

Briefing Note

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United Nations Ethics Office Denial of 'Protection against Retaliation' for OHCHR Staff Member Emma Reilly

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Source Documents:

- **Annex A:** Memo from Ethics Director to Emma Reilly, 7 October 2016
- **Annex B:** Emma Reilly's Response to Ethics Office, 25 October 2016

The Author appeared before the US Congressional hearing on 'UN Peacekeepers: Abuse and Accountability' by the House Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in April 2016.¹ He also drafted the related 'Proposal for Reform of the Investigation of Misconduct in the UN and the Replacement of the Office of Internal Oversight Services' 7 May 2016.²

¹ <http://docs.house.gov/meetings/FA/FA16/20160413/104766/HHRG-114-FA16-Wstate-GalloP-20160413.pdf>

² <http://docs.house.gov/meetings/FA/FA16/20160413/104766/HHRG-114-FA16-20160413-SD001.pdf>

Explanatory Background

The annexed documents relate to the UN Ethics Office decision in respect of an application by UN staff member **Ms. Emma Reilly** for ‘whistleblower protection’ under ST/SGB/2005/21.³

Under this bulletin, a staff member can be accorded protection against retaliation, they must have (a) reported misconduct or co-operated with an investigation, (defined as “*a protected activity*”) and (b) then suffered retaliation as a consequence of having done so.⁴

Upon receipt of an application for protection from a staff member who claims to have suffered retaliation, the Ethics Office is legally required to carry out “preliminary review”⁵ of the staff member’s complaint to determine:

- (1) if they did in fact engage in “*a protected activity*”; and
- (2) if there is a prima facie case that the protected activity was “*a contributing factor*” in causing the retaliation they then allege to have suffered.

Should these conditions be met, the Ethics Office must send the matter to the Investigation Division of the Office of Internal Oversight Services (“OIOS/ID”) for them to formally investigate the retaliation. The irony is that senior officials in positions of authority in OIOS/ID have themselves been found to have abused their authority and retaliated against their own staff, so if there is not a bias against finding retaliation, there is a clear double standard in their doing so.⁶

This case, however, demonstrates how the system is designed to fail. It shows how the Ethics Office goes to extraordinary lengths not to find that the conditions for ‘protection against retaliation’ are met.

UN staff members have no recourse to challenge any Ethics Office decision⁷ - even if their decision is fundamentally flawed, so there is no legal *right* to ‘whistleblower protection’ at all.

Significance

Analysis of the Ethics Office memo dated 7 October 2016 attached at Annex A reveals:

- 1) **the extraordinary lengths to which the UN Ethics Office will go to deny ‘Whistleblower protection’ to a staff member who suffers retaliation after reporting misconduct in the UN,**
- 2) **that the UN Office of the High Commissioner for Human Rights provided information to the Government of China identifying human rights activists accredited to attend a UN Human Rights meeting in Geneva;**
- 3) **that at least three Chinese human rights activists were detained and prevented from**

³ <http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=ST/SGB/2005/21&Lang=E>

⁴ ST/SGB/2005/21 Para 2.1

⁵ ST/SGB/2005/21 Para 5.2(c)

⁶ Nguyen-Kropp & Postica 2013/UNDT/176 <http://www.un.org/en/oaj/files/undt/judgments/undt-2013-176.pdf>

⁷ Wasserstrom 2014/UNAT/457 <http://www.un.org/en/oaj/files/unat/judgments/2014-UNAT-457.pdf>

travelling to Geneva to attend those meetings, and one, a lawyer named Cao Shunli, (who was the subject of concerns raised by Ms. Reilly) subsequently died in police custody;

- 4) **that the UN Office of the High Commissioner for Human Rights never denied having passed Cao Shunli's name to the Chinese Government;**
- 5) **that the Ethics Office did not consider that complicity in the death of a Human Rights activist constituted any breach of UN ethical standards, or that evidence of such a death might give Ms. Reilly "*a reasonable belief that misconduct had occurred*".**

The UN's treatment of former OHCHR official Mr Anders Kompass is well documented. After OIOS was unable to establish that he had leaked confidential information about the Western Sahara to the Moroccan ambassador, OHCHR insisted he be investigated for "leaking confidential information" to the French ambassador for passing on a report of child sex abuse in the Central African Republic. This decision caused public outrage and the Deschamps Panel had to be established to look into the matter.

Now it appears that:

- 6) **another senior official in the UN Office of the High Commissioner for Human Rights had such a close relationship with the Moroccan ambassador and accepted *gifts* from him;**
and
- 7) **both the Ethics Office and the Office of Internal Oversight Services were aware of this unprofessional relationship and failed to investigate it.**

Ethics Office Memo

Ms. Reilly believed she was entitled to 'whistleblower protection' because she had suffered a long period of retaliation after reporting misconduct.

The Ethics Office memo dated 7 October 2016 attached at Annex A is not the report of an *investigation* into misconduct or retaliation. Instead it is the Ethics Office explanation of their decision *not* to refer her allegations of retaliation to OIOS/ID to investigate.

The Ethics Office took fully 85 days to carry out this 'preliminary review' simply to determine that there was no prima facie case of retaliation. The explanation takes up 27 pages in length, and it is clear that the Ethics Office relies extensively on every legal technicality available.

In addition, in order to support the assertion that Ms. Reilly did not have "*a reasonable belief that misconduct has occurred*" the Ethics Office rely heavily on self-serving denials by third parties; namely senior UN officials who clearly have a vested interest in denying any wrongdoing.

In attempting *not* to identify retaliation, the Ethics Office rely on assurances from senior management that no office procedures were violated any procedures, but fail to consider how gross mismanagement and ineptitude may have lead to the arbitrary detention and death of a Human Rights activist.

Ms. Reilly's Reports of Possible Misconduct

Ms. Reilly claims that as early as 13 or 14 February 2013, she made a complaint about Mr. Eric Tistoune (Chief, Human Rights Council Branch, OHCHR). She also made later complaints, including against Mr. Mac Darrow, and Mr. Craig Mokhiber, also in the same office.

The basis of the staff member's complaints were:

- 1) that Mr. Tistoune had instructed staff to provide information on named human rights activists to the Chinese Permanent Mission;
- 2) that Mr. Tistoune had accepted "favours" (with a financial value) from the Head of the Moroccan Permanent Mission, and,
- 3) that OHCHR recruitment exercises had been unethically manipulated in order to favour particular applicants.

These are three allegations of possible misconduct. As a UN staff member, Ms. Reilly had a legal obligation under UN Staff Rule 1.2(c) to report them.⁸

As early as March 2013, Ms. Reilly raised her concerns in person with Ms. Navi Pillay, then the High Commissioner for Human Rights.

Ms. Reilly can show a pattern of retaliation from that point forwards, supported by medical evidence of stress, but OHCHR refuse to acknowledge any culpability for any wrongdoing and the Ethics Office has, – as usual – have gone to great lengths not to grant her application for 'Protection against Retaliation.'

Pursuant to ST/SGB/2005/21, the Ethics Office requires that complaints of misconduct be "*supported by information or evidence to support a reasonable belief that misconduct has occurred.*" In all three of Ms. Reilly's allegations, the complaint was supported by such information or evidence but the Ethics Office exercised their discretion in interpreting that evidence and determined that failed to establish a prima facie case that the protected activity was a contributing factor in the retaliation she then suffered.

Disclosure of names of Human Rights activists

This is clearly the most serious of Ms. Reilly's allegations.

One of the responsibilities of the Human Rights Council is to conduct Universal Periodic Reviews (UPR) of the human rights situation in the member states. China was due to have such a review in 2013.

The Chinese Permanent Mission wished to know, in advance, whether certain individuals would be attending those UPR sessions⁹ and on 1 March 2013, China formally requested OHCHR not to accredit or meet with individuals from an NGO they claim was "*a terrorist organisation.*"¹⁰

⁸ ST/SGB/2013/3. Online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/355/10/PDF/N1335510.pdf>

⁹ See Annex A, paras 12 -16 & footnotes 6 - 11

¹⁰ See Annex A, para 17 & footnote 12

It is clear that Ms. Reilly was concerned that this information would be used to intimidate the activists who would be attending, and that she believed that by providing the information, Mr. Tistounet was knowingly exposing them to the foreseeable risk of arbitrary detention. She appears to have been expressing concerns about this since March 2013 when the written request was received.

Interestingly, the Ethics Office acknowledged there was never any dispute as to these facts.¹¹

Six months later, on 14 September a Chinese Human Rights lawyer by the name of Cao Shunli¹² was detained at Beijing airport while trying to leave for Geneva.¹³

The Chinese government later confirmed that she was arrested on a charge of ‘provocation’¹⁴, but a month later, she was charged with the criminal offence of “*picking quarrels and provoking troubles*.”

By February 2014 after allegedly being denied medical treatment for several months, she was reported to be in critical condition.¹⁵ She was finally transferred to a hospital in Beijing, but died on 14 March.¹⁶

Did OHCHR give Cao Shunli’s name to the Chinese Government?

It has been widely reported in the press that Cao Shunli was arrested and detained at the airport in Beijing when on her way to the UN Human Rights meeting in Geneva.¹⁷ The US¹⁸ and British¹⁹ Governments also understood this to be the case.

