency International. 2013. *International Principles for Whistleblower Legislation*.

UN Department of Economic and Social Affairs, Sustainable Development, n.d. *Transforming our World: the 2030 Agenda for Sustainable Development*. <https://sdgs.un.org/2030agenda>

UN Ethics Office, n.d. *Ethics Panel of the UN*. <https://www.un.org/en/ethics/overview/ethics-panel.shtml>

UN Ethics Office, n.d. *Protection against Retaliation*.

<https://www.un.org/en/ethics/protection-against-retaliation/index.shtml>

UN Ethics Office, n.d. *What is the UN Ethics Office?* <https://www.un.org/en/ethics/>

UN General Assembly of the United Nations. 2021. *Contributions for 2021 for the United Nations Regular Budget.* <https://www.un.org/en/ga/contributions/honourroll.shtml>

UN Office of Internal Oversight Services, n.d. *Report Wrongdoing.* <https://oios.un.org/report-wrongdoing>

UNDP. 2017. *Resource Guide for UNDP Personnel.*

UNDP. 2018. *UNDP Policy on Protection against Retaliation.*

United Nations Secretariat. 2017. *Protection against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations.*

United Nations. 2007. *Secretary-General's Bulletin United Nations System-Wide Application of Ethics: Separately Administered Organs and Programmes.*

United Nations. 2015. *Ethics Office - Establishment and Terms of Reference.*

United Nations. 2016. *United Nations Status, Basic Rights and Duties of United Nations Staff Members Secretary-General's Bulletin.*

Walden, S., & Edwards, B. 2014. *Whistleblower Protection in International Governmental Organizations.*

Walden, Shelley. 2018. *UNHCR Whistleblower Wins Case Before the UN Dispute Tribunal.* <https://whistleblower.org/uncategorized/unhcr-whistleblower-wins-case-before-the-un-dispute-tribunal/>

Wasserstrom, J. 2018. *Representative Cases in Which the United Nations or its Funds, Programmes or Agencies have not Complied with Best Practices in Whistleblower Protection.*

World Health Organization. 2015. *WHO Whistleblowing and Protection against Retaliation: Policy and Procedures 2015.*

“Anti-Corruption Helpdesk Answers provide practitioners around the world with rapid on-demand briefings on corruption. Drawing on publicly available information, the briefings present an overview of a particular issue and do not necessarily reflect Transparency International’s official position.”

*Transparency International
International Secretariat
Alt-Moabit 96
10559 Berlin
Germany*

*Phone: +49 - 30 - 34 38 200
Fax: +49 - 30 - 34 70 39 12*

*tihelpdesk@transparency.org
www.transparency.org*

*blog.transparency.org
facebook.com/transparencyinternational
twitter.com/anticorruption*

*Transparency International chapters can use the Helpdesk free.
Email us at tihelpdesk@transparency.org*