



UNITED STATES REPRESENTATIVE FOR
UNITED NATIONS MANAGEMENT AND REFORM

140 EAST 45 STREET
NEW YORK, N.Y. 10017

August 21, 2007

Dear Mr. Benson,

Thank you for your initial efforts as the new leader of the new UN Ethics Office and the obvious thoughtfulness that you bring to the position.

I have received copies of your Memorandum to Kemal Dervis, regarding file No. 2007/129 dated August 17, 2007 and your letter to a whistleblower complainant regarding file no. 2007/129 also dated August 17, 2007. I understand that you have compiled more detailed findings in this matter. As I understand it, your conclusions are complete because of the failure of UNDP to further cooperate in your investigative process. Therefore, I specifically request that you make available all such findings to my government and to the public-at-large, redacted as appropriate if necessary, pursuant to GA Resolution 59/272, paras. 1(c) and 2.

According to your Memorandum and letter, UNDP has refused to cooperate with the UN Ethics Office and you have found that there is a *prima facie* case of whistleblower retaliation against UNDP management. Unfortunately, because of UNDP's failure to cooperate with your investigation you are unable to proceed further with your investigation.

UNDP's failure to cooperate with the UN Ethics Office is counter to good governance, is contrary to key UN rules, and directly and fundamentally undermines serious efforts at UN reform.

Mr. Robert Benson,
Director,
United Nations Ethics Office,
UN Secretariat Room S-3001,
New York, NY 10017.

The UN Ethics Office is a key and signature accomplishment of the UN reform effort memorialized by the 2005 World Summit Outcome Document A/RES/60/1. The Ethics Office is a direct product of paragraph 161 (d) of the Outcome Document:

We urge the Secretary-General to scrupulously apply the existing standards of conduct and develop **a system-wide code of ethics for all United Nations personnel**. In this regard, we request the Secretary-General to submit details on **an ethics office with independent status**, which he intends to create, to the General Assembly at its sixtieth session. (emphasis added).

In the first test of this signature reform, UNDP has rejected any role for the UN Ethics Office. You correctly note that UNDP does not have "an applicable protection from retaliation policy within UNDP," and that UNDP is ultimately accountable to the General Assembly. You did omit some otherwise obvious facts: the Secretary General selects the leader of UNDP, UNDP employs the UN logo on all its materials, and UNDP stands for the **United Nations Development Program**. (emphasis added).

Additionally, UNDP touts its work as "**the UN's global development network**." UNDP claims that "[o]ne of the main reasons that UNDP is a trusted development partner all over the world is because **it operates according to the principles and values of the United Nations**." UNDP's "Resident Coordinator leads the UN country team and is **the designated representative of the Secretary-General** for development operations." (UNDP Website, <http://www.undp.org/about/>). (emphasis added). The **UNDP Resident Representative has the function of UN Resident Coordinator**. (UN Website, <http://www.un.ro/coordinator.html>). (emphasis added). Contrary to reason and to UNDP's publicly stated principles, UNDP has rejected one of the core principles and values of the UN in its repudiation of the UN's ethics policy.

As you may know, UNDP has eagerly taken the lead in the "One U.N. Initiative," which is intended to increase UN coordination, harmonize the various roles of UN entities and to eliminate unnecessary duplication in the UN. Apparently and unfortunately, UNDP sees no need for "One UN" when it comes to UN Ethics as it opposes the reach and applicability of the UN Ethics Office beyond application to the thirty-eight story building located on First Avenue, in New York City. Instead of "one" set of Ethics to serve all UN staff, UNDP conveniently in this case has chosen to promote a fragmented and uncoordinated system that neither serves the needs of the UN as a whole, nor protects the rights of UN staff members world-wide.

It is the epitome of *institutional impunity* when a UN agency can outright reject the role of the UN Ethics Office. We have seen UNDP act with impunity before when its leaders have rejected making financial disclosure, refused to release internal audits and rejected the adverse findings of the UN Board of Auditors. However, rejecting the role of the Ethics Office is particularly untenable, as your findings appear to directly implicate the very same UNDP leadership that now refuses to cooperate in your independent investigation. One can only conclude that if UNDP refuses to cooperate with your investigation that its leadership fears your likely conclusions. Only when UNDP was confronted with the reality of your conclusions – that

there was a *prima facie* case of whistleblower retaliation perpetrated by UNDP management – did it refuse to cooperate.

