

**Formal complaint of unsatisfactory conduct, abuse of authority and harassment by Mr. Eric Tistounet, D-1, Chief, Human Rights Council Branch**

Dear High Commissioner,

I am writing to you, as the responsible official, to make a formal complaint of unsatisfactory conduct under ST/AI/2017/1 and of abuse of authority and harassment under ST/SGB/2019/8 against Mr. Eric Tistounet, D-1, Chief, Human Rights Council Branch. The specific grounds of the complaint are laid out below, along with the link to relevant provisions of the policy, and supporting documentation is attached. Further supporting documentation which I do not currently have the right to attach due to confidentiality requirements may be submitted to the panel at a later date, subject to obtaining relevant permissions.

I am submitting this formal complaint at this stage because it was confirmed to me this month that neither OIOS nor OHCHR has ever conducted an investigation of this matter, or taken any measure to verify that the practice of secretly handing names of human rights defenders to China has stopped. As Mr. Tistounet will, beginning today, once again act as Officer-in-Charge of CTMD, with associated access to lists of NGO participants to meetings of treaty bodies, I am concerned that they may also be exposed to danger by having their names transmitted to the Chinese delegation without their knowledge or consent. As you know, late last year, I discovered that Mr. Tistounet was instructing that requests received from China be concealed from the rest of OHCHR, which strongly implies that the practice of secretly handing names to China continues.

**1. Provision of names of human rights defenders to the Chinese delegation, exposing them and their families to arbitrary detention, torture and death in custody**

At least since 2012, and likely at least since the creation of the Human Rights Council, Mr. Tistounet has either directly provided or instructed his subordinates to provide the Chinese delegation with advance information on whether specific, named human rights defenders planned to attend sessions of the Council. For example, in September 2012, OHCHR handed over the names of Geng He and Dolkun Isa to the personal email address of a Chinese diplomat (Annex 1).<sup>1</sup> Ms Geng is the wife of Gao Zhisheng, who at the time was held in arbitrary detention in China, and of whose case the UN Working Group on Arbitrary Detention was seized. OHCHR took no measures to seek the consent of Ms Geng, or to inform her that her name had been transmitted to the Chinese delegation. Mr. Gao describes in his book being subjected to torture and forced to contact his family and supporters to ask them to stop engaging in advocacy on his behalf.<sup>2</sup> The link between OHCHR's action in providing the Chinese government with information on the advocacy plans of Mr. Gao's wife and his subsequent torture is obvious. Mr. Tistounet apparently

<sup>1</sup> As it was known in September 2012 that I would assume responsibility for NGO liaison at the next session, I was copied in hundreds of emails entitled "NGO accreditation." A recent upgrade of OHCHR's email systems permits searches, and drew these emails to my attention.

<sup>2</sup> Gao Zhisheng, *Unwavering Convictions: Gao Zhisheng's ten-year torture and faith in China's future*, 2017. The members of the Working Group on Arbitrary Detention are submitted as witnesses regarding the clear danger to which Mr. Gao was exposed as a direct result of the actions of OHCHR transmitting his wife's name at precisely the time the Working Group was sending communications to the Chinese delegation in order to obtain information as to his whereabouts.

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applied this exceptional practice only to requests from the Chinese delegation; a request from the Turkish delegation relating to the same session was refused (Annex 2).

When in February 2013 I was assigned to responsibility for NGO liaison, I was informed that such a request had been received from the Chinese delegation related to the March 2013 session of the Human Rights Council. I immediately expressed the view that handing over names would expose human rights defenders and their families to harm. Following my oral objection, a number of emails were sent among persons already aware of the practice, which were clearly intended to give me the impression that this was the first time such a request had been received, and that managers were genuinely considering how to respond (Annexes 2 and 3). If Mr. Tistounet believed that the practice of handing over names of human rights defenders to the Chinese delegation without their knowledge or consent complied with the rules, he would have had no need to engage in such subterfuge.

