

Geneva, 31 October 2018

## Report of possible UN complicity in international crimes

Dear Secretary-General,

As you are aware, from February 2013 and several times since, I reported that a senior manager in the UN Human Rights Office had instructed staff to provide China with advance information on whether named individuals would be attending the Human Rights Council. Such requests were refused from all other Member States, and were clearly against the rules of the Human Rights Council.<sup>1</sup> Despite my multiple reports through the appropriate channels, names were handed over beginning from the 22<sup>nd</sup> session of the Human Rights Council in March 2013. When Ethics Office documents on my case were leaked to the press, the OHCHR response confirmed that names continued to be provided to China,<sup>2</sup> although subsequent responses to queries from NGOs provided inconsistent information.<sup>3</sup> I would note that all of the protective measures claimed in the OHCHR press release were in fact measures taken by me personally, disobeying instructions as I was required to do per Article 19 of the Standards of Conduct for the International Civil Service,<sup>4</sup> for the 23<sup>rd</sup> and 24<sup>th</sup> sessions of the Human Rights Council. They were discontinued from the 25<sup>th</sup> session onwards, when I was no longer in the Human Rights Council Branch and unable to act to protect these human rights defenders. I reported that I had taken these measures in a meeting with the OHCHR Chief of Office held on 20 January 2017, and can provide evidence of this fact upon request.

Four days after the first names were handed over, the NGO of which the human rights defenders were members experienced a virus attack intended to disrupt their participation in the Human Rights Council.<sup>5</sup> More seriously, reprisals against the family members of the Uyghur human rights defenders whose names were provided to China have increased since the provision of their names to China. Their family members have been arbitrarily arrested and detained, and some have been subjected to torture. The Assistant Secretary General for Human Rights asserted, without evidence, that providing the names of human rights defenders to China without their knowledge or consent did not expose them or their associates to “additional reprisals.”<sup>6</sup> My question as to the calculus applied to determine whether a Member State is so

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<sup>1</sup> For a summary of the rules breached, see Case of Emma Reilly: Response to memo from Ethics Office, 25 October 2016, paras. 5-29. This was among the Ethics Office documents leaked to the press, in breach of my confidentiality, and published online. OIOS declined to investigate despite my request. While there are errors in the annotations added by the individual who published the document, it is available here: <http://peteragallo.com/wp-content/uploads/2017/01/OHCHR-Retaliaton-Annex-B-Response-to-Ethics290117.pdf>

<sup>2</sup> OHCHR press release of 2 February 2017. A revised version of the press release, correcting an initial mistake in the name of Cao Shunli, remains on the OHCHR website: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21139&LangID=E>

<sup>3</sup> These inconsistencies were summarized in a press release of the NGO UN Watch: <https://www.unwatch.org/ohchr-enable-chinas-harassment-dissidents/>

<sup>4</sup> Article 19 provides, inter alia, that international civil servants “should not follow verbal or written instructions that are manifestly inconsistent with their official functions or that threaten their safety or that of others.”

<sup>5</sup> See <http://www.uyghurcongress.org/en/?p=20050>

<sup>6</sup> Email from Andrew Gilmour to Emma Reilly, 8 November 2017.

I later discovered the policy had been in place since 2006

repressive that it no longer matters if the UN Human Rights Office informs its delegation of the movements and plans of human rights defenders remains without response. It is clear, however, that the actions taken by China against the family members of the human rights defenders are in direct consequence of their international advocacy, with the intention of silencing them. At no point have I been provided with a positive reason why China, uniquely among Member States, should receive this advance information from the UN. The extended families of the Uyghur human rights defenders whose names were handed over are now detained in internment camps in Xinjiang, the existence of which has been condemned by UN experts and raised by the new High Commissioner for Human Rights.<sup>7</sup>