As you have correctly pointed out, UNDP's promise to conduct its own review somehow as part of a larger inquiry into UNDP programs is not appropriate and cannot be considered a real impartial inquiry. How can the very same management that is the subject of your inquiry credibly commission its own investigation? The General Assembly created your office to be the expert body to investigate claims of whistleblower retaliation in the UN context. There is no more credible body to consider such a complaint than the UN Ethics Office and no amount of self-created forum shopping can relieve UNDP of its ethical obligations.

There are real human consequences to UNDP's refusal to cooperate in your investigation. We must remember that the former UN staff member may be no longer employed by the UN because of such whistleblower retaliation. As UNDP persistently evades any form of accountability, a former staff member remains unemployed and unemployable apparently because of UNDP's punitive and retaliatory actions. Under such circumstances no staff member at UNDP (or any other UN Fund, Program or Specialized Agency) will feel free to come forward with whistle-blowing information when they have no protection from retaliation.

Moreover, as you know under its terms of reference "The Ethics Office will seek to complete its preliminary review within 45 days of receiving the complaint of retaliation." (ST/SGB/2005/21, Section 5.3). Your office purportedly received the complaint at issue on June 5, 2007. You delayed the release of your Memorandum pending an effort to convince UNDP to cooperate with your investigation. Your good faith attempt to work with UNDP was rejected. Now over 75 days after filing it will be impossible for the complainant to receive due process under ethics rules because of UNDP's actions.

Although we appreciate the thoughtfulness of your analysis in this matter, we also believe that your decision that you cannot proceed absent consent by UNDP is inconsistent with the relevant authorities and the founding documents of the Ethics Office. As stated above, the 2005 Outcome Document clearly underscores that the Ethics Office was to apply system-wide across the UN. In the ACABQ Report on Ethics Office, A/60/7/Add.23, Paragraph 8 states:

On the matter of standard-setting, while the Advisory Committee understands that there will be input on standards of ethical conduct from **many parts of the United Nations system**, which may reflect different cultural approaches, it trusts that a common standard will be developed to be applied system-wide, leading to a **system-wide code of conduct for all United Nations personnel**. (emphasis added).

The Secretary General Bulletin ST/SGB/2005/21 contemplates that such ethics protection from whistleblower retaliation applies to "**any staff member**," "**the burden of proof shall rest with the Administration**," and "**all offices and staff members shall cooperate with the ethics office**." Section 2.1 (a)(b)(c) (emphasis added). The Ethics Office Terms of Reference directly apply to "**all staff members**," and orders that "**all offices and staff members shall cooperate with the Ethics Office**." (SYG Bulletin ST/SGB/2005/22 Ethics Office, 1.2, 4.1, Section 5).

Finally, GA Resolution, A/RES/60/254:

16. Welcomes the establishment of the Ethics Office, and ...:

(a) Urges the Secretary-General to **finalize a system-wide code of ethics for all United Nations personnel, including personnel of the funds and programmes**, at an early date. (emphasis added).

UNDP's refusal to cooperate with the UN Ethics Office and your investigation directly and clearly violates the clear terms of these founding documents of the Ethics Office and UNDP to this day is devoid of any such real ethics code within UNDP.

When the Associate Administrator of UNDP was asked about the status of reforms within UNDP on January 19, 2007 he stated: "You ain't seen nothing yet." (Matthew Lee, "Facing UNDP Scandals, Ad Melkert Says 'You Ain't Seen Nothing Yet' In Terms of Transparency", *Inner City Press at the UN*, January 19, 2007). Unfortunately, he was right then and no Member State could have expected that to this day that UNDP would seek to place itself above UN rules, and above the reach of the UN Ethics Office. Neither you nor the Secretary General should countenance such irresponsible and unaccountable behavior. Simply put, UNDP's rejection of the Ethics Office is devastating to the UN reform effort. In the context of UN reform, UNDP's rejection of the role of the UN Ethics Office in UNDP is akin to the U.S. giving the Louisiana Purchase back to the French and stating "oh, we really don't need it."¹

Accordingly, please I urge you:

1. To reconsider your conclusion that you cannot proceed in the absence of UNDP's cooperation;
2. To conclude your report with or without UNDP's cooperation and make such conclusions available to all member states, and;
3. To convey our strong concerns about UNDP's actions to the Secretary General and request that the Secretary General insist that UNDP cooperate with your investigation.

Thank you for your attention to this matter.

Yours Truly,



Mark D. Wallace

cc: Mr. Kim Won-soo
Mr. Chris Coleman
Mr. Vijay Nambiar
Ms. Alicia Barcena

¹ As you are Canadian, if my country ever does decide to give the Louisiana Purchase back, I will remind my colleagues that a portion of the Purchase was later incorporated into Canada.