

Ethics Office / Bureau de la déontologie

**CONFIDENTIAL**

TO: Mr. Kemal Dervis  
A: Administrator, UNDP

DATE: 17 August 2007

FROM: Robert Benson  
DE: Director, Ethics Office



SUBJECT: **Re. Our File 2007/129**

OBJET:

I wish to thank UNDP for submitting such a detailed and thorough submission regarding the protection from retaliation case for which I have been conducting a review.

While, from a purely legal perspective, the Ethics Office does not have the jurisdiction to address a request for protection from retaliation in relation to cases arising from UNDP, as Director of the Ethics Office, I undertook the review of this case based upon the following:

- (i) I received what I considered to be sincere and deeply concerned representations from the President of UNDP's Staff Council, who are clearly interested in ensuring this matter be dealt with in the best interests of UNDP;
- (ii) an absence of an applicable protection from retaliation policy within UNDP;
- (iii) the direct and public intervention of one of the Executive Board members of the UNDP; and
- (iv) accountability in this matter is ultimately to the General Assembly.

On this latter point, that is accountability to the General Assembly, I note that UNDP has itself acknowledged its accountability to the General Assembly through its Executive Board and ECOSOC.

One has to appreciate that in addressing a protection from retaliation case, three significant steps are involved. The first involves a preliminary determination whether a prima facie case of retaliation has been made out; if so, then, during the second phase, the burden shifts to the Organization to establish that the 'prima facie' retaliation was not as a consequence of the individual's participation in a protected activity. During this second phase, a thorough and detailed investigation of the facts of the case is undertaken. The information UNDP has raised in its submission would be considered during this phase, and it would be considered in the context of the UN's Charter and accountability to the General Assembly. During the final phase, if in fact it is found that there was a retaliatory act, appropriate measures would be recommended in order to address the issues that have arisen as a consequence of the original complaint.

In the present case, we discussed the possibility of UNDP, without ceding jurisdiction in future cases, allowing this case to proceed within the parameters of ST/SGB/2005/21. However, you

have indicated that after discussing this matter further, and in light of ongoing inquiry being undertaken by the Board of Auditors, UNDP wishes to conduct its own external review.

When I undertook my review of this case, it was done so within the parameters of ST/SGB/2005/21. Indeed, the Ethics Office received independent and corroborative information in relation to whether a prima facie case of retaliation has been established.

While it is now understood that the case will not proceed any further within the parameters of ST/SGB/2005/21, I must advise that had the jurisdiction of the protection from retaliation bulletin applied, the information received by the Ethics Office would have supported a determination that a prima facie case had been established in this case.

Should UNDP wish to reconsider pursuing this matter within ST/SGB/2005/21, I believe it would be in best interests of the United Nations and UNDP to do so.

cc: Mr. Secretary-General  
Mr. Nambiar  
Mr. Melkert  
Mr. Shkurtaj  
Mr. Samaras