



GOVERNMENT ACCOUNTABILITY PROJECT

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United Nations Secretary General Antonio Guterres
760 United Nations Plaza
New York 10017

Dear Mr. Secretary General,

I write to you on behalf of Emma Reilly, a United Nations staff member in the Office of the High Commissioner for Human Rights (OHCHR), whom the Government Accountability Project (GAP) represents for purposes of securing for her protection from the retaliation she now suffers as the result of disclosing misconduct.

Ms. Reilly, a UN whistleblower who first appealed to the Ethics Office for protection from retaliation over nine months ago, has been denied both fairness and due process. The Ethics Office's first rejection of her request was a 27-page, single-space exercise in tortuous bureaucratic sophistry that left Ms. Reilly exposed to reprisal. The second rejection of her request prolonged the ordeal, and confused the process by applying aspects of different anti-retaliation policies in an ad hoc manner.

Here, in summary, is what happened.

Among other things, Ms. Reilly reported in 2013 that the Chief of the Human Rights Council Branch instructed her and her colleagues to provide the delegation of China with the names of dissidents who sought accreditation to attend the Human Rights Council (HRC) sessions *before* they traveled to Geneva. Ms. Reilly explained to him and to others her reasons for objecting to this practice:

- 1) The government of China has a history of human rights abuse;
- 2) Identifying dissidents to a repressive government endangered them and their families or associates;¹
- 3) The timing of the identification was crucial. Names might be released after the dissidents were safely outside of China, or after confirmation that the identification would not place their families and associates in danger, but not before.

After Ms. Reilly began to experience reprisal, she appealed to the Ethics Office at the Secretariat in New York for protection. The Ethics Office and its subsequent iteration, the Alternate Ethics Panel Chair, replied to Ms. Reilly that no rule or regulation existed to prohibit divulging the names of dissidents planning to attend UN HRC sessions before they traveled. Therefore, she had not reported misconduct

¹ Of particular concern was Rebiya Kadeer, the President of the World Uyghur Congress, and now a resident of the United States. Ms. Kadeer's sons were imprisoned at the time that Ms. Reilly was instructed to inform the Chinese delegation that she (Ms. Kadeer) had applied for accreditation to speak and participate in a session of the Human Rights Council in Geneva.

and was not entitled to protection from reprisal. Nor had she presented evidence that she had a reasonable belief that it did.²

This reply is equivalent to saying that, at the UN, there is no specific regulation that prohibits a staff member from shoving a colleague out a window. Therefore, should one staff member report another for doing this, he or she has not reported misconduct. Because a witness to the defenestration is not interviewed, there does not exist any evidence that the whistleblower believed that the action merits investigation and discipline.

Like most workplaces, at the UN there is no regulation against pushing people out windows because one assumes that staff members have enough sense and integrity to avoid recklessly endangering others. There may be categories of prohibited conduct that allude to endangering others as undesirable, but the UN Member States did not explicitly forbid acts that most humans would realize could cause injury or death. Instead, they relied on guiding principles of action and behavior, *which they identified*, as we will do below.

Surely, Ethics officials must be familiar with these guiding principles.

Emma Reilly's Disclosures

As a whistleblower, Ms. Reilly's disclosures of wrongdoing fall into two categories: 1) reports of the violations of guiding principles of human rights monitoring (specifically -- Confidentiality and Do-No-Harm) and 2) violations of staff rules regarding the acceptance of gratuities from member states, and fairness in recruitment. Because the dangers Ms. Reilly reported for human rights defenders from a UN Member State are the most significant concern, both to her and to the United Nations, we will address this disclosure first.

On 13 or 14 February, 2013, Ms. Reilly, a P-3 Human Rights Officer (HRO) at the Office of the High Commissioner for Human Rights (OHCHR), disclosed the intention of the Chief of her Branch, Eric Tistounet, to reveal to the Chinese delegation the names of its nationals who, as human rights defenders (HRDs) seeking accreditation for upcoming HRC sessions, might criticize their government in a public forum abroad. Ms. Reilly believed that this practice would endanger the HRDs.

Unfortunately, events later proved her to be correct.³

As an HRO, Ms. Reilly had been trained in the principles set out by the United Nations to guide actions in a field where active HRDs often face imminent danger. The OHCHR training manual instructs HROs on

² We note that neither iteration of the preliminary review included an interview with [REDACTED] the senior official whom Ms. Reilly cited as a witness to her belief that the release of names of dissidents prior to their departure from China constituted misconduct under the Do-No-Harm standard of human right smonitoring.

