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U.N. Secretary–General’s Lack of Leadership Undermines Accountability

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In 2006, the United States Mission to the United Nations began investigating the claims of a whistleblower who alleged significant problems and rule violations associated with the U.N. Development Program’s (UNDP) activities in North Korea. After months of delay and obfuscation by UNDP officials, the U.S. successfully led an effort by the UNDP Executive Board to suspend UNDP activities in North Korea and convinced Secretary-General Ban Ki-Moon to call for an independent audit of U.N. activities in the country. The preliminary audit confirmed the allegations.

The UNDP fired the whistleblower in March 2007. The U.N. Ethics Office subsequently concluded that the firing was retaliatory. The UNDP has rejected the conclusions of the U.N. Ethics Office, arguing that it lacked jurisdiction to investigate the case. Secretary–General Ban Ki-Moon has sided with the UNDP. This is a serious abdication of his responsibility to promote an effective, accountable United Nations. Congress and the Administration should demand that Secretary–General Ban implement a consistent, system-wide code of ethics subject to investigation by the Ethics Office.

The UNDP–North Korean Scandal. Informed by details provided by the whistleblower, the United States began questioning the influence that North Korea had over personnel and financial decisions made by the UNDP in 2006. Under the leadership of Ambassador Mark Wallace, in a series of meetings and letters, the U.S. began asking questions in order to clarify details and access internal

UNDP reports and audits of the organization’s activities involving the secretive regime of Kim Jong-Il.

The UNDP strongly resisted U.S. efforts to investigate the situation, causing considerable frustration that was made public in January 2007 through a letter from Ambassador Wallace to the UNDP that was leaked to the press, which concluded:

[B]ecause of the actions of the DPRK government and the complicity of UNDP, at least since 1998 the UNDP DPRK program has been systematically perverted for the benefit of the Kim Jong Il regime—rather than the people of North Korea. The UNDP DPRK program has for years operated in blatant violation of UN rules, served as a steady and large source of hard currency and other resources for the DPRK government with minimal or no assurance that UNDP funds and resources are utilized for legitimate development activities.¹

Forced to react to media coverage of the letter, in late January 2007, U.N. Secretary–General Ban Ki-Moon announced that he would have the U.N. Board of Auditors conduct an audit of all U.N. activities in North Korea.² The U.N. Board of Auditors completed a preliminary audit report of UNDP activities and projects in North Korea in May 2007.

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The audit confirmed the whistleblower's allegations: The UNDP had indeed hired local staff through a North Korean government agency in violation of "relevant instructions and procedures"; the UNDP paid the government their salaries and allowances and did not confirm that the government paid the staff in full; the UNDP had paid for expenses in hard currency rather than in local currency in violation of UNDP rules; the UNDP did not have complete access to its projects in North Korea in violation of its rules; and site visits by international UNDP staff to its projects were rare.³

The UNDP has subsequently been accused by the U.S. of concealing its possession of counterfeit U.S. currency distributed by the North Korean government,⁴ as well as providing dual-use technology subject to U.S. export controls to North Korea, even though the U.S. Department of Commerce declined a previous UNDP request to export identical items to North Korea.

The reaction of the UNDP to the North Korea scandal has been disturbing. Nearly two months after Mr. Ban called for the audit, on March 5, 2007, the UNDP was forced to suspend its work in North Korea when the North Korean government failed to meet conditions set by the UNDP Executive Board following U.S. demands for an investigation.⁵ The UNDP then yielded to North Korean demands that it pull its staff out and transfer ownership of UNDP assets in North Korea—valued at \$2 million—to the

government.⁶ The UNDP downplayed and distorted the conclusions of the Board of Auditors report by shifting blame to the UNDP Executive Board and falsely claiming that the report concluded that no "UNDP rules or regulations were broken." The UNDP also implied that its leadership took the lead in requiring North Korea to comply with its standard international practice when in reality the Executive Board forced the issue.⁷

No Protection for Whistleblower. Even more disturbing, however, is the vindictive treatment of longtime U.N. and UNDP employee Artjon Shkurtaaj, who blew the whistle on the UNDP's activities in North Korea after trying unsuccessfully to get the organization to change its practices while working there from 2004 to 2006. Mr. Shkurtaaj was abruptly let go by the UNDP in March 2007 after 13 years of service to the U.N. and excellent performance reviews. The UNDP acknowledged that Mr. Shkurtaaj worked on short-term contracts for the UNDP dating back to the 1990s, but stated that the decision to not renew his contract had nothing to do with revealing the irregular practices of the UNDP in North Korea.⁸

After reviewing Mr. Shkurtaaj's case, the new U.N. Ethics Office disagreed with the UNDP's position on his whistleblower status. Former U.N. Secretary-General Kofi Annan established the Ethics Office precisely because the U.N. lacked an effective means of protecting whistleblowers from retaliation. The

