



Immunity or Impunity? Four Ways to Make the UN More Accountable

By Rasna Warah



As the United Nations General Assembly convenes for its 74th session in New York this month, issues such as climate change, sustainable development, the refugee crisis, and catastrophes confronting an increasingly fractured world will no doubt take centre stage. World leaders will present their countries' achievements and challenges, lobby groups and NGOs will advocate for more funding for this or that cause, and dictators will try and whitewash their failures and human rights abuses while their wives go on shopping sprees in Manhattan. New York's 42nd Street, where the UN's headquarters is located, will be abuzz with foreign dignitaries and diplomats, all jostling for a space to be heard.

Amid all the cacophony of voices, the ones that will be drowned will be those of former UN employees who suffered at the hands of the UN's management when they tried to report wrongdoing within the UN, or those many thousands of victims of UN actions that have yet to have their day in court or to be compensated.

A poor scorecard

The UN's scorecard since its founding 75 years ago has been a mixed bag. Despite considerable achievements in the areas of human development and humanitarian assistance, the UN has failed to

prevent wars and protect human rights in several countries. It has failed to avert genocides and mass human rights violations in Rwanda, Bosnia, Somalia, Iraq, Sudan, Yemen, and Myanmar, among many other countries, even though its stated goal when it was founded after the Second World War was “to save succeeding generations from the scourge of war”..

In addition, the UN Security Council - ostensibly the peacekeeping body of the UN - has not been able to avert or reduce the current conflicts in Syria and Yemen, partly because the five permanent members of the Council (United States of America, Britain, France, Russia and China) have directly or indirectly fuelled, funded, participated in or supported these conflicts, and have not suffered sanctions as a result due to their veto-holding powers in the Council. On the contrary, the conflicts in Syria and Yemen have resulted in a refugee and humanitarian crisis that has not been witnessed since the Second World War, and have further given rise to draconian anti-refugee policies in Europe and elsewhere, thereby negating the very essence of international cooperation upon which the UN was established.

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What's worse, UN employees, including senior managers, have in recent years been mired in corruption scandals and other acts of wrongdoing that have made security more precarious and tarnished the legitimacy and reputation of this intergovernmental organisation.

Furthermore, UN employees implicated in wrongdoing get away scot-free because the UN Charter accords them immunity from prosecution in national courts. What's worse, those who report wrongdoing usually suffer retaliation, despite a UN whistleblower protection policy that was adopted by the UN in 2005, and a revised one that was enacted in January 2017.

UN whistleblowers are thus forced to rely on the UN's internal oversight mechanisms and tribunals to settle disputes, which presents a serious conflict of interest as the UN is both the judge and the defendant in every case. As UN employees cannot approach national courts with their cases, UN whistleblowers and those who suffered as a result of UN employees' actions, have no means of obtaining justice, except through the UN's internal oversight systems, which are heavily flawed and biased. (For more on this, read my book

Moreover, acts of corruption or misuse or diversion of funds within the UN are extremely hard to monitor as there is no independent external auditing mechanism in place that regularly monitors and reviews how the billions of dollars that the UN's various programmes and agencies receive are managed or used; nor are there any effective means to bring the culprits to book. (This level of lack of oversight is not even prevalent in some of the most authoritarian governments in the world.) This means that funds intended for UN programmes and projects can easily end up in the wrong hands, thereby depriving the world's most vulnerable people of much-needed assistance.

The new UN Secretary-General Antonio Guterres has promised to improve transparency and whistleblower protection at the UN. He has also said that he is committed to seriously tackling sexual harassment within the organisation, which apparently has reached crisis levels. An internal [UN survey](#), conducted by Deloitte, whose results were released in January this year, found that a third of UN staff members surveyed had been sexually harassed.

The UN Staff Union further noted that sexual harassment was only one among many abuses of authority that take place at the UN. Results from its [own survey](#) which was conducted in November

2018 before the Deloitte survey, showed that sexual harassment makes up only about 16 per cent of all forms of harassment; 44 per cent of [those surveyed](#) said that they had experienced abuse of authority and 20 per cent felt that they had experienced retaliation after reporting misconduct. The survey also found that a large number of complaints were never investigated; when they were, the complainants were not informed of the outcome of the investigations.

