Proposed Revisions to the UN Whistleblower Protection Policy

Based on the findings of GAP’s recent report: “The Impact of the United Nations Internal Justice System on Organizational Accountability & the Peacekeeping Missions,”\(^1\) we propose the following revisions to ST/SGB/2005/21:

1. Peacekeepers and UN police officers are on the frontlines and are therefore the employees who are most likely to be aware of sexual exploitation and abuse, human trafficking and other serious crimes or misconduct committed in peacekeeping missions. But while the UN requires police officers and peacekeepers to report misconduct, it fails to provide those who report this type of misconduct with any protection when they do so. UN police officers and peacekeeping personnel cannot bring cases before the justice system and the UN whistleblower protection policy does not apply to them. Therefore, the scope of protection against retaliation provided in section 2.1 should be extended to apply to contractors, UN police officers, UN peacekeepers, victims and any other person who provides information about misconduct that could undermine the United Nation’s mission. The key to receiving protection should be the content of the information disclosed, not the identity of the person disclosing it.\(^2\)

2. Whistleblowers who make a protected disclosure to the UN should be protected from harassment by contractors, sub-contractors or member states and such retaliators should be disciplined. For example, most Multilateral Development Bank whistleblower protection policies allow the Banks to apply sanctions or suspend contractors who engage in whistleblower retaliation.\(^3\)

3. Sections 8 and 2.1 should be revised to extend protection to anyone who reports misconduct of any kind involving UN operations, not just violations of certain rules and regulations by a “United Nations staff member.” Best practice whistleblower standards established in international and national law require that whistleblower rights cover disclosures of any illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety and any other activity that undermines the institutional mission to its stakeholders, as well as any other information that assists in honoring those duties. Clearly, misconduct by a UN peacekeeper or UN police officer should be covered by this definition even though they are not directly employed by the UN, as such misconduct has the potential

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1 Available at [http://www.whistleblower.org/program-areas/gap-reports/tipping-the-scales](http://www.whistleblower.org/program-areas/gap-reports/tipping-the-scales).

2 Such comprehensive coverage is provided by some Intergovernmental Organizations. See, for examples, section 5.1 of the African Development Bank’s (AfDB) Whistleblowing and Complaints Handling Policy, and section 8 of the Asian Development Bank’s (ADB) Whistleblower and Witness Protection Policy.

3 See, for example, AfDB Whistleblowing and Complaints Handling Policy, sections 6.2 and 6.3; ADB Administrative Order No. 2.10, section 8.5; and Inter-American Development Bank (IDB) Staff Rule No. PE-328, section 109 and 110.
to pose a specific danger to public health and safety, to create liability for the organization, and to undermine the organization’s mission, since these people are deployed under the UN banner. Moreover, since the Secretary General’s bulletin on “Special Measures for Protection for Sexual Exploitation and Sexual Abuse” requires UN staff members to report “concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system,” (emphasis added) whistleblowers should be granted protection from retaliation if they make such disclosures.

4. Best practice whistleblower protection laws also cover all common scenarios that could have a chilling effect on responsible exercise of free expression rights. Representative scenarios include individuals who are perceived as whistleblowers (even if mistaken), or as “assisting whistleblowers,” (to guard against guilt by association), and individuals who are “about to” make a disclosure (to preclude preemptive strikes to circumvent statutory protection). These indirect contexts often can have the most significant potential for a chilling effect that locks in secrecy by keeping people silent and isolating those who do speak out. The World Bank (Staff Rule 8.02, section 2.04); AfDB Whistleblowing and Complaints Handling Policy (section 6); and IDB (Staff Rule No. PE-328, section 104) all provide such protections. The United Nations should as well.

5. Expand the list of offices to which a protected disclosure can be made. Currently, the list includes “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,” (section 3) which varies from mission to mission. This list should also include the Conduct and Discipline Unit/Team (which may be the focal point, but not necessarily) and the whistleblower’s supervisors.

6. The Ethics Office’s recommendations for protecting a whistleblower are not binding and there is no timeline for the enforcement of its decisions. Thus, even when the Ethics Office recommends relief – as it did in one recent case – the whistleblower may still not be protected. To address this concern, section 6.2 should be revised to provide a deadline by which the Secretary-General must decide whether or not to enforce the Office’s decision. We suggest the following language: “Should the Ethics Office not be satisfied with the response from the head of department or office concerned, it can make a recommendation to the Secretary-General. The Secretary-General shall make and communicate the decision to adopt or reject the Ethics Office’s recommendations within 30 days to the Ethics Office, complainant and the department or office concerned. In the absence of a response within the specified time period, the recommendations of the Ethics Office become effective.”

7. The UN Secretariat protection against retaliation policy, and the corresponding policies at the UN funds and programmes, should be amended to include protections against retaliation for those who testify before the UN Dispute and Appeals Tribunals – including witnesses or

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victims who may not be employed by the organization – as well as those who use the internal justice system. The need for such provisions has been noted by UN Dispute Tribunal judges (see, for example UNDT/2011/156) and by the UN Ethics Office (see paragraph 36 of the 2010 Ethics Office Activity Report).

In regards to the second part of this recommendation, at the World Bank, staff members are prohibited from retaliating “against any person who in good faith provides information about suspected misconduct, or who uses the Conflict Resolution System,” and can be disciplined if they do so. The UN should therefore prohibit retaliation against those who use the internal justice system and protect those who believe that they’ve been retaliated against for using it.

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5 World Bank. Staff Rule 8.01: Disciplinary Proceedings. 10 February 2006. para. 2.03.