

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE:  
OL OTH 17/2017

9 August 2017

Your Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to your attention information I have received concerning alleged retaliation against a whistle-blower, Ms. Emma Reilly, for alleging a practice by the OHCHR with a potential to place human rights defenders at risk, and failures of the UN Ethics mechanisms to protect her from retaliation.

Ms. Reilly is a Human Rights Officer with the Office of the UN High Commissioner for Human Rights.

According to the information received:

On 11 February 2013, Ms. Reilly and other OHCHR staff supporting the participation of NGOs in the Human Rights Council were instructed to provide information to the Permanent Mission of China in response to its inquiry as to whether 13 named human rights defenders had applied for accreditation to the 22<sup>nd</sup> regular session of the Human Rights Council. Affirming these individuals' applications before they travelled had a clear potential to place human rights defenders at risk of detention and other forms of reprisal, and to have a chilling effect on their freedom of expression. Ms. Reilly reported this instruction to senior OHCHR staff, including the then High Commissioner. Nevertheless, the practice of providing the names of human rights defenders about to travel abroad for the possible purpose of criticizing their government was put in place and continued at least until 2015. No measures were taken to ensure the safety of the human rights defenders prior to the transmission of their names to the Permanent Mission. Ms. Reilly continued to report this and other related actions through the appropriate internal channels. She also reported to the Permanent Missions of the European Union in November 2013, and of Ireland in March 2016, the provision of names to the Chinese delegation.

On 15 July 2016, Ms. Reilly applied to the UN Ethics Office for protection against retaliation suffered due to these disclosures. She alleged retaliation that amounts to the creation of a hostile work environment, including, *inter alia*, blacklisting for promotion or consideration for posts; efforts to elicit from Ms. Reilly's former supervisors and from NGOs complaints against her; inclusion of false and prejudicial information in her performance evaluation without any

attempt to verify facts; exclusion from meetings; and spreading of false rumours among senior managers. Ms. Reilly's health has suffered as a result of this retaliation. Despite recommendations issued since December 2014 from the UN ombudsman, medical services, staff counsellor, and Ms. Reilly's own doctor, OHCHR has refused to effect Ms. Reilly's transfer to a position without regular contact with or supervision by the managers whose alleged wrongdoing she disclosed.

The UN Ethics Office responded to Ms. Reilly on 7 October 2016, concluding that the provision of names of human rights defenders to the Permanent Mission of China violated no UN rule and finding no link between any of Ms. Reilly's protected reports and the adverse actions of OHCHR. Following a telephone call of 13 October 2016, the Ethics Office agreed to re-open Ms. Reilly's case due to a number of errors and material omissions in its consideration. In response to Ms. Reilly's requests for a deadline for consideration of her case, she was informed that no time limit applies to re-opened cases.

Ms. Reilly appears caught in a procedural cul-de-sac. Only after the Ethics Office finds in its preliminary review that a disclosure was protected and has apparently caused reprisal, is the staff member entitled to interim protections from ongoing retaliation. In Ms. Reilly's case, the Ethics Office has not made such a finding but has admitted procedural errors that entitle her to a re-opened review. Because there is no preliminary finding of apparent retaliation, however, Ms. Reilly has been denied interim protection measures. In brief, the Ethics Office has conducted its preliminary review in such an apparently anomalous fashion that it has been obliged to repeat the exercise, leaving Ms. Reilly unprotected from alleged ongoing retaliation for nearly one year.

On 19 January 2017, Ms. Reilly was contacted by a journalist who had obtained copies of Ethics Office documents related to her case. Ms. Reilly immediately reported this to both OHCHR and the Ethics Office, and requested that Office of Internal Oversight Services (OIOS) open an investigation. Ms. Reilly agreed to an offer of the Director of the Ethics Office to request her transfer to prevent further retaliation while her case was under consideration. On 26 January 2017, the Ethics Office recused itself from the case due to an alleged conflict of interest following a conversation between the Director of the Ethics Office and a senior OHCHR staff member, in which the OHCHR staff member mentioned that Ms. Reilly had stated the leak appeared to be from the Ethics Office. OIOS referred responsibility for investigating the leak to the Ethics Office.