“The results confirm that this has a debilitating effect on staff morale and work performance, and that there are continued barriers to reporting, including fear of retaliation and a perception that the perpetrators, for the most part, enjoy impunity,” admitted Guterres in a letter to UN staff after the survey’s results were revealed.

What hope is there that the UN Secretary-General will succeed in reforming the UN when all his predecessors have failed in this endeavour, and given the UN’s own record in not protecting those who report criminal or unethical practices? How can the UN claim to be a champion of human rights when its own employees have violated these rights in countries where they are stationed, and have not been reprimanded or punished as a result?

Let me give you a few recent examples that illustrate how difficult it is to obtain any kind of accountability or justice in the UN system.

Case 1: No justice for cholera victims in Haiti

In 2010, UN peacekeepers from Nepal were implicated in spreading cholera in Haiti, which killed more than 8,500 people. Despite investigations that showed that the strain of cholera in Haiti matched the one prevalent in Nepal at the time, the UN failed to take responsibility for the deaths. Ironically, Haiti had not experienced a cholera outbreak for decades until the Nepalese peacekeepers arrived.

The [class-action suit](#) filed against the UN by the affected victims and their families was dismissed by a court in the United States in August 2016 on the grounds that the UN and its employees enjoyed immunity from prosecution. Although the then UN Secretary-General, Ban Ki-moon, finally expressed regret about the role of UN peacekeepers in spreading cholera in Haiti, and promised to increase funding to address the cholera epidemic, his apology came too late, and none of the victims have so far received any compensation for their loss or suffering.

Case 2: Shooting the messenger

When Anders Kompass, the director of field operations at the Office of the United Nations High Commissioner for Human Rights, reported to the French authorities that French peacekeepers operating under the authorisation of the UN Security Council in the strife-torn Central African Republic were sexually exploiting boys as young as eight years old, the UN’s senior managers responded by asking Kompass to resign. When he refused to do so, they suspended him for “unauthorized disclosure of confidential information”, and, in a typical case of “shooting the messenger”, they directed their internal investigations towards him rather than towards the peacekeepers who had allegedly abused the children.

Thanks to intense public pressure following media reports about the scandal, UN Secretary-General Ban Ki-moon ordered an [independent inquiry](#) into the child abuse allegations. The inquiry’s report concluded that the UN’s failure to respond to the child abuse allegations amounted to “gross institutional failure”. The report also exonerated Kompass of all charges. However, because his experience with the UN had been so traumatic, Kompass resigned from the UN shortly thereafter.

Meanwhile, the French troops accused of sexually abusing the boys were sent home to face charges.

However, in January 2017, the Paris prosecutor's office ended the investigations into the case, citing "insufficient elements" to press charges.

Case 3: The Iraq Oil-for-Food scandal

In 1991, the UN Security Council imposed sanctions on Iraq after the Iraqi dictator Saddam Hussein invaded Kuwait. The negative humanitarian impact of these sanctions was to be alleviated by the UN's 64-billion-dollar Oil-for-Food Programme, which did not allow Iraq to sell its oil commercially, but allowed it to sell oil to purchase food and medical supplies for the Iraqi people under the UN's watch.

However, what on paper appeared to be a well-coordinated, transparent deal, was in reality one of the biggest scams the world has ever witnessed. Reports by [UN whistleblowers](#) and investigations carried out by the [Volcker Commission](#) in 2004/2005 showed that Saddam used the programme as a money laundering scheme and that more than 2,000 companies and individuals from 66 countries had paid bribes or received kickbacks. Billions of dollars were lost as a result. Interestingly, several UN staff members had tried to alert the UN Secretariat in New York about the theft, but their warnings were not heeded; in fact, the contract of [one of these staff members](#) was not renewed after he sent a complaint to the UN Secretariat.

In the end, the Iraqi dictator was not tried and executed for the crimes he committed under the UN's Oil-for-Food Programme, but for other atrocities he had inflicted on the Iraqi people. And the Volcker Commission's report remained just a list of names of people implicated in the scandal, the majority of whom never faced a judge or a jury.