³ In September, 2013, an HRD was detained (at the Beijing airport) as she was about to travel to Geneva for the purpose of advocating for human rights. She died in detention six months later. While Ms. Reilly does not attribute this incident to actions taken by Mr. Tistounet, the fact that it happened illustrates the danger of giving the government in question information that could lead to such an incident.

the cautionary principles of confidentiality and do-no-harm, which should be applied to guide judgments made in unpredictable and/or dangerous settings. Ms. Reilly believed that these principles prohibited the disclosure (prior to an HRC session) to a Member State of the names of HRDs seeking accreditation for participation in that session.

Clearly, disclosure of the names of government critics to the government they might be about to denounce violated both principles. We argue that these principles are elements of the United Nations Charter, which, in Art. 1, paragraph 3, asserts that a purpose of the United Nations is:

*To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in **promoting and encouraging respect for human rights and for fundamental freedoms for all...**(emphasis added)*

Staff members of the UN are obliged to report a failure to uphold the United Nations Charter (SGB/2005/21 Sec. 1, para 1.1). By refusing to protect the confidentiality of cooperating persons, Mr. Tistounet was quite possibly “doing harm” by exposing HRDs to repression that they might otherwise avoid. Moreover, staff members who report such a failure are entitled to protection from retaliation (SGB/2005/21, Sec. 2, para. 2.1(a))

Emma Reilly believed that Eric Tistounet had violated the principle that HROs are trained to apply when he instructed her and her colleagues to provide the names of Chinese HRDs to the Chinese delegation prior to their travel to Geneva to participate in HRC sessions. Thus, she believed that this action violated the spirit of the United Nations Charter. When she discussed this practice in a 2015 e-mail to Mohammad Ali Ansour in the Office of the High Commissioner, after being unable to change it for two years, she wrote: “Eric instructed that this information be provided to the delegation prior to every session, despite objections from both me and [REDACTED] that this violated the fundamental principle that we should do no harm.”

To qualify for protection from retaliation under either SGB/2005/21 or SGB/2017/2, the staff member making a disclosure must have a reasonable belief that the disclosure reveals misconduct.⁴ The facts that [REDACTED] a P-5 Chief of the Civil Society Section, agreed with Ms. Reilly’s assessment of the danger, and that Ms. Reilly volunteered [REDACTED] as a witness, validate Ms. Reilly’s claim that her disclosure was based on her “reasonable belief” that Mr. Tistounet’s instruction constituted misconduct as well as on evidence to that effect.

Instructions included in the OHCHR *Manual on Human Rights Monitoring*, Chapter 14 “Protection of Victims, Witnesses and Other Cooperating Persons” are quite explicit on this point.⁵ In this chapter of the training manual, the two principles articulated first are:

1. Respect for confidentiality;

⁴ SGB/2005/21, Section 2, 2.1(a) and SGB/2017/2. Section 2, 2.1(a) The referenced paragraph reads in relevant part: “The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred;”

⁵ United Nations Human Rights. Office of the High Commissioner. <http://www.ohchr.org/Documents/Publications/Chapter14-56pp.pdf>
Accessed April 19, 2017. P.

2. Do no harm.

OHCHR provides its staff members with rigorous training and guidance, using its encyclopedic *Manual on Human Rights Monitoring*. Chapter 14 of the Manual recognizes that “There is no single correct approach to protection,”⁶ and therefore sets out **guiding principles** for HROs, among which is the principle of Do-No-Harm:

*To better protect a cooperating person at risk, HROs [Human Rights Officers] should focus their efforts on decreasing the level of risk by, on the one hand, **reducing the threat and the vulnerability factors and, on the other, increasing protection capacities**. HROs should aim at strengthening the position of the person at risk and weakening that of the source of the threat (emphasis added).*⁷

The facts of Ms. Reilly’s disclosure show that Mr. Tistounet failed to observe this principle and thus his actions were in violation of the spirit of the UN Charter. Mr. Tistounet did the very opposite of the actions implied by the UN Charter and set out in the training manual: his actions increased the risk and vulnerability factors to which the HRDs named by him were subject while decreasing protection capacities. Because he provided an early warning to the Chinese government, he placed cooperating persons at risk in a place and at a time when the United Nations was unable to protect them.

Mr. Tistounet’s argument that the HRDs would attend a public meeting, at which time their identities would be known anyway, is disingenuous. Any reasonable person knows that when the HRDs are outside of China and are present at a session of the HRC, their vulnerability to repression at the hands of the Chinese government, and that of their families and associates, is much diminished. By the same token, the UN’s ability to protect them is increased.

In short, we argue in the present document that Ms. Reilly had a reasonable belief that her disclosure involved misconduct by Mr. Tistounet, based on the principles set out in the United Nations Charter and the HROs’ Training Manual.

The training manual recognizes that the protection of human rights requires, good sense, rapid decision-making, and flexibility. The manual therefore articulates guiding principles rather than rigid rules. When a witness is in danger, the environment may change quickly and HROs must react appropriately. The stakes are high; they may be life and death.

