


# MEMORANDUM

United Nations Children's Fund  
Three United Nations Plaza  
New York, New York 10017

Telephone 212 326 7000  
Facsimile 212 888 7465  
212 888 7454  
www.unicef.org

To: Katrina Campbell  
Ethics Advisor, UN Population Fund  
Former Alternate Chair  
Ethics Panel of the United Nations (EPUN)

27 February 2018

From: Ursula Wellen   
Principal Adviser, Ethics  
Alternate Chair, Ethics Panel of the United Nations

Subject: Request for Protection against Retaliation by Ms. Emma Reilly:  
Outcome of the independent review by the Alternate Chair of the Ethics Panel of the United Nations

Please find attached for your attention and further action the outcome of the independent review of the determination by the UN Ethics Office regarding the Request for Protection against Retaliation by Ms. Emma Reilly. I have completed this independent review in my capacity as the elected Alternate Chair of the Ethics Panel of the United Nations.

Please let me know if you have any questions. I may be reached directly on 

Enclosure: Outcome of independent review (6 pages)

unite for  
children

unicef 

**Outcome of the independent review**  
**by the Alternate Chair of the Ethics Panel of the United Nations**  
**of the determination by the UN Ethics Office regarding**  
**the Request for Protection against Retaliation by Ms. Emma Reilly**

**I. Recommendations**

**The Secretary-General on 2 April 2018 instructed OHCHR to implement these recommendations.**  
**None of them were implemented.**

1. I recommend, as Alternate Chair of the Ethics Panel of the United Nations acting under Section 9.2 of ST/SGB/2017/12, that the UN Ethics Office reach out to the High Commissioner for Human Rights and to Ms. Emma Reilly (“the Complainant”), with a view for them to agree terms of a comprehensive *ad hoc* mediation, supported by the Office of the Ombudsman or by any other informal mechanism of conflict resolution in the Organization, that the High Commissioner for Human Rights and the Complainant may be able to agree on.

2. Since the Complainant informed me as the Alternate Chair of the Ethics Panel that there is a pending case before the United Nations Dispute Tribunal (“UNDT”), apparently related to some of the facts that were also at issue in her Request for Protection against Retaliation, such a comprehensive *ad hoc* mediation should also suspend the pending UNDT case and, if successful, include a full and final settlement.

**The UN Ethics Office refused to act on this recommendation or refer it for action.**

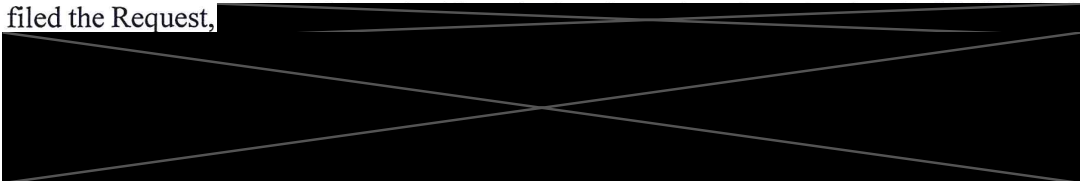
3. I further recommend, as Alternate Chair of the Ethics Panel, that the UN Ethics Office reach out to the High Commissioner for Human Rights and to the Complainant, with a view for them to agree terms of a temporary reassignment of the Complainant within or outside her office, pending completion of such a comprehensive *ad hoc* mediation.

4. Finally, I recommend as Alternate Chair of the Ethics Panel of the United Nations that the UN Ethics Office advise the Office of the Secretary-General of this outcome of the independent review.

5. These recommendations are based on the mandate given to the Alternate Chair of the Ethics Panel under Section 9.2 and to the UN Ethics Office under Sections 7.5 and 7.6 of ST/SGB/2017/2, as well as their implied authority to provide good offices.