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The practice constitutes unsatisfactory conduct, and rises to the level of misconduct, including on the following grounds:

A. Complicity in international crimes is illegal

The United Nations is a subject of international law with a legal personality that is separate from that of Member States.<sup>3</sup> The Draft Articles on the Responsibility of International Organizations,<sup>4</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>5</sup> Providing names of human rights defenders to China in advance of sessions of the Human Rights Council amounts to complicity in the international crimes committed against the family members or associates 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 the Secretary-General’s annual reports to the Human Rights Council on intimidation and reprisals for cooperation with the UN in the field of human rights.<sup>6</sup> 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 constitute violations of international law if committed by the UN itself.

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B. Provision of names violates the rules set by the Human Rights Council

The participation of NGOs in the Council is governed, *inter alia*, by Rule 7(a) of the Rules of Procedure of the Human Rights Council, which provides:

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<sup>3</sup> Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion), ICJ Rep 1949, p.174.

<sup>4</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>5</sup> 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>6</sup> See, for example, [A/HRC/42/30](http://www.hrc.org/docs/default-source/2013/a-hrc-42-30.pdf), at pp.9, 20-22, 45-48.

The Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and *practices observed by the Commission on Human Rights*, while ensuring the most effective contribution of these entities.<sup>7</sup> (emphasis added)

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Neither the Human Rights Council nor the General Assembly decided on any change to the practice observed by the Commission on Human Rights regarding provision of information on individuals accredited by NGOs. The relevant practice of the Commission is as follows:

Whenever any Government participating in the work of the Commission requests the secretariat to verify or confirm the accreditation of any particular NGO representative(s), immediate action is taken in this regard and *the results of the verification are publicly reported by the secretariat to the plenary of the Commission or brought to the attention of the Expanded Bureau of the Commission*.<sup>8</sup> (emphasis added)

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Thus, if the requested information was to be shared with China, it should have been publicly reported either to the plenary or to the expanded Bureau of the Human Rights Council, and not secretly transmitted to the private email addresses of Chinese diplomats. The Secretariat has no independent authority to change the rules and practices of the Human Rights Council, but rather has as its function, consistent with para. 27 of the Standards of Conduct of the International Civil Service, to carry out decisions of the Council as regards its own methods of work.<sup>9</sup> Mr. Tistounet consistently denied this practice when directly asked by State delegations (e.g. European Union in late 2013, see sec. 2 below), so it is clear that he did not consider himself to be applying rules set by those same States.

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#### C. Applying preferential treatment to China violates the UN Charter, staff regulations and Standards of Conduct of the International Civil Service

Article 100(1) of the UN Charter provides:

In the performance of their duties the Secretary-General and *the staff shall not seek or receive instructions from any government or from any other authority external to the Organization*.

They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. (emphasis added)

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This principle is reflected in Staff regulation 1.2 (d) and paragraph 8 of the Standards of Conduct of the International Civil Service.

When other delegations requested information on the accreditation status of specific, named individuals prior to sessions of the Human Rights Council, their requests were refused. For example, in September 2012, while China was provided with such information, Turkey was not (Annex 2). Application of different rules to different member states clearly breaches article 100(1) of the Charter.

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Provision of information also breached staff regulation 1.2(i), which provides, *inter alia*, that staff members “shall not communicate to any Government, entity, person or any other

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<sup>7</sup> Human Rights Council Resolution 5/1, section VII.

<sup>8</sup> *Main rules and practices followed by the Commission on Human Rights in the organization of its work and the conduct of business* (Note by the Secretariat, doc.E/CN.4/2001/CRP.1), in *Compilation of recent documents in relation to the enhancement of the working methods of the Commission on Human Rights (1999 - 2005)* <http://www.ohchr.org/Documents/HRBodies/HRCouncil/CompilationDocuments1999-2005.pdf>, p.28, para 42.

<sup>9</sup> Para.27 of the Standards of Conduct of the International Civil Service begins: “The main function of all secretariats is to assist legislative bodies in their work and to carry out their decisions...”

source any information known to them by reason of their official position that they know or ought to have known has not been made public...”