The immunity from prosecution clause

The main reason why UN officials get away with crimes such as fraud, sexual exploitation or corruption is that [Article 105](#) (Chapter XVI: Miscellaneous Provisions) of the UN Charter accords them immunity from prosecution, not just in the country where they are posted, but also in their own countries. Article 105, paragraph 2 of the UN Charter states that "representatives of the Members of the United Nations and officials of the Organization shall...enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization".

In essence this means that UN officials and representatives are "above the law" in every country. They do not even face the "court of public opinion"; public exposure of UN scandals has rarely led to the voluntary resignation or dismissal of those implicated.

The original intention of inserting the immunity clause in the UN Charter was to prevent governments from unnecessarily detaining or arresting UN officials while they carried out their official duties, especially in war zones and countries with authoritarian regimes. However, as the cases above have shown, this privilege is often abused.

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If UN officials are implicated in a criminal activity, they cannot be arrested or tried in the country where the crime took place, nor can they be repatriated to their own countries to face trial there – unless their immunity is waived by the UN Secretary-General, which rarely happens.

UN Staff Regulation 1.1 (f) states: *“The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of the [UN] Charter are conferred in the interests of the Organization...In any case where an issue arises regarding the application of these privileges and immunities, the staff member shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant instruments.”*

When the Secretary-General decides not to lift the immunity of the implicated UN staff member (which is almost always the case), there is no real avenue of appeal against the Secretary-General’s decision for an adversely affected party. This has allowed all manner of crimes to take place under the blue UN flag.

This kind of diplomatic immunity (i.e. impunity) is not even accorded to diplomats and ambassadors, who, according to the Vienna Convention on Diplomatic Relations, may escape prosecution in the countries where they are posted, but can face prosecution in their home countries if they are implicated in criminal or illegal activities. Paragraph 4 of Article 31 of the Vienna Convention on Diplomatic Relations (1961) states: *“The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.”*

Little, if any, protection for whistleblowers

UN whistleblowers are routinely retaliated against because they are seen as an “existential threat” to the UN’s moral authority and legitimacy. Former UN employees have reported a flawed internal justice and grievance system that is stacked against the victims. Yet whistleblowers are the only “accountability mechanism” that the UN has.

In 2005, in the wake of the Oil-for-Food scandal in Iraq, the UN established a whistleblower protection policy and an Ethics Office in response to the many whistleblower cases that staff felt were not being handled appropriately. One of the Ethics Office’s core mandates is to receive complaints of retaliation from UN whistleblowers. However, most of these complaints never get investigated. In fact, [an analysis of cases](#) received by the UN Ethics Office between 2006 and 2014 conducted by the Government Accountability Project (GAP), a Washington-based watchdog organisation, revealed that the Ethics Office substantiated retaliation in less than 4 percent of the cases it received, which means that the vast majority of UN whistleblowers receive little or no relief or support from this office.

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The UN’s 2005 whistleblower protection policy was [revised and adopted in January 2017](#). However, it offers even less protection to whistleblowers than the 2005 policy as it places the onus of establishing misconduct on the whistleblower, and even threatens to “discipline” the whistleblower if his or her allegations or complaints are found to be false.

Paragraph 2.3 of the revised policy states: *“Making a report or providing information that is intentionally false or misleading constitutes misconduct and may result in disciplinary or other appropriate action.”* This means that if a staff member suspects wrongdoing in his or her office or department, and makes a complaint so that further investigations can be carried out, and then it is determined that no wrongdoing took place (which usually happens as the UN is adept at covering up

wrongdoing), that staff member could face disciplinary action, the threat of which would most likely silence or deter most would-be whistleblowers.

The revised policy is an improvement on the old policy in that it does allow UN whistleblowers to approach an external entity or individual if they believe that the internal justice system has failed them or is unlikely to protect them. However, it severely limits the kinds of information they can divulge and the types of entities and individuals that they can approach. Section 4 (a) (ii) of the revised policy states that an individual can only report misconduct to an external entity or individual if the report does not cause “substantive damage to the Organization’s operations”. So, for instance, if a whistleblower reports to a donor that the donor’s funds are being misused or stolen, the UN could argue that by reporting this to the donor, the whistleblower jeopardised the UN’s operations as the donor might stop funding its projects. What’s more, the UN could “discipline” the whistleblower for spreading “rumours”.