1. Letter from Ambassador Mark D. Wallace, United States Representative for United Nations Management and Reform, to Ad Melkert, Associate Administrator, United Nations Development Program, January 16, 2007, at www.opinionjournal.com/editorial/011907letter.pdf.
2. "UNDP Seeks Full Audit of its DPR Korea Work; Ban Ki-moon Orders System Wide Inquiry," UN News Centre, January 19, 2007, at www.un.org/apps/news/story.asp?NewsID=21282&Cr=dprk&Cr1=.
3. United Nations Board of Auditors, "Report of the Board of Auditors on the Special Audit Requested by the ACABQ into the Activities of UNDP, UNFPA, UNOPS and UNICEF in the Democratic People's Republic of Korea," May 31, 2007, at www.undp.org/dprk/docs/DPRK-prelimauditreport-20070601.pdf.
4. Melanie Kirkpatrick, "North Korea Tech Transfer: Why was the U.N. Helping Pyongyang Obtain Militarily Useful Computers and GPS Systems?" *Wall Street Journal*, July 20, 2007; and Editorial, "Kim's U.N. Buddy," *Wall Street Journal*, June 22, 2007, p. A10.
5. Warren Hoge, "U.N. Development Agency Suspends Its Work in North Korea," *The New York Times*, March 6, 2007.
6. Benny Avni, "A U.N. Agency Gives \$2 Million to Kim Jong-Il," *New York Sun*, April 25, 2007, at www.nysun.com/article/53136.
7. United Nations Development Program, "Statement by UNDP regarding the Preliminary Audit Report on UN Operations in DPRK," June 1, 2007, at content.undp.org/go/newsroom/2007/june/dprk-audit-statement-20070601.en.
8. The Associated Press, "U.N. Ex-employee in N Korea Seeks Whistleblower Protection Amid Finances Probe," *International Herald Tribune*, July 6, 2007.

General Assembly agreed to create the Ethics Office in the 2005 World Summit Outcome Document. The Ethics Office was formally established and became operational in January 2006. One of its first duties was to establish an effective whistleblower policy for the U.N. to protect staff “against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations.”⁹

In reviewing Mr. Shkurtaj’s case, the Ethics Office concluded that “the information received by the Ethics Office would have supported a determination that a prima facie case [of retaliation] had been established in this case.”¹⁰ But the UNDP’s senior leadership, consisting of Administrator Kemal Dervis and Associate Administrator Ad Melkert, rejected the conclusion of the Ethics Office and its jurisdiction to investigate the matter, and, through a spokesman, instead announced that it would “arrange an additional and complementary external review to take place under the auspices of the UNDP’s Executive Board.”¹¹ Considering the obfuscation and resistance that has characterized the UNDP through this entire process, there is little reason to have confidence that the UNDP investigation will be unbiased.

In a letter to the Ethics Office, Ambassador Mark Wallace, in reference to the UNDP response, said that it is “the epitome of institutional impunity when a UN agency can outright reject the role of the UN Ethics Office” and reasonably asked how “the very same management that is the subject of your inquiry [can] credibly commission its own investigation.”¹²

Failure of Leadership. In a serious abdication of his central role in promoting an effective, account-

able U.N. system, Secretary–General Ban Ki-Moon appears to have sided with the UNDP rather than his own Ethics Office. At an August 28 press conference, Mr. Ban stated:

It is crucially important for the United Nations system to uphold the highest level of ethical standard and this ethical standard should be implemented across the board, system-wide, in a coherent manner. We have experienced these days some unfortunate situations involving this whistle-blower case. Soon there will be an announcement by the UNDP Board of Governors and chairman about this issue including all the UNDP activities in North Korea, DPRK, and the case of the whistle-blowers issue. They will be examined and reviewed by a recognized, independent auditor. I remember that there was a very important recommendation by world leaders in 2005. There is an outcome document that an ethical code of conduct should be applied system-wide in a coherent manner. At this time, the [UN] Ethics office does not fully enjoy the jurisdiction of all funds and programmes of the United Nations. I would hope that the General Assembly looks at this issue again and gives clear guidelines so that the Ethics Office can have a broader jurisdiction covering funds and programmes, and other agencies.¹³

This statement is disingenuous. When the General Assembly approved the 2005 World Summit Outcome Document, it specifically urged the Secretary–General to “scrupulously apply the existing standards of conduct and develop a system-wide code of ethics for all United Nations personnel.” It