One would assume that the same guiding principles apply to Ethics Officers. Those officials entrusted with responsibility for determining what is right must have good judgment, if they are to be effective.

Neither preliminary review of Ms. Reilly’s appeal for protection demonstrated this quality. Ms. Armstrong went so far as to apply mechanically to Ms. Reilly’s case a conclusion reached by an external review in a different case **two years after** Ms. Reilly made her first disclosure. The conclusions applied were those reached (following extensive internal debate and contrary to the publicly stated opinion of the High Commissioner) in the case of Anders Kompass, who reported **to extra-territorial law**

⁶ <http://www.ohchr.org/Documents/Publications/Chapter14-56pp.pdf> A. Key Concepts. Accessed April 21, 2017.

⁷ Ibid. pp. 7-8.

enforcement the names of victims of ongoing sexual abuse for the purpose of halting the abuse. The conclusion that in this setting the release of names was appropriate was used to justify Mr. Tistounet's release of the names of potential victims **to potential abusers**. In Ms. Armstrong's judgment, the presence or absence of threat is irrelevant to the decision to identify witnesses.

We must enter a procedural note here: The memo written by Elia Armstrong to Emma Reilly, and reaffirmed by Katrina Campbell, asserting that the provision of HRDs' names under the circumstances described does not constitute misconduct, in itself constitutes an illogical and bureaucratic response to a matter of life and death in which sound judgment is called for.

In replying to Ms. Reilly, both Ms. Armstrong and Ms. Campbell also assess her disclosures of the provision of gratuities to Mr. Tistounet by a Member State and an irregular recruitment exercise. Both Ethics Officers find that these disclosures represent protected activity. Nonetheless, both conclude that the manipulation of a post to which Ms. Reilly had applied after she made her disclosures was not retaliatory. Ms. Campbell's analysis, however, shows clearly that the recruitment process for the post in question requires investigation. Nonetheless, she makes several assumptions about the process and does not consider the questions she herself raises, thus denying Ms. Reilly an investigation of actions that may be retaliatory.

Assumptions

1. The status of 'available funds' is not the same as 'approved funds.'
2. Craig Mokhiber was accurate in his account about administrative issues affecting the post in question.
3. Both Emma Reilly and ██████████ were mistaken in their beliefs about these same issues.
4. Craig Mokhiber would not have included Flavia Pansieri in a communication with Emma Reilly, if his actions were retaliatory (this assumption is especially peculiar, given what we now know about Ms. Pansieri's role in the reprisal visited upon Anders Kompass. Even she acknowledges that she was negligent, if not culpable).
5. Nigol Vanian's search for negative information about Emma Reilly was within the parameters of his job duties and was therefore not retaliatory (This argument is simply irrelevant. Many – if not most – retaliatory administrative actions taken against a whistleblower are taken under the specified authorities of the retaliator: non-renewal of contract, demotion, summary transfer, removal of duties, etc.).

These assumptions are dubious, at best, and require investigation before being accepted. Indeed, a fair investigation could easily validate or disprove three of them. The questions one would expect an investigation to clarify are:

1. What were the decisions made concerning the availability of funds and the approval of funds for a post for which Ms. Reilly was the preferred candidate? When were these decisions made, why, and by whom?
2. Was the person who made the decision aware of Ms. Reilly's previous disclosures or in a position to be influenced by someone who was?
3. Was Mr. Mokhiber's account of these decisions accurate?
4. Can the Secretariat prove (by clear and convincing evidence) that Mr. Vanian's search for negative information about Ms. Reilly constituted an action he would have taken absent her disclosures of misconduct?

The submission for investigation of the questions above would have been a legitimate response to Ms. Reilly's request for protection from retaliation. Unfortunately for her, for the OHCHR and for the United Nations, this was not what happened.

Add to these problems, Ms. Campbell's latitude in deciding which aspects of which Anti-Retaliation policy apply to Ms. Reilly. Ms. Campbell adopts the procedural elements of the new policy (SGB/2017/2) and the substantive elements of the former policy (SGB/2005/21), thus, in effect, applying a unilaterally devised third policy neither recognized nor signed by the Secretary General. While in principle, we do not object to this practical step, it does seem to us that the Ethics Office assumes procedural latitude for itself in a situation where regulations are silent, yet does not extend to Ms. Reilly the same latitude when she applied her best judgment to a dangerous situation.