The United Nations is a subject of international law with a legal personality that is separate from that of Member States.<sup>8</sup> The Draft Articles on the Responsibility of International Organizations,<sup>9</sup> prepared by the International Law Commission, address circumstances where an international organization aids or assists in the commission of an internationally wrongful act. Article 14 provides that “[a]n international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if... (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that organization.”<sup>10</sup> I believe that providing names of human rights defenders to China in advance of sessions of the Human Rights Council and Universal Periodic Review amounts to complicity in the international crimes committed against the family members of those whose names are handed over. As regards (a), the UN is fully aware of the reprisals taken by China to try to prevent human rights defenders cooperating with UN human rights mechanisms, and indeed includes these in your annual reports to the Human Rights Council on intimidation and reprisals for cooperation with the UN in the field of human rights. In this context, it is difficult to imagine a positive purpose for which the names could be used that would justify breaching the rules of the Council to provide them. As regards (b), this requirement is met by human rights violations, including arbitrary arrest, arbitrary detention and torture, as they would be violations of international law if committed by the UN itself.

I recently reported evidence that the Human Rights Council Branch is concealing requests received from China from the rest of the UN Human Rights Office.<sup>11</sup> It was communicated to me that, rather than take any action to prevent the handing over of names, the UN Human Rights Office had decided that the China desk officer would regularly check the registry of

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<sup>7</sup> See, for example:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23452&LangID=E>

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23518&LangID=E>

<sup>8</sup> *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)*, ICJ Rep 1949, p. 174.

<sup>9</sup> See General Assembly Resolutions 66/98, 66/100, 69/126, and 72/122. The draft articles are available here: [http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft\\_articles/9\\_11\\_2011.pdf&lang=EF](http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft_articles/9_11_2011.pdf&lang=EF)

<sup>10</sup> It should be noted that article 14 is almost an exact reproduction of article 16 of the Draft Articles on State Responsibility, which has been found to be a rule of customary international law by the International Court of Justice: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, ICJ Rep 2007, para. 420.

<sup>11</sup> Email from Emma Reilly to OHCHR civil society team, copying the High Commissioner, Deputy High Commissioner and Assistant Secretary-General for Human Rights, 18 July 2018.

communications received. I remain unclear as to how this would protect human rights defenders. The Universal Periodic Review of China is to be held next Tuesday, 5 November. I appeal to you to order an investigation of whether names continue to be provided, and to order that this dangerous practice be stopped.

I note that, according to the Ethics decision in my case communicated to me on 2 March 2018, the revised Ethics policy does not protect staff members who report wrongdoing that may amount to complicity in international crimes. Rather, the formal position is that the “do no harm” principle is in all cases subordinate to political considerations. I would encourage you to revise the policy so that staff reporting the most serious wrongdoing are able to seek protection from retaliation for their reports.

As the justification provided by the Ethics Officer – but not the UN Human Rights Office – for this exceptional and dangerous practice that applied only to China was wholly political, I would also alert you to the possible political ramifications of continuing to provide the Chinese delegation with the names of human rights defenders without their knowledge or consent. The lists of names China provided in 2013 consisted largely of dissidents based outside of China. I recommended to my supervisors in 2013 that the countries of nationality or asylum of those on the list be alerted that their names were to be handed to China without their consent, but this recommendation was ignored. I am concerned that Germany, the United Kingdom and the United States of America would be disturbed to hear that names of their nationals were provided to China by the United Nations without their knowledge or consent.

**And, for example, Sweden, Norway, Canada, Australia, Switzerland, ...**

The ongoing failure of OHCHR and your own office to even acknowledge receipt of my letters and emails make it abundantly clear that the UN does not intend to answer my question as to whether names are still being handed over, or to protect me from retaliation for my reports. My priority remains, as it always has been, to ensure that the UN’s Human Rights Office complies with international human rights law and ceases to provide information that may be used by China in the commission of international crimes including arbitrary arrest, arbitrary detention and torture. While you have made clear that the UN will not apply its own ethics or harassment policies and protect me from ongoing damage to my health and reputation, I would appeal to you to act to protect human rights defenders from reprisals for cooperation with the UN.

Yours sincerely,



Emma Reilly

Copy to:  
High Commissioner for Human Rights  
Assistant Secretary General for Human Rights  
Assistant Secretary General for Human Resources  
Director of UN Ethics Office  
Government Accountability Project