In essence, these conditions constitute a gagging order on whistleblowers – a significant step backwards from the 2005 policy, which provided qualified protection to UN whistleblowers who spoke to outsiders or the media. The revised policy appears to give whistleblowers greater leeway in reporting wrongdoing, but takes away this freedom through stringent conditions, thereby reinforcing the UN’s culture of impunity.

No external oversight on how financial resources are managed or used

The UN’s Office for Internal Oversight Services (OIOS), whose mission is to “promote effective programme management by identifying, reporting on and proposing remedies for problems of waste, fraud, abuse and mismanagement within the Organization”, has had little success in ensuring that those UN staff members implicated in fraud, corruption, abuse of office or other criminal or unethical activities are punished or made to account for their actions. (Yet in many UN Member States, theft of public money is treated as a serious crime where the perpetrators are handed stiff penalties, including the death sentence.) In some cases, senior managers have been known to exert pressure on OIOS to look the other way in cases incriminating them.

One of the reasons why UN employees get away with theft, fraud and other criminal activities is because there is no external monitoring of UN projects and activities and there are no accessible and transparent accounting and auditing systems available for scrutiny to the public or even to donor countries. Thus it is relatively easy for UN staff members to get away with financial mismanagement and misdemeanours; an unscrupulous finance or procurement officer, a project manager or someone in charge of budgets can easily divert, mismanage or misreport UN funds, including donor (taxpayers’) funds, and be opaque about how those funds have been allocated or used.

Moreover, if senior managers are implicated in theft or fraud, they can use their authority to subvert or manipulate the evidence, for example, by threatening whistleblowers with the sack, or coercing junior staff members not to cooperate with an internal investigation.

Despite being among the biggest donors to the UN, the European Union (EU) has abdicated its role of monitoring funds that it gives to the UN. The European Commission (EC), the EU’s administrative arm, has little oversight authority over how the UN spends its money. The EC’s 2003 permits UN organisations to “manage EC contributions in accordance with their own regulations and rules”. In addition, EC’s reporting guidelines for the UN state that “tailor-made reports are not required for specific EU-UN Contribution Agreements” and that “where they meet the EU’s needs, the Commission will rely on the reports produced by the United Nations for other donors”.

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FAFA thus essentially allows the UN to monitor itself. This means that UN agencies monitor, evaluate and audit their own EU-funded programmes and projects, often without recourse to an external auditor or evaluator.

This lack of transparency is perpetuated by the UN's lack of democratic accountability. As the lawyer Matthew Parish, a former UN peacekeeper, stated on his blog, this happens because "there are no disaffected voters to de-select the UN's senior management on the grounds that they are wasting money".

So what can be done to make the UN more accountable? Following are four recommendations to make the UN more efficient, transparent and accountable to its Member States and to the citizens of the world who fund it.

If implemented, these recommendations will go a long way in making the UN more efficient and effective in carrying out its mandate. They will also make the UN less prone to waste, fraud, corruption and mismanagement, which have tarnished this intergovernmental organisation's reputation and negatively impacted the people and countries that depend on the UN for protection.

RECOMMENDATION 1: Define the application of paragraphs 1 and 2 of Article 105 of the UN Charter in order to limit the immunity accorded to UN officials and representatives, including UN peacekeepers.

Article 105 in Chapter XVI of the UN Charter (under Miscellaneous Provisions) states:

- 1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.*
- 2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.*
- 3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.*

While paragraphs 1 and 2 of Article 105 accord privileges and immunity to the UN and its officials and representatives, paragraph 3 offers a window of opportunity to limit this provision, as it allows the UN General Assembly to make recommendations with a view to determining the details of their application. If sufficient pressure is put on the UN, through the General Assembly, Member States and lobby or pressure groups, among other groups interested in UN reform, the "details" of the application of paragraphs 1 and 2 could restrict or redefine the immunity and privileges of UN officials and representatives so that they are in line with the 1961 Vienna Convention on Diplomatic Relations that states that "the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State".

The details of the application of paragraphs 1 and 2 could state that UN staff members implicated in wrongdoing or criminal activities should only be tried in their home countries and that they should

only be referred to a national court or justice system if the external arbitration tribunal (described below) fails to settle their cases or if the tribunal makes a specific recommendation that they be referred to a national court, especially in cases where the suspects are accused of serious crimes. These measures could serve as important deterrents to those who intend to carry out criminal or unethical activities while working for the UN.