D. Endangering the safety and privacy of persons seeking to cooperate with UN human rights mechanisms violates the Code of Conduct for OHCHR staff

Article 11 of the Code of Conduct for OHCHR staff provides that staff shall “refrain from endangering, by way of their words or action during or after their service with the OHCHR, the safety and privacy of the people with whom they come into contact...”

China regularly retaliates against individuals seeking to cooperate with UN human rights mechanisms, and this fact is publicly acknowledged by the UN itself, including in reports of the Secretary-General.<sup>10</sup> It should therefore have been clear to Mr. Tistounet that providing names of individuals planning to speak out against China’s human rights record to the Chinese delegation in advance risked exposing them to reprisals.

2. Repeated public and internal misrepresentation of the practice of providing names of human rights defenders to the Chinese delegation

Mr. Tistounet has repeatedly misrepresented the practice of providing names to the Chinese delegation, both internally and publicly. In late 2013, when my internal reports had led to no action and I was temporarily reassigned away from the Human Rights Council Branch, meaning I was no longer in a position to delay or prevent the handing over of names of human rights defenders to the Chinese delegation, I reported the secret practice to the delegation of the European Union. European Union member states were extremely concerned by this endangerment of human rights defenders seeking to cooperate with UN human rights mechanisms, and called a meeting of all 27 member state delegations, which Mr. Tistounet attended on behalf of OHCHR. Three diplomats present at the meeting, from the delegations of the EU, Ireland and the UK, separately reported to me that Mr. Tistounet strenuously denied that any names had been handed over, claimed that any such suggestion was a slur on his character, and defamed me as a fantasist with mental health problems.

Following my reports to the former Deputy High Commissioner in December 2014, to the former High Commissioner in July 2015, and to the current Deputy High Commissioner in March 2016, Mr. Tistounet repeated the same lie that no names had been handed to China and the same defamation of me, with a view to discrediting my report. His word was apparently accepted despite the fact that I, on every occasion, provided written evidence. Neither OHCHR nor OIOS at any point conducted an investigation into my reports.

In early 2017, I was contacted by a journalist who stated that he was in possession of Ethics Office documents.<sup>11</sup> These documents, relating to my request for protection against ongoing retaliation by Mr. Tistounet, were later published on the website of Inner City Press. Mr. Tistounet was assigned responsibility for the OHCHR response. He drafted a press release that actively misrepresented the practice in fact applied, falsely claimed that protective measures had been taken, and included a paragraph defaming me in a further effort to discredit my reports (Annex 4). The NGO referred to in the press release has testified to its falsity and to the danger to which its members are exposed when China learns of their advocacy plans in advance (Annex 5). I formally objected to both the falsity of the press release and my deliberate, public defamation by my employer (Annex 6). My objection was transmitted by the former High Commissioner directly to Mr. Tistounet to draft a response, which response predictably repeated the same lies (Annex 7).

<sup>10</sup> *Supra* note 6.

<sup>11</sup> For an account of the facts, see judgement UNDT/2019/094.

**Ms Pollard's hand-picked "investigators" claimed Mr. Tistounet never denied the policy, despite literal video of him denying it...**

When asked at a public event, at which he spoke in his official capacity, whether names had been handed to the Chinese delegation, Mr. Tistounet denied it.<sup>12</sup> OHCHR answers to NGO queries, which were drafted by Mr. Tistounet, varied between claiming the practice had stopped and saying it had never happened.<sup>13</sup> This repeated misrepresentation to Member States, to his superiors, to human rights mechanisms, to UN staff, to NGOs and to the general public strongly indicates that Mr. Tistounet knew that his instruction that names be handed over amounted at minimum to unsatisfactory conduct, and likely rose to the level of misconduct.

