

UNDP ETHICS OFFICE RESPONSE TO THE DRAFT REPORT OF THE INDEPENDENT REVIEWER ENTITLED “SYSTEMS AND SILOS: REVIEW OF A UNDP/GEF PROJECT”



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1. The UNDP Ethics Office welcomes the draft report of the independent reviewer entitled “SYSTEMS AND SILOS: REVIEW OF A UNDP/GEF PROJECT”, and the opportunity to comment thereon.
2. At the outset it is important to emphasize how seriously UNDP and the independent UNDP Ethics Office take whistleblower protection. UNDP encourages whistleblowers to step forward and alert leadership regarding their good faith concerns that wrongdoing has taken place, or is about to take place, and to do so without fear of retaliation or retribution. We regularly educate staff and issue many awareness pieces to allay any fears staff have from coming forward and fulfilling their obligation to report wrongdoing as required in the UN Staff Regulations and Rules. Our Protection against Retaliation Policy is among the strongest and broadest in the UN system.
3. With regard to the draft report looking into concerns raised with regard to the S&L Project, the Ethics Office comments today are primarily focused on the issue of the alleged whistleblowers, whether each engaged in protected activity, whether each requested protection against threatened retaliation and whether the Ethics Office acted appropriately and in accordance with Staff Regulations and Rules of the United Nations, the applicable UNDP Policy on the Protection against Retaliation and with the applicable Secretary General Bulletins affecting same. The Ethics Office comments will not focus on any concerns raised with the investigations undertaken, nor will it focus on the actual substance of the whistleblower allegations concerning the S&L Project.
4. With regard to the first alleged whistleblower (Whistleblower A) despite the fact that he has in recent years proclaimed himself to be a whistleblower for whom protection against retaliation was denied, Whistleblower A never came to the Ethics Office to seek protection against retaliation. He first came to the Ethics Office in late October 2014 asking for direction as to where he could appropriately report concerns of misconduct (Quote: “I would like to have an advice regarding improper conduct of the UNDP Moscow Office which looks unethical for me in many aspects. I would like to speak to a person who would be ready to help. Please inform me whom should I speak to.”) The Director of the Ethics Office personally referred him to speak to the Office of Audit and Investigations (OAI) as the only office authorized to investigate allegations of wrongdoing. Whistleblower A and the Ethics Office continued to exchange emails off and on through 2015 as he repeatedly copied the Ethics Director on email exchanges he had with OAI on his allegations. Never once during that time did he mention that he had suffered or was threatened with retaliation for having filed said charges nor did he ever formally or informally seek protection against retaliation. In future years, as evidenced by the Foreign Policy magazine article, he changed his story and claimed

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that the Ethics Office failed to protect him after he sought protection. Again, this is a fallacy; he has produced no evidence to support that claim, and there exist no emails or other evidence that he can provide where he ever sought such protection. In fact, the Ethics Office understands that when Whistleblower A first came to the Ethics Office seeking to report suspected misconduct in late October 2014, he already had ended his employment with UNDP and was, at that time, a private citizen. He never inferred or claimed to Ethics that his departure from UNDP was somehow retaliatory.

5. The report indicates the second whistleblower (Whistleblower B) alleged that he was somehow denied due process or that the Ethics Office acted in bad faith in failing to find he presented *prima facie* evidence of retaliation for having “blown the whistle” on alleged fraud and corruption in the S&L Project. Again, this is simply not true. When Whistleblower B claimed he was retaliated against for having alerted management about said alleged fraud and corruption, the Ethics Office worked tirelessly with him to review all of the evidence he put forth and also spoke with or otherwise corresponded with all witnesses he requested that we contact. None had any independent verification of the facts as Whistleblower B claimed them to be. In fact, the witnesses each stated that while they each believed Whistleblower B to be a credible person, they only knew what Whistleblower B had told them as to the allegations in question. The Ethics Office also determined that Whistleblower B himself did not pass along first-hand knowledge of wrongdoing; rather, he was passing along the concerns of a consultant who had mentioned his own fears of fraud in the project in the body of a report the consultant had authored. Thus after careful analysis, the UNDP Ethics Office determined that Whistleblower B had failed to show by a “more likely than not” standard of proof required by the UNDP Protection against Retaliation (PaR) Policy, that any action taken or threatened against him was somehow caused by or connected to the allegations of wrongdoing he raised concerning the S&L project; this ended with the UNDP Ethics Office issuing a no *prima facie* finding that retaliation, as defined by the PaR policy, had taken place. Whistleblower B was notified that if he took exception to such finding, he was free to appeal such finding to the Chairperson of the Ethics Panel of the United Nations. Whistleblower B availed himself of that opportunity and made his appeal pursuant to language both Section 10 of the UNDP PaR Policy¹ and in section 4.3 of ST/SGB/2007/11² allowing for such appeals. The Chairperson completed her review of his appeal, and upheld the finding of the UNDP Ethics Office that Whistleblower B had failed to establish any “retaliatory” action had been taken against him as a consequence of having filed said allegations of wrongdoing. He remains employed by UNDP to this day.

¹ “If, following the notification of a determination by the UNDP Ethics Office on a staff member’s complaint of Retaliation, he/she wishes to have the matter reviewed further, he/she should refer the matter in writing to the Chairperson of the Ethics Panel of the United Nations, as provided in ST/SGB/2007/11 and ST/SGB/2007/11/Amend.1.”

² “Alternatively, if following a final determination by the respective Ethics Office of a matter referred to it by a staff member, the said staff member wishes to have the matter reviewed further, he or she may, in writing, refer the matter to the Chairperson of the Ethics Committee.”

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6. Another recommendation contained in the draft report is to consider offering the whistleblowers in the instant matter “restitution” for having allegedly suffered retaliation. As noted above, neither alleged whistleblower has suffered retaliation or pecuniary harm such that any restitution is warranted.
7. Finally, another recommendation in the draft report is a suggestion to engage the Ombudsman in the process of addressing whistleblowers generally in some form of mediation. It is important to remember that misconduct cannot be mediated, nor can misconduct be informally resolved. Retaliation and the protection afforded whistleblowers is covered in ST/SGB/2017/2/Rev.1 which states, in pertinent part, that all such claims of retaliation, and preliminary reviews of requests for protection against retaliation, must be conducted by the Ethics Office. The Ombudsman is only to mediate disagreements or disputes between staff/staff or staff/management; they are not to become involved in mediation of retaliation claims.
8. As reported to the Executive Board annually, UNDP and the UNDP Ethics Office strongly embrace whistleblowing, and encourage whistleblowers to come forward to report good faith concerns that wrongdoing may have transpired; in the Ethics Office, we take our obligation and mandate very seriously to protect such whistleblowers from retaliation for having fulfilled their duty to report, where the negative action taken or threatened is a consequence of having done so. We remain available to answer any questions that you may have.