9. Secretary–General’s Bulletin, “Ethics Office: Establishment and Terms of Reference,” United Nations Document ST/SGB/2005/22, December 30, 2005, p. 10, at www.un.org/reform/ethics/index.shtml.
10. Letter from Director Robert Benson of the United Nations Ethics Office to Administrator Kemal Dervis of the United Nations Development Program, August 17, 2007, at www.innerecitypress.com/Dervis17Aug07.pdf.
11. United Nations Development Program, “UNDP Statement on DPRK,” August 21, 2007, at content.undp.org/go/newsroom/2007/august/undp-statement-on-dprk-20070821.en.
12. Letter from Ambassador Mark D. Wallace to Director Robert Benson of the UN Ethics Office, August 21, 2007, at claudiarosett.pajamasmedia.com/documents/Wallace%20to%20Benson%20Letter%2021Aug07.pdf.
13. United Nations Department of Public Information, “Transcript of Press Conference by Secretary–General Ban Ki-Moon at United Nations Headquarters,” United Nations Document SG/SM/11133, August 28, 2007, at www.un.org/News/Press/docs/2007/sgsm11133.doc.htm.

continued, “In this regard, we request the Secretary–General to submit details on an ethics office with independent status...”¹⁴ Thus, the General Assembly clearly envisioned that the ethics office apply the code of ethics “system-wide,” i.e., to all U.N. funds, programs and other entities. The UNDP clearly falls within this group.

Indeed, the argument that the Ethics Office lacks jurisdiction in the matter hangs on the tenuous thread that Mr. Annan did not specifically state that the jurisdiction of the Ethics Office was system-wide in his Bulletin. This is a simple matter to correct. Mr. Ban should issue a new Bulletin clarifying that, based on the urging of the General Assembly in the World Summit Outcome Document, the jurisdiction of the Ethics Office applies to the entire U.N. system, including the UNDP.

For years, the U.N. Secretariat has complained about micromanagement and lack of empowerment of the Secretary–General by the General Assembly to make decisions. But Mr. Ban appears to have ceded some of the authorities of his office in his efforts to protect Mssrs. Dervis and Melkert. In 2003, Mr. Annan issued a Bulletin concerning sexual exploitation and abuse which covers all U.N. staff globally.¹⁵ The 2003 Bulletin itself states that its provisions were promulgated “in consultation with the Executive Heads of separately administered organs and programmes of the United Nations,” and that the Bulletin “shall apply to all staff of the United Nations, including staff of separately administered organs and programmes of the United Nations.” In simple language, this means the policy applies to all U.N. staff, including UNDP staff.

Sexual exploitation and abuse by U.N. staff and peacekeepers is clearly an important matter, but Mr. Annan did not feel it necessary to bring this particular policy to the UNDP Executive Board back in 2003. Instead, the matter was coordinated with the “Executive Heads” of all U.N. agencies.

The UNDP’s executive head at the time was Mr. Mark Malloch Brown.

Based on the legal precedent of the 2003 Bulletin against sexual exploitation and abuse, Mr. Ban should feel well within his authority to simply coordinate the whistleblower matter with Mr. Dervis. After all, Mr. Dervis is accountable to Mr. Ban, who of course is the Chief Administrative Officer of the United Nations. So why does Mr. Annan’s successor feel compelled to defer the question of Ethics Office jurisdiction to the UNDP Executive Board?

Mr. Ban needs to show leadership and managerial skills to resolve this issue. It is clear that until he does, the U.N.’s “flagship development agency” (which has received more than a billion dollars from U.S. taxpayers over the past decade) will continue to operate with impunity and without accountability. The head of the U.N. Ethics Office showed courage by even accepting Mr. Shkurta’s complaint. He should be encouraged to examine each and every complaint from UNDP staffers. In recent days, more UNDP staff have come forward.¹⁶

What Must Be Done. Just last week, the Senate passed an amendment to the Department of State, Foreign Operations, and Related Programs Appropriations bill prohibiting disbursement of U.S. funds to the UNDP until it adopts and implements a whistleblower protection policy. The evident flaws of UNDP in the North Korean scandal make this action prudent. However, Congress and the Administration should simultaneously demand that Secretary–General Ban implement a consistent, system-wide code of ethics subject to investigation by the Ethics Office as called for in the World Summit Outcome Document.

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14. “2005 World Summit Outcome,” United Nations Document A/RES/60/1, October 24, 2005, p. 34, at daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf.

15. Secretary–General’s Bulletin, “Special Measures for Protection from Sexual Exploitation and Sexual Abuse,” United Nations Document ST/SGB/2003/13, October 9, 2003, at daccessdds.un.org/doc/UNDOC/GEN/N03/550/40/PDF/N0355040.pdf.

16. Justin Bergman, “Ex-UN Staffer Makes Whistleblower Claim,” Associated Press, August 7, 2007, at ap.google.com/article/ALeqM5i8QtuzO3D0c0QLUYl-s5e17Ik6-Q.