The UN Charter in Article 101(3) requires that international civil servants demonstrate the highest standards of efficiency, competence, and integrity. The Standards of Conduct of the International Civil Service elaborate upon this obligation at paragraph 5:

The concept of integrity enshrined in the Charter of the United Nations embraces all aspects of an international civil servant's behaviour, including such qualities as *honesty, truthfulness, impartiality and incorruptibility*. These qualities are as basic as those of competence and efficiency, also enshrined in the Charter. (emphasis added)

Mr. Tistounet's repeated and deliberate deception, both internally and publicly, as to the practice in fact applied to requests of the Chinese delegation clearly breaches this obligation of integrity. The practice itself, which was applied only to China, demonstrates partiality and thus also breaches this standard.

### **3. Exceptions to other rules and practices of the Human Rights Council for the benefit of China and to cover up this practice**

Mr. Tistounet has recently breached other established rules and practices of the Human Rights Council for the sole benefit of China, in apparent breach of Article 100(1) of the UN Charter.

When exhibits are held in Palais des Nations during sessions of the Human Rights Council, they require approval not only by UNOG, but also by the Secretariat of the Human Rights Council. The general rule has been that country-specific exhibits are prohibited during sessions of the Council (See Annex 8 for emails from previous sessions). Mr. Tistounet approved an exception to this general rule for the benefit of China, which was permitted to hold a major exhibit extolling its human rights record during the first week of the most recent Human Rights Council session (9-13 September 2019)

At the 41<sup>st</sup> session of the Human Rights Council, Mr. Tistounet, apparently to cover up the practice he ordered of providing China with names of human rights defenders who would be attending the Council and otherwise acting on behalf of China, prevented publication of at least four NGO written statements which included reference to China's efforts to silence NGO criticism at the Council, one of which specifically referenced the OHCHR practice of handing names to China (Annex 9).<sup>14</sup>

The official guidelines for NGO written statements provide:

The written statement is issued, *unedited*, in the language(s) as received (English, French or Spanish) from the submitting NGO. *NGOs assume full responsibility for the content of their statements, which should fully uphold UN standards and avoid abusive language.*<sup>15</sup> (emphasis added)

<sup>12</sup> The denial was caught on video: <https://www.youtube.com/watch?v=ZmxNji05ZJg>

<sup>13</sup> The NGO UN Watch summarised OHCHR's inconsistent and contradictory public positions: <https://unwatch.org/ohchr-enable-chinas-harassment-dissidents/>

<sup>14</sup> The NGO whose statements were not published commented on the issue: <https://unwatch.org/un-censors-100-rights-groups-on-chinese-abuses-blocks-publication-of-joint-appeal/>

<sup>15</sup> [https://ohchr.org/Documents/HRBodies/HRCouncil/PracticalGuideNGO\\_en.pdf](https://ohchr.org/Documents/HRBodies/HRCouncil/PracticalGuideNGO_en.pdf)





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my career prospects both inside and outside the UN system, and significantly impacted my working conditions by misleading all OHCHR staff members that I had made false reports. I was not invited to a single assessment exercise between the issuance of the press release in February 2017 and early September 2019, despite applying for hundreds of posts.

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C. Publicly defaming me, and publicly stating that my reports were false. For example, at a public meeting held on 14 March 2017, at which he explicitly represented OHCHR, Mr. Tistounet falsely stated that no names had been given to the Chinese delegation, and dismissed my report as part of a right-wing conspiracy against the UN.<sup>18</sup> As it is my obligation as a UN staff member to report misconduct, it is particularly serious for a manager against whom such a report is made to so blatantly attack a staff member for doing their job. ST/SGB/2019/8 includes in the definition of harassment “unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment” (sec. 1.3). Transmission of false information to national governments, OHCHR staff members, human rights experts and the general public, and allegations that I had made false allegations or simply invented the handing of names to China were clearly, maliciously calculated to cause me offence and humiliation, and significantly contributed to an intimidating, hostile and offensive work environment.