At the conclusion of this second assessment of her complaint, Ms. Reilly was offered a third review by a member of the UN Ethics Panel (excluding both the Chair and the Alternate Chair because they have participated in previous reviews). It is not clear, however, under what authority or according to what regulations, this review would take place. It is apparent, however, that such an exercise would be hard-pressed to find room for independence from the previous reviews. The circumstance surrounding such an exercise, as described by Ms. Campbell, even as she offers it, speak for themselves: "As per Section 9.1 of the New Retaliation policy, you may request that your complaint be reviewed further by writing to the Alternate Chair of the EPUN. In this case, since I am the Alternate Chair, I would recuse myself from further involvement, and the remaining members of the EPUN (minus Elia Armstrong) will decide who will review the matter instead."

The process of reviewing Ms. Reilly's request for protection, submitted to the Ethics Office of the Secretariat in July, 2016, has been repeatedly mishandled, resulting in a denial of due process and protection, even as you, Mr. Secretary General, approved a new whistleblower protection policy and publicly asserted your support for whistleblowers.

We can establish by producing an audio recording of a phonecall, if needed, that Ms. Armstrong agreed to re-open the preliminary review of Ms. Reilly's case because of errors of fact and omission. Subsequently, however, her office apparently released information about the case improperly and, declaring a conflict of interest in continuing her review, Ms. Armstrong shifted responsibility for the case to Ms. Campbell at UNFPA. In taking up this assignment, Ms. Campbell applied the procedural authority of SGB/2017/2 that allows the Ethics Office to declare a conflict of interest and reassign the review. We argue that now – given the exposure of the dispute and the political sensitivities surrounding it – the entire EPUN is affected by a perceived conflict of interest, at the very least, if not a material one.

The Ethics Office/Ethics Panel and Hostility to Whistleblowers

Further, in her memo, Ms. Campbell added her personal opinion about the ways in which Ms. Reilly became an irritation to senior officials at the OHCHR and in the oversight offices.

Since 2013, you lodged at least 10 different complaints with several different officials about, essentially, three matters. A staff member is, of course, obligated by Staff Regulations and Staff Rules to report misconduct to the organization via the proper channels. However, the decision

whether to investigate and take corrective action is not within the authority of the staff member [emphasis in original]. It is quite possible that officials at OHCHR and/or OIOS decided not to proceed with an investigation of certain complaints for very good reasons of which they decided not to inform you because they were not obligated to do so. It would have been better to have lodged your complaint in the hands of the proper authority and then have left the matter in the hands of that authority to decide on next steps.⁸

This opinion ignores the uncomfortable reality that the practice of endangering HRDs in China continued, that Ms. Reilly's concerns had proven to be justified following the tragic detention and death of a HRD, and that Ms. Reilly continued - and continues - to suffer retaliation as a result of her reports.

Therefore, Ms. Campbell's recommendation begs the question: It would have been better for whom if Ms. Reilly simply made her disclosures, and then remained silent? Certainly not for the human rights defenders who were identified to a repressive government prior to every session of the HRC for two years. And not for the taxpayers of donor countries, who pay to employ ethical staff members at the United Nations.

Absent the reality of retaliation, it would have been better for Ms. Reilly to have adopted Ms. Campbell's recommended course of non-action. She would not have put her career at risk in order to protect human rights defenders in China. And it might have been better in the short term for the OHCHR because China's HRDs would not have known for some time that their government was receiving advance notice of their travel and public speaking plans. It might also have been better for OHCHR because the Chinese PM would not have been angered by the dispute, a concern that Mr. Tistounet expressed. It would also have been better for Mr. Tistounet, himself, whose conduct would not have been repeatedly exposed as non-compliant with the UN Charter and the guiding principles of human rights monitoring. Finally, it would have been better for the Ethics Office, which would not have been obliged to elaborate an arcane justification for denying Ms. Reilly protection from retaliation because, according to its analysis, exposing human rights defenders to detention, injury and death is not misconduct at the United Nations.

Requests for Redress

Ms. Reilly is a committed and capable Human Rights Officer, who has been honored to work at the OHCHR and would like to continue there. On her behalf, we therefore make three requests.

1. An investigation of her retaliation complaint should take place. As pointed out above, Ms. Reilly's complaint is quite specific, and could be expediently resolved;
2. Ms. Reilly requires a new reporting structure that does not expose her to retaliatory intent as administrative decisions are made regarding the terms of her employment;
3. Ms. Reilly's selection for a post at the equivalent level to the post that was transferred to New York should be finalized her retention for at least two years assured at the United Nations.

⁸ Katrina Campbell, Memo to Emma Reilly, April 10, 2017, p. 5.

Should the Secretariat wish to address, at this point, only the dispute concerning the preliminary review of Ms. Reilly's retaliation complaint, we respectfully request access to external arbitration for her complaint, to be managed by an independent and external professional arbitrator, chosen jointly by the Secretariat and Ms. Reilly.

With assurances of high regard,



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