**II. Background, Procedural History, and Standard of Review**

6. The present Request for Protection against Retaliation is politically highly charged, factually complex, and procedurally prolonged and protracted. Since the Complainant has filed the Request,



7. The procedural complexity is in part attributable to the fact that there was a change in the applicable legal regime while the present Request for Protection against Retaliation was pending: up until 20 January 2017, the relevant policy was ST/SGB/2005/21 (“2005 Retaliation Policy”) and from 20 January 2017, ST/SGB/2017/12 (“2017 Retaliation Policy”) came into effect.
8. The 2017 Retaliation Policy envisages for the first time (a) a recusal by the UN Ethics Office when the Director of the UN Ethics Office is of the view that there is an actual or potential conflict of interest, and (b) an independent review mechanism, through review by the Alternate EPUN Chair. In the present instance, both of these new mechanisms came into play since the Complainant has availed herself of the independent review mechanism.
9. Procedural complexity is also attributable to the fact that the Complaint continued to provide additional material for review and consideration by the Alternate EPUN Chair throughout the independent review process, which required balancing due process requirements with the need for closure and expeditious treatment.
10. The independent review was assigned to me on 1 August 2017, following completion of the preliminary review by the UNFPA Ethics Adviser (who was the Alternate Chair of the Ethics Panel until 1 October 2017 and therefore took over during the preliminary review phase, following a recusal by the UN Ethics Office based on Section 7.7 of the 2017 Retaliation Policy). When the independent review was assigned to me, I was not yet the Alternate Chair of the Ethics Panel, but the ‘Designate’ Alternate Chair of the Ethics Panel: Following an election in September 2016, the UNFPA Ethics Adviser became the Alternate Chair of the Ethics Panel for the period from 1 October 2016 to 30 September 2017 and I – as the Principal Adviser, Ethics within UNICEF– unofficially became the ‘Designate’ Alternate Chair. I officially started my tenure as the Alternate Chair of the Ethics Panel on 1 October 2017.
11. The present independent review is based on the following material: (a) several telephone conversations with the Complainant, (b) several telephone conversations with Ms. Beatrice Edwards of the Government Accountability Project who acted as the Complainant’s representative while direct contact with her was not possible due to health reasons, and (c) the review of three sets of files – one set of hard copy files provided by the UN Ethics Office, another set of hard copy files provided by the UNFPA Ethics Adviser, and a third set of files submitted by the Complainant in electronic format.
12. Based on my understanding of the object and purpose of the independent review under Section 9.2 of the 2017 Retaliation Policy, I have refrained from actively requesting any additional records or documents and from contacting specific offices or staff members. This is because I consider that the object and purpose of the independent review is to establish whether the preliminary review by the UN Ethics Office was procedurally and

The policy is clear that “The alternate Chair of the Ethics Panel will ... undertake his or her own independent review of the matter.” Ms Wellen decided to ignore the policy.

substantively sound and led to reasonable conclusions. It is my interpretation therefore that the scope of the independent review is ultimately limited to a desk top review and does not extend to a *de novo* investigation. However, at the request of the Complainant, I have accepted to review and consider additional records or documents that the Complainant wished to submit. My decision to accept reviewing and considering these additional records and documents was based on reasons of due process, in light of the UN Ethics Office’s recusal.

### III. Analysis and Findings of the Independent Review

11. From the material on which this independent review is based, it is clear that there were at least four sets of events that the Complainant considered to be a protected activity under the policy on protection against retaliation that applied when she filed her Request for Protection against Retaliation on 15 July 2016: (a) reports regarding information sharing with a member state; (b) reports regarding allegations of harassment, (c) reports regarding acceptance of financial benefits from a member delegation, and (d) reports regarding improper selection processes. Except for (a), it appears that the UN Ethics Office and the UNFPA Ethics Adviser – finalizing the Preliminary Review subsequent to the recusal of the UN Ethics Office – accepted that the others were protected activities.

#### **First key question: were reports regarding information sharing with a member state a Protected Activity?**

There is no evidence for this. It appears to be based on OHCHR’s changing public story.