On 30 January 2017, the Ethics Office referred Ms. Reilly's case, which, by that time, had been under consideration for 199 days, to the Alternate Chair of the Ethics Panel of the United Nations, under section 7.7 of the new whistle-blower protection policy (ST/SGB/2017/2). This policy had not been in force at the time Ms. Reilly made her complaint. The Alternate Chair indicated that time limits would start again for her *de novo* review, and later that time limits in the new

policy were mere guidelines. On 11 April 2017, the Alternate Chair confirmed the findings of the Ethics Office, apparently without considering the questions posed by Ms. Reilly that had led to the re-opening of her case. On 28 April 2017, Ms. Reilly accepted the offer of the Alternate Chair to refer her case for review by another Ethics Officer, while asking for details of how this person would be chosen, given that the new policy names only the Alternate Chair as competent to conduct such a review (section 9.1). On 26 June 2017, having received no response during her rapid deployment to Mauritania, Ms. Reilly followed up with the Alternate Chair, who claimed that due to a letter sent by the Government Accountability Project to you on Ms. Reilly's behalf, "all lower actions had to cease. The Secretary-General is the ultimate chief ethics officer, and has authority to direct our actions on these matters."

On 2 February 2017, following the leak of Ethics Office documents, OHCHR issued a press release outlining the practice allegedly applied to requests from China for the names of human rights defenders, which included an allegation that Ms. Reilly's complaints were found to be unsubstantiated in two separate investigations. The investigations referenced appear to be an investigation of harassment, which Ms. Reilly is currently appealing, and an OIOS investigation of an OHCHR staff member accepting financial benefit from the Moroccan delegation, which was in fact substantiated. The High Commissioner and other senior officials, both in OHCHR and in your office, allegedly have refused or ignored Ms. Reilly's requests to meet to discuss either the OHCHR press release or other retaliatory actions taken against her. Ms. Reilly's requested that the press release be retracted or corrected.

I express serious concern at the allegations of retaliation against Ms. Reilly, which, if true, would appear to be directly related to her whistle-blowing activities and based on a practice and a policy that falls short of international standards on whistle-blower protection. I also express concern at the lack of adequate protection measures for Ms. Reilly, as well as the lack of sufficient independence of the Ethics Office and the Ethics Panel under the existing policy. Moreover, I am concerned that the lack of protection for whistle-blowers in this case may have a deterrent effect on UN staff who in the future seek to disclose wrongdoing in the organization, and which in turn may undermine the organization and its work as a whole.

I would like to underline that whistle-blower protection rests upon the core right to freedom of expression. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), guarantees the right to seek, receive and impart information and ideas of all kinds, and through any media regardless of frontiers. Whistle-blowers enjoy the right to impart information, but their legal protection when publicly disclosing information rests especially on the public's right to receive it. For an international organization, such as the United Nations, these rights are of no less importance, in particular given its role in the promotion of human rights and the lack of access of the organization's whistle-blowers to any other formal justice system (see my report to the General Assembly in 2015, A/70/361).

In this regard, I welcome the Secretary-General's prioritization of whistle-blower protection within the United Nations and the adopted policy contained in document ST/SGB/2017/2 which highlights the importance of openness, fairness and transparency for the proper functioning of the United Nations. However, I am concerned that the allegations raised in the above case suggest that the existing policy within the OHCHR and the standards under the new policy may fall short of international standards on whistle-blower protection. In this connection, I would like to share the following observations:

- The existing policy should include the introduction of interim protection measures regardless of the preliminary findings of the Ethics Office. In Ms. Reilly's case, the lack of such interim protection measures has resulted in allegations of ongoing retaliation against her for at least one year. UN staff should be protected from retaliation when they make public disclosures to the media, civil society or Governments (A/70/361, para.57).
- In order for the investigations into the allegations of wrongdoing and retaliation to be effective, time limits in the new policy (ST/SGB/2017/2) should be interpreted as rules and not merely as guidelines.
- While well-intentioned, the existing policy will lack real independence and effectiveness to protect whistle-blowers as long as internal reporting channels require implementing actions by individuals in the organization's management. The Ethics Office involves only recommendatory powers, and it can therefore not equal a formal justice mechanism that includes the power to remove persons from their post and personal liability (A/70/361, para. 69).

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the ongoing process of review of the UN policy on protection against retaliation, in particular the time limits that will apply for each stage of review, and the redress available to applicants where these limits or other procedural rules are not respected.
3. Please provide information on measures taken to ensure the independence of Ethics Officers, and the reporting lines of Ethics Officers within the UN system.

4. Please provide information on the process applied to applications for protection against retaliation that were under consideration by the Ethics Office at the time of adoption of the new policy.
5. Please provide the basis for the decision to issue a press release containing prejudicial information about a UN staff member while her disclosures remained under consideration.

Given the extraordinary circumstances surrounding this case – the preliminary review was pending when SGB/2005/21 was abolished and SGB/2017/2 was adopted – I specifically request that interim protection measures be extended to Ms. Reilly at present and that they remain in place until such time as her complaint is resolved.

I would appreciate receiving a response within 60 days.

Your Excellency's response will be made available in a report to be presented to the Human Rights Council for its consideration. A copy of this letter will be shared with the Office of the High Commissioner for Human Rights. Please accept, Excellency, the assurances of my highest consideration.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression