



Session Report

Session Title: The United Nations is Failing Whistleblowers: What Needs to Change

Date & Time: Friday, 09.12.2022, 8:30 am - 10:00 am GMT -5

Report prepared by: Aitor Arauz, President, United Nations Staff Union - New York

Moderated by: Anna Myers, Executive Director, Whistleblowing International Network

Panellists:

- James Wasserstrom - Founder and Executive Chairman, IntegritySanctuary
- Mark Polane - President, United Nations International Civil ServantsFederation (UNIESRV)
- Samantha Feinstein - Staff Attorney and Director, International Program, Government Accountability Project
- Marie Terracol - Whistleblower Protection Lead, Transparency International Secretariat

Share the thematic focus of the session, it's purpose and corruption risks?

The session examined the dynamics of retaliation against whistleblowers who report misconduct at organisations in the United Nations system. Panellists shared their own experiences and those of other whistleblowers they had supported, attempting to identify some of the specific circumstances that condition the UN's often evasive response to reports of fraud, corruption and abuse, including sexual abuse. They pinpointed systemic weaknesses that result in organisations failing to consistently apply the whistleblower

protections mechanisms formally in place and proposed measures to strengthen responses and protections. Recent high-profile cases of corruption and misconduct reported by whistleblowers affected areas as critical as sustainable development and climate mitigation projects, the protection of human rights defenders, the cybersecurity of international civil aviation, and even the sexual abuse of minors; highlighting the role of UN whistleblowers in protecting the global public good.

Summary of panellists' contributions & discussion points (please be as detailed as possible)

Anna Myers introduced herself and the panellists, who over the years have supported a number of UN whistleblowers, including some featured in the BBC 2 documentary film screened the night before. It was essential for the whistleblower protection community to continue to support whistleblowers who step up to report wrongdoing in order to address problems, and whose actions reveal if our accountability mechanisms are working. We should not let them nor rely on them to do this alone.

James Wasserstrom, a 28-year veteran at the UN, reported a kickback scheme worth USD 50 million orchestrated by senior managers at the United Nations Mission in Kosovo, for which he suffered retaliation that included abolishment of his office, malicious accusations of misconduct, illegal arrests, systematic defamation and threats to his life, after he. His was the first recognised whistleblower case under the “new” system of protection from retaliation launched at the UN and the system failed abysmally. The investigation concluded saying he had exercised “bad judgment” and the retaliation against him were “random acts by rogue actors”. He embarked on a 7-year legal battle through the internal justice system to clear his name and obtain accountability, but after successive victories and increasingly supportive media attention, his case was thrown out by the UN Appeals Tribunal on spurious procedural grounds. He was promptly terminated and lost his pension rights.

Mark Polane, President of the UN Field Staff Union and of the UNISERV Federation, with 30 years in the organisation, recalled that he identified the injustices in the system early on his career, leading him to engage with staff representation at various times. His involvement with this panel came from his awareness of the recent UNOPS fiasco. The UN's own surveys, as well as those conducted by the Unions, indicate a low level of trust in protection mechanisms and in the organisations' willingness to respond meaningfully to reports of misconduct, which in turn lead to low levels of reporting. Policies are in place, but they are not implemented consistently. When wrongdoing involves the senior leadership of small organizations such as UNOPS, the internal ethics and oversight functions will not go against their executive heads, impunity prevails and whistleblowers are stripped of protection. The Staff Unions are working hard for change, but the pressure must also come from outside. We love the UN and we want it to be better. It is in the organizations' interest to change the culture to make the UN more credible.

Aitor Arauz, President of the United Nations Staff Union in New York concurred and added that the high political stakes and high-pressure environment the UN operates in are often cited as an excuse to avoid addressing wrongdoing at senior levels. In recent years he had witnessed instances across the system of whistleblower protection mechanisms working effectively, and others where they had failed miserably. The successes indicate that, when the political will is present, the system can work as intended. However, we cannot simply rely on the moral choices of a small number of individuals. Senior managers in positions of power are intelligent individuals making rational choices in their best interest – we must create the systemic conditions of scrutiny and accountability to ensure the reflex shifts from the cover-up culture to a robust response to wrongdoing and effective protection for whistleblowers in all instances.

Samantha Feinstein spoke on behalf of the Government Accountability Project, which has worked over the years to protect whistleblowers, including representing staff of UN system organizations before the internal justice system. Whistleblower protection was being taken more seriously by the United Nations since the US introduced provisions in the Consolidated Appropriations Act that required the US to withhold 15% of its funding to the UN in cases of failure to have or implement best practice whistleblower policies. Unfortunately, the

U.S. recently removed this provision from the Act despite its effectiveness. She shared details of whistleblower cases that were illustrative of ongoing shortcomings at the UN in implementing best practice whistleblower protections. Vincent Smith reported a cybersecurity breach at ICAO and the subsequent destruction of evidence and obstruction of investigations. The organization failed to protect him from retaliation, and he was terminated on pretextual grounds. After the case drew media attention and the US threatened to withdraw funding, ICAO agreed to implement its whistleblower policy that the Secretary General had previously not incorporated with the staff code after ICAO's Council approved the policy. However, the internal justice system at ICAO lacked neutrality and professionalism and the UNAT in the Heftberger case required ICAO to address the issues, which it did except for the rule that requires employees to be represented by other ICAO employees or former employees instead of qualified external council, which illustrates the problem of inequality of arms. And by purging ethical employees instead of pursuing accountability, ICAO failed to address the issues, resulting in a cybersecurity system that remains weak to this day, putting international civil aviation at continued risk. Aicha El Basri, a spokesperson for UNAMID, disclosed that her boss, who controlled the information flow to UNHQ, was withholding information about Sudan's abuses against the population of Darfur. After 8 months of retaliation, she began to fear for her life and resigned rather than facing the ordeal of going through the justice system. She testified before U.S. Congress, and requested that DPKO and OIOS investigate the coverup, which they failed to do. Anders Kompass, then-director of field operations at the Office of the United Nations High Commissioner for Human Rights, exposed that French peacekeepers were abusing children as young as 8 in the CAR. Instead of investigating his claims, UN senior managers suspended him for the unauthorized disclosure of confidential information. The Secretary-General only opened an investigation after public pressure from media exposure of the scandal. The investigation exonerated Kompass, however his experience was so traumatic he resigned shortly thereafter. The peacekeepers were handed over to the French authorities, who found the evidence was insufficient to press charges, resulting in no accountability. Samantha summarized the problems illustrated by these cases. Inequality of arms is a concern in the internal justice system – whistleblowers who win their cases cannot get attorney fees and are thus often unrepresented, while the organisations are defended by high-power attorneys. Likewise,

limitations on staff's right to report externally under restrictive conditions means that whistleblowers may be exposed to additional misconduct reports. These and other shortcomings are addressed in the GAP's 50+ recommendations to the Internal Justice Council. In parallel, Member States must be more demanding on the UN to do better. She added that Rowan Downing, former UNDT judge, had become a whistleblower himself, when he pointed out that the Office of Administration of Justice is inherently conflicted and interferes in how the Tribunals do their work. He blew the whistle on obstruction of justice and other issues, including shortcomings in the discovery process – the agency has all the information that the whistleblower needs to prove their case, while there is no rule of procedure forcing the respondent to produce all the relevant documentation.

James Wasserstrom stated that in both the Kompas and Morsi cases, nobody suffered consequences for whistleblowing other than the whistleblowers. Now the UN was resolving whistleblower cases by paying people off and imposing NDAs. In his dealings with the United States, he had been disappointed by the Democrats' response over the years. The General Assembly's Budget and Administrative Committee, made up of diplomats and politicians, was unable to exercise proper oversight. What was needed was a professional and independent oversight body reporting directly to the General Assembly.

Marie Terracol (Whistleblower Protection Lead, Transparency International Secretariat) considered that, given the UN's size and complexity and the high-risk environment it operates in, the UN has few reports of fraud, which indicates the system is not working. Policies are the first step (not all of them are up to standard), but it's also about the organizational setup and culture to make sure policies are implemented in practice. Fear of retaliation within the UN system is clearly one of the reasons people don't report. There is a lack of confidence that there will be positive outcomes. The UN's own statistics show that only 7% of complaints are considered retaliation. The evidence threshold for a retaliation complaint to be forwarded for investigation is too high. Most of the anti-retaliation policies don't cover non-staff categories, despite this category of consultants, contractors, interns, etc. constituting half of the UN workforce. The independence of offices charged with whistleblower protection is also a concern. At the UN, the SG appoints, funds and writes the performance evaluation for the head of the Ethics Office, leaving them

vulnerable to interference. It is important to detect and prevent corruption early so damages to the public good can be avoided.

Anna Myers closed by observing that the repeated pattern of retaliation and cover-up experienced by a wide range of individual UN whistleblowers over time revealed systemic problems that must be addressed. Without it, senior management in the UN will continue to determine it more in their interest to “manage” wrongdoing away than to seriously address it and protect those who report it. This panel represents the growing clamour for serious reform from across a wide range of stakeholders and a willing community of experts able to work with the UN to achieve it.

Main outcomes of session (include quotes/highlights and interesting questions from the floor)

Despite having whistleblower protection rules on the books (some of which still have room for improvement), UN system organisations too often fail to live up to their promise to protect those who report grave misconduct. These failures of accountability not only take a heavy toll on the lives and careers of the individuals who have the bravery to speak up, they also cause financial losses, lasting reputational harm, and decrease in the public’s trust in the UN system. Effective reforms must be identified through a transparent and participatory process.

“We love the UN and want it to be better. It is in the organisations’ interest to change the culture to make the UN more credible.”

“Withholding of donor funding is an effective incentive for change.”

“We love whistleblowers, but we shouldn’t have to rely on them to keep systems accountable. This is a collective responsibility.”

“We need the UN to be there to respond to crises, but that doesn’t justify throwing out the checks and balances.”

“The system is reactive. It should be more preventive.”

“The UN is incapable of policing itself. There needs to be an agency that does not rely on ex-post facto investigation, but that has teeth.”

“Change the power structure to change the calculation on how to respond when a whistleblower reports misconduct.”

“Necessary reforms should not be designed behind closed doors. Effective change must include the contributions of civil society organisations, academia, donors, the unions, and whistleblowers themselves.”

Key recommendations for the future and concrete follow-up actions

Some of the needed reforms were discussed during the workshop:

Strengthen existing protection against retaliation (PaR) policies by:

- **Lowering the artificially high evidentiary burden on whistleblowers, who are required to prove a link between the protected activity and detrimental action for their retaliation complaint to be investigated internally.**
- **Extending PaR policies to all personnel.**
- **Allowing UN personnel to engage external counsel.**
- **Allowing applicants to claim legal fees.**

Member states and donors should strengthen accountability for failure to address corruption and protect whistleblowers, including by withholding funding until the needed reforms are made.

Draw up reform proposals through a participatory process.

Ensure genuine independence of the oversight and investigation bodies, Ethics Offices and of the Tribunals.

Address UN personnel's lack of trust in the system.

Ensure that the UN Board of Auditors is required to assign certified accountants to audit the UN Common System and that the auditors are shielded from obstruction, efforts to suppress their findings, and retaliation for reporting problems.

Rapporteur's name and date submitted

Aitor Arauz, 14.12.2022