12. The first key question in this matter is this: did the Complainant’s reports regarding information sharing with a member state constitute a protected activity under the 2005 Retaliation Policy? These reports referred to a practice by OHCHR of confirming the participation of named individuals to sessions of the Human Rights Council with the Permanent Mission of one member state (State X) – a practice which was discontinued later on.
13. I have ultimately concluded that these reports by the Complainant related to a policy difference, rather than a reporting of misconduct.
14. The 2005 Retaliation Policy defines protected activity as follows: “Reports [of] the failure of one or more staff members to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, the Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service, including any request or instruction from any staff member to violate the above-mentioned regulations, rules or standards. In order to receive protection, the report should be made as soon as possible and not later than six years after the individual becomes aware of the misconduct. The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred.” [emphasis added].

15. In its initial analysis, the UN Ethics Office dedicated a considerable amount of time and effort to investigating and reviewing the factual circumstances. On that basis, the UN Ethics Office concluded that the factual circumstances did not seem to indicate that misconduct had occurred. Therefore, in its analysis, *“the Ethics Office [was] unable to conclude that the information or evidence [the Complainant] submitted supports a reasonable belief that confirming the attendance to a session of the Human Rights Council of a named individuals to the Permanent Mission of State X constituted misconduct.”* (see Para. 24 of the Memorandum dated 7 October 2016 from the Director of the UN Ethics Office to the Complainant). It also put emphasis on the fact that the Complainant was not able to identify the specific rule that the information sharing practice would have violated. The UNFPA Ethics Adviser, acting as the then Alternate EPUN Chair, in turn emphasized that the conduct was *“well-known to senior leaders in OHCHR, and was apparently not considered misconduct by any of those senior leaders”*.

**I identified all of the rules to Ms Wellen, as I had to all previous Ethics Officers.**

16. It is my view that these tests are relevant for assessing whether misconduct had occurred – but not necessarily decisive in assessing whether the Complainant made the report in good faith and based on a reasonable belief that misconduct had occurred: -- this is because there may still be instances where (a) an investigation ultimately concludes that there was no misconduct, (b) the only written rule at stake is a high level principle, such as the principles of independence and impartiality of the international civil service, the humanitarian “do no harm” principle, or protection of confidentiality, and (c) senior leaders chose not to act – but a staff member could still have held a reasonable belief that misconduct had occurred and should therefore be protected from retaliation.

17. In the present instance, it is ultimately my assessment that the Complainant herself was aware that there could be different views regarding the information sharing practice with a member state. This assessment is based on a thorough review and consideration of the material referred to in paragraph 7. From that material, it seems clear that the Complainant strongly disapproved of this practice and felt that it was contrary to the principles of independence and impartiality of the international civil service, the humanitarian “do no harm” principle, and protection of confidentiality. It also appears that the Complainant wanted the practice to be reviewed by higher or outside authority -- which is for instance substantiated by the Complainant’s requests in 2013 to consult the Office of Legal Affairs.

**This is perhaps the most unethical finding - in the UN, managers can risk the lives of individuals to preserve a good working relationship with Beijing.**

18. However, based on the material I reviewed, it seems to me that all of this pointed to a disagreement on what I would call “ethics in programming” – i.e. an area where OHCHR’s senior management had to make difficult choices between building and maintaining a working relationship with member states and its human rights advocacy. In other words, it appears to me that it was, or should have been reasonably clear for the Complainant, that there was a policy difference and disagreement, rather than a basis for a reasonable belief that misconduct by an individual staff member had occurred.

19. However, it is also clear from the history of this matter -- which goes back five years by now to early 2013 -- that this was an important policy difference and one about which the Complainant felt and continuous to feel extremely strongly.
20. From my independent review of this case, it seems that some of the complexities of the present matter are related to OHCHR not acknowledging and responding directly to the Complainant at an early stage in 2013, when she first raised the issue and made the reports. This observation and concern is already highlighted in the Memorandum dated 10 April 2017 from the then Alternate EPUN Chair to the Complainant, stating that “*it would have been better for management of OHCHR to have directly responded to [the Complainant] in 2013 regarding [her] complaints about [her supervisor who was in charge of this particular practice].*”
21. By not responding to the Complainant’s concerns – and thereby not openly and proactively addressing this profound policy difference at an early stage --, OHCHR in my view shares some degree of responsibility for the Complainant’s current situation, where she sees herself as a longstanding whistle-blower who has been failed by the UN system. It is against this background that I am making the recommendation for the UN Ethics Office to reach out to the High Commissioner for Human Rights and the Complainant, with a view for them to agree terms of a comprehensive *ad hoc* mediation.