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D. Failing to take any action following my assault by a member of the Cuban delegation in my office on 19 September 2013. A report on the incident remains with UNOG Security, but has never been shared, as only Mr. Tistounet may request this, and he has refused to do so. The existence of the report was confirmed with [REDACTED] by telephone on 20 September 2013, following an email request I had sent on 19 September 2013 (Annex 11). No actions whatsoever were taken to protect me or to raise the issue with the delegate. This constitutes abuse of authority through the creation of a hostile work environment (sec. 1.8, ST/SGB/2019/8). Furthermore, as Mr. Tistounet expressly linked his refusal to request the report to an email I had sent in which I raised the case of Cao Shunli, the refusal was clearly intended to intimidate me into remaining silent about the secret practice of handing names to China.

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E. Actively contacting the supervisors of my temporary posts to encourage them to give me negative performance evaluations. Mr. Tistounet was actively supported in these efforts by the Chief of PSMS, Mr. Kyle Ward and the former Chief of Human Resources, Mr. Nigol Vanian. All three men called a number of my former supervisors, none of whom had expressed any issues with my performance and all of whom had completed their performance evaluations, to a joint meeting in order to encourage complaints about my team work with a view to ensuring my non-renewal. Witnesses: [REDACTED], [REDACTED]. This constitutes abuse of authority under sec. 1.8 of ST/SGB/2019/8, as Mr. Tistounet used his position of influence, power and authority in an effort to influence my performance evaluation, prospects of promotion, and contract renewal.

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This is not an exhaustive list, but summarises some of many abuses of authority. These individual abuses of authority together amount to a pattern of serious harassment, which is aggravated by the fact that it is clearly in retaliation for my report that Mr. Tistounet had established a secret practice of sharing names of human rights defenders with the Chinese delegation. Mr. Tistounet has successfully involved other senior managers in OHCHR in his efforts to retaliate against me. This harassment has now lasted for six and a half years. In this time, I have been vilified by Mr. Tistounet among senior managers to such an extent that every request I have made to meet to resolve my case has simply gone unanswered.

<sup>18</sup> Supra note 12.

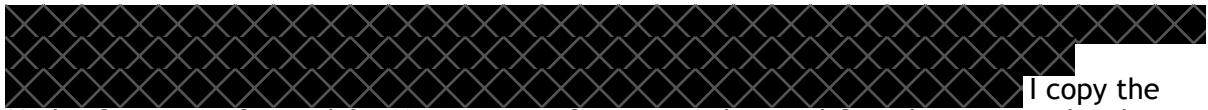
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Mr. Tistounet has thus been successful in ensuring that my reports of this very serious endangerment of human rights defenders are simply ignored. The degree of the retaliation against me has ensured that no other staff member reported it.

**Request for immediate protection for the duration of the investigation into this report**

I note that ST/SGB/2019/8 requires that you ensure that I am not subjected to further adverse actions as a result of this report. I fully anticipate that Mr. Tistounet will escalate the ongoing retaliation against me as soon as he becomes aware of this report, and ask that you take immediate measures for my protection.

I appeal to you once again to end my blacklisting, enforced by your Deputy, and place me against a post commensurate with my qualifications and experience that is outside Mr. Tistounet's reporting lines. As I am on both the P-4 and P-3 rosters, you could simply place me against any of the more than 60 posts to which I have applied, which remain open in Inspira, and for which I am a rostered candidate.



I copy the Under-Secretary-General for Management Strategy, Policy and Compliance in order that she assign responsibility for external monitoring relating to this complaint to someone without a conflict of interest.

I reiterate my request, outstanding since September 2018, that you meet with me. I assure you that it gives me no pleasure to be forced once again to make a formal complaint when my case could be so very easily solved. I simply do not believe that staff members who respect their obligation to report conduct that actively endangers the lives and safety of human rights defenders and their families should be punished, harassed, ostracised, and left without functions. In contrast, every single staff member who simply obeyed the instruction to secretly hand names to China has been promoted at least once in the past six and a half years, without exception. I encourage you to work to change a culture that rewards actively endangering the very human rights defenders we are mandated to protect.

I look forward to hearing from you.

Yours sincerely,

Emma Reilly

Copy to:

- OIOS
- USG for Management Strategy, Policy and Compliance
- ASG for Human Rights (UN focal point on reprisals)
- Secretary-General