UN Policy Still Fails to Protect Whistleblowers

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United Nations Secretary-General António Guterres wrote a letter to all of the permanent representatives to the U.N. in New York earlier this month, updating them on his management and reform agenda.

A number of these initiatives are still in development and awaiting conclusions of various advisory teams or issuing of final reports and, thus, are hard to evaluate at this time.

This is not the case, however, for the secretary-general’s new whistleblower policy. The letter states:

In January, we strengthened whistleblower protection to boost openness, transparency, and fairness. Enhanced safeguards are now available for individuals who report misconduct or cooperate with duly authorized audits or investigations. I have directed an internal working group to examine how these efforts could be further expanded to cover consultants and individual contractors. The working group will submit its recommendations to me by 30 June 2017.

The secretary-general issued his [new whistleblower policy](http://undocs.org/en/ST/SGB/2017/2) in January. While different in some respects to the previous policy, the new policy remains flawed beyond the issue of coverage for consultants and individual contractors.

Peter Gallo, former U.N. Office of Internal Oversight Services investigator, [concluded](http://peteragallo.com/wp-content/uploads/2017/02/Designed-to-Fail-PAG-on-ST-SGB-2017-2.pdf) that the new whistleblower policy would not have made substantive differences in the treatment of past whistleblower cases.

In particular, the Ethics Office retains discretion over whether to grant protection or allow cases to move forward. This is troubling considering evidence that the [Ethics Office was compromised](http://www.codebluecampaign.com/carstatement/) in the situation involving retaliation against [Anders Kompass](http://www.irinnews.org/opinion/2016/06/17/exclusive-ethical-failure-%E2%80%93-why-i-resigned-un) after he informed the French government of sexual abuse by peacekeepers—some from France—in the Central African Republic.

The failure to adequately reform the U.N. whistleblower policy could have substantial financial consequences for the U.N.

Legislation first enacted in 2015 requires the U.S. to withhold 15 percent of contributions to individual U.N. organizations, departments, and agencies unless the secretary of state reported to the committees on appropriations that the organization, department, or agency is “effectively implementing and enforcing policies and procedures which reflect best practices … for the protection of whistleblowers from retaliation.”

The recent [omnibus appropriations bill for fiscal year 2017](https://www.congress.gov/115/bills/hr244/BILLS-115hr244enr.pdf) included this language.

Former Secretary of State John Kerry reported that the U.N. met the whistleblower standards in the law. He asserted this despite evidence of retaliation and the fact that the U.N. does not allow whistleblowers access to independent external arbitration as specified in the law.

The Trump administration will issue its own determination this summer, but as things stand, it is clear that [Guterres’ policy does not meet the requirements outlined in law](http://www.heritage.org/global-politics/report/the-us-should-enforce-the-law-improve-un-whistle-blower-protections), particularly access to independent external arbitration.

The new policy does, in cases of conflict of interest on the part of the director of the Ethics Office, mention the possibility for a referral to an alternative reviewing body. The only specific possibility cited was the alternate chair of the ethics panel of the United Nations, i.e. another internal option. Likewise, the possibility of an alternative investigating mechanism is mentioned, albeit without specific examples, if the U.N. Office of Internal Oversight Services has a conflict of interest.

However, neither example specifically states that the alternative could be external. Combined with a previous statement by Office of the Chef de Cabinet of the Secretary-General that external arbitration would be “[in contravention of the legal framework established by the General Assembly](http://www.heritage.org/global-politics/report/the-us-should-enforce-the-law-improve-un-whistle-blower-protections),” one can only assume that the secretary-general’s new policy does not provide an option for independent external arbitration and, thus, is inconsistent with the requirements established by Congress.

The secretary-general has time to direct his internal working group to propose additional changes to meet this standard. If his new policy does offer the possibility of external arbitration, he should make this explicit and list those options. If not, he should direct his working group to incorporate external arbitration into his protection against retaliation policy.

Not only would this enhance protections for U.N. whistleblowers, which provide a valuable service to the organization and the member states, but it would also demonstrate to the U.S. that he is determined to pursue changes that would comply with congressional standards and avoid withholding.