**Second key question: was any direct or indirect detrimental action recommended, threatened or taken because the Complainant had engaged in a protected activity?**

**In reality, Ms Wellen did not even read my file before 30 December 2017, and then came under management pressure to “close” my case. I submitted extensive evidence. She conducts no analysis, and simply ignores the existence of the false and defamatory press release.**

22. The second key question for this independent review is the question as to whether there was “*any direct or indirect detrimental action recommended, threatened or taken*” against the Complainant. The Complainant takes the view that she has been subject to what she considers to be “character assassination and vilification” over an extended period. However, in response to repeated requests to identify specific, individually attributable acts that would constitute detrimental action, the responses from the Complaint have ultimately not been specific enough to support a finding of detrimental action.
23. In her initial Complaint and in communications during this independent review, the Complainant has raised a number of allegations as detrimental action, in particular: (a) creation of a hostile work environment, (b) being undermined in external relations with NGOs and encouraging NGOs to file complaints against the Complainant, (c) having a temporary job vacancy cancelled after the Complainant had been selected for the post and (d) failure to follow-up an alleged incident of physical assault by a member of the Cuban delegation in 2013 (e) having to work without terms of reference, (f) being blacklisted and excluded from promotions, (g) attempts at linking the Complainant’s contract renewal in December 2017 to a “forcible transfer” from Geneva to Mauritania.

**The actual sequence of events:  
3 Dec 2017: I tell Ms Wellen I have been warned my contract will be linked to forcible transfer. She says she can't rely on a "tip-off."  
4 Dec 2017: I get the email and forward it as evidence. She refuses to speak to the senior manager who warned me. Ethics Officers simply refuse to refer anything for investigation where it could cause the UN reputational damage.**

24. In the context of the independent review, I have encountered significant difficulties in establishing - even at a *prima facie* level - whether any of these allegations constituted a detrimental action, and if so whether there was a causal link between a protected activity and the detrimental action: (a) This being a desk top review, it is not possible for the Alternate EPUN Chair to investigate and seek additional evidence, so that I was limited to the material referred to in paragraph 11; (b) While there is evidence – including in the form of a witness statement - that during the period from 2013 up until the present, the Complainant became associated with a reputation for being difficult and a poor team player, it is not possible to identify even at the *prima facie* level what specific actions led to this reputation and whether there was a causal link between a protected activity and the detrimental action. (c) There seems to have been a complete breakdown in trust between OHCHR and the Complainant, so that communications that appear neutral in tone to an outsider are received by the Complainant as indicative of a detrimental action. To give but one recent example, the Complainant took the view that a proposed reassignment and transfer to the OHCHR Office in Mauritania – which had been offered to her on 4 December 2017 – constituted a detrimental action since she read the email communication to mean that her contract extension was being tied to her accepting the proposed reassignment and transfer. However, for a neutral outside reader, there was no indication of these two matters being tied together, and the Complainant was also not able to substantiate her concerns in that respect.

#### Conclusion

25. Therefore, I have not been able to identify at the *prima facie* level specific detrimental action recommended, threatened or taken because the Complainant had engaged in a protected activity. It is my view that a referral to OIOS for further investigation is not warranted because there is no basis for a *prima facie* case of retaliation, based on the 2005 Retaliation Policy and the 2007 Retaliation Policy

26. However, the breakdown in trust between OHCHR and the Complainant is an additional reason, beyond those already set out in paragraph 21, for recommending that the UN Ethics Office reach out to the High Commissioner for Human Rights and the Complainant, with a view for them to agree terms of a comprehensive *ad hoc* mediation.

New York, 27 February 2018



Ursula Wellen

Principal Adviser, Ethics, UNICEF acting as

**Alternate Chair of the Ethics Panel of the United Nations**