RECOMMENDATION 2: Replace the UN Ethics Office with an independent external arbitration tribunal to settle cases involving UN whistleblowers.

The UN Ethics Office has failed in its mandate to protect UN whistleblowers. In fact, the majority of UN whistleblowers receive little or no relief or support from the UN Ethics Office. It is, therefore, recommended that the UN Ethics Office be replaced by an independent external arbitration tribunal that is not funded by the UN and which is not beholden to any one donor or government. This would eliminate issues of conflict of interest that prevent so many UN whistleblower cases from being heard.

The main purpose of this independent external tribunal would be to hear cases involving UN whistleblowers. Such an external arbitration mechanism would also allow those who are not employed by the UN and external entities or individuals who have been adversely affected by the UN's or its personnel's actions to obtain justice outside the UN system.

This is in line with the UK House of Commons report last year that made a recommendation to establish "an independent aid ombudsman to provide the right to appeal, an avenue through which those who have suffered [at the hands of aid organisations] can seek justice by other means". This recommendation, if also applied to the UN, would provide UN employees another channel through which to seek justice.

This independent external tribunal should ideally be funded by private foundations and individuals, philanthropists, non-governmental organisations working towards improving governance, and any other entity or individual interested in improving accountability and transparency at the UN. UN Member States would not be exempt from funding such a tribunal, but their contributions would be voluntary and subject to conditions. Rules would be put in place to ensure that donors do not influence the outcome of any case brought before the tribunal.

RECOMMENDATION 3: Revise the EC's Financial and Administrative Framework Agreement that allows UN organisations to manage EU contributions without any external oversight.

The European Union (EU) is among the biggest donors to the UN's various programmes and projects, and so has a vested interest in ensuring that European taxpayers' money is utilised well and efficiently. However, the European Commission's 2003 Financial and Administrative Framework Agreement (FAFA) permits UN organisations to "manage EC contributions in accordance with their own regulations and rules". In addition, the EC's reporting guidelines for the UN state that "tailor-made reports are not required for specific EU-UN Contribution Agreements" and that "where they meet the EU's needs, the Commission will rely on the reports produced by the United Nations for other donors".

FAFA should be revised so that EU funds donated to UN agencies are subject to regular audits and oversight by external organisations/entities or by the EC's own auditors. Through the EU's example, other big donors to the UN might be encouraged to institute similar external auditing and monitoring mechanisms, thereby ensuring that funds given to the UN are not stolen or mismanaged and are used more efficiently.

RECOMMENDATION 4: Withdraw funding from UN agencies that do not protect whistleblowers or which do not take cases of wrongdoing, including sexual harassment, seriously.

In January 2015, President Barack Obama signed into law a bill – the first of its kind – which forces the US State Department to withdraw 15 percent of US funding from any UN agency that fails to adhere to best practices for whistleblowers. According to the law, the 15 percent US contribution to the UN or any of its agencies will not be obligated until the State Department reports that they are implementing best practices for whistleblower protection, including: protection against retaliation for internal and lawful public disclosures; legal burdens of proof; statutes of limitation for reporting retaliation; access to independent adjudicative bodies, including external arbitration; and results that eliminate the effects of proven retaliation.

However, I believe that this bill does not go far enough in that it does not threaten to withdraw *all* US funding from an agency that does not adhere to best practices for whistleblowers, nor does it guarantee that UN agencies can be trusted to accurately report to the State Department that they are protecting whistleblowers.

Other countries are considering taking even more drastic actions against aid organisations that allow sexual harassment and other wrongdoing to continue. For example, the United Kingdom has threatened to withdraw UK funding from aid and humanitarian organisations that do not take sexual harassment or abuse seriously. If this policy could be applied to the UN, then it might encourage UN agencies to be more diligent about how they treat sexual harassment and sexual abuse cases.

Given the stifling bureaucracy at the UN, and its propensity to cover up scandals that make the organisation look bad, the most effective strategy to curb wrongdoing at the UN could be for donors to withdraw funding from any agency where criminal or unethical practices have been reported and have not been dealt with adequately. There is no bigger incentive in the UN to reform itself than the threat of dwindling resources due to donor disgust.

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