OHCHR has acknowledged that Cao Shunli was attending the Universal Periodic Review meeting where China’s Human Rights record was to be discussed.²⁰ She could not do that without a travel visa for Switzerland and to obtain one, she would have to show she was accredited by OHCHR to attend those meetings.

The Spokesperson for the UN High Commissioner for Human Rights spokesperson said of her disappearance: “*We are deeply concerned that a human rights defender was detained in relation to her work and engagement with United Nations human rights mechanisms.*”²¹

11 See Annex A, paras 12 to 19

12 https://en.wikipedia.org/wiki/Cao_Shunli

13 <https://www.hrw.org/news/2015/09/14/china-government-should-account-activists-detention-death>

14 Annex to Human Rights Council, Working Group on Enforced or Involuntary Disappearances. Post-sessional document 102nd session (3–7 February 2014) A/HRC/WGEID/102/1. Online at http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Disappearances/A.HRC.WGEID.102-1_en.doc&action=default&DefaultItemOpen=1 Replies from the Government of China to urgent appeals. Page 19. para 1.

15 US Congressional Executive Commission on China. <http://www.cecc.gov/publications/commission-analysis/inadequate-medical-care-for-cao-shunli-before-her-death-contradicts>

16 US State Department, 2014 Country Reports on Human Rights Practices; China. 25 June 2015. Online at: <https://www.state.gov/j/drl/rls/hrrpt/2014/eap/236432.htm>

17 <https://www.hrw.org/news/2014/03/14/dispatches-death-defender-china>

18 <https://www.state.gov/r/pa/prs/ps/2014/03/223542.htm>

19 <https://www.gov.uk/government/news/uk-saddened-at-death-of-chinese-activist-cao-shunli>

20 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14394>

21 <https://sg.news.yahoo.com/detained-china-activist-dies-critical-illness-163141830.html> (quoting AFP)

The Ethics Office did find Ms. Reilly's complaint to be based on facts; OHCHR did respond to the Chinese Permanent Mission and did identify the human rights activists who had been accredited. This correspondence is not available but it is most significant that at no time since Ms. Reilly first raised this matter in March 2014 has OHCHR ever denied that Cao Shunli's name was on that list.

OHCHR must have known that Cao Shunli failed to arrive in Geneva in September. Her detention was also being reported by human rights NGOs.²² It is also curious that the News Release headlined "*UN experts alarmed by reprisals against activists linked to China's international human rights review*" that was issued by the independent human rights experts on 16 October 2013 - only a month after Cao Shunli was arrested - appears to have been removed from the OHCHR website.²³

The archived version of the OHCHR news website shows that it specifically mentioned Cao Shunli.²⁴

In addition - while it does not appear to have been reported by Ms. Reilly - it appears that Cao Shunli was not the only Chinese human rights activist detained on their way to attend the UN's Human Rights training. Press reports mention the case of two other activists; Chen Jianfang²⁵ was detained at the same time and Zhou Weilin²⁶ had been detained a week earlier. Their cases were all mentioned in the post-session document of the Human Rights Council Working Group on Enforced or Involuntary Disappearances published in February 2014, but that is a group of *external* human rights experts.²⁷

OHCHR does not appear to have expressed any ethical concern about any of these disappearances, but have instead taken what appears to be retaliatory measures against Ms. Reilly following her complaints concerning the detention and death of Cao Shunli.

Could Ms. Reilly be mistaken?

Of course there is a possibility that Ms. Reilly was entirely mistaken and that a perfectly legitimate explanation may exist to explain the UN sharing the information with the Chinese Permanent Mission. It is entirely possible that the Chinese Government was legitimately concerned about the credible risk of a terrorist attack or was pursuing an entirely different line of enquiry altogether.

That determination, however, is not for the Ethics Office to make. The requirement under ST/SGB/2005/21 was for Ms. Reilly to have made a report in good faith and to have submitted information or evidence to support a reasonable belief that misconduct has occurred.²⁸

²² <https://www.nchrd.org/2013/10/chrb-cao-shunlis-detention-confirmed-crackdown-expands-as-china-touts-achievements-at-un-review-1017-23-2013/>

²³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13860&LangID=E> (Offline)

²⁴ <http://web.archive.org/web/20131105063558/http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13860&LangID=E>

²⁵ <https://www.nchrd.org/2013/11/activist-chen-jianfang-disappeared-police-raided-residence-chinese-authorities-intensify-reprisals-ahead-of-un-human-rights-council-election/>

²⁶ <https://www.nchrd.org/2014/01/prisoner-of-conscience-zhou-weilin/>

²⁷ See Footnote 11 above

²⁸ ST/SGB/2005/21 Para 5.2(c)

As a Human Rights Officer, Ms. Reilly believed that Mr. Tistounet was knowingly ignoring a credible and foreseeable risk that Chinese Human Rights activists might be subject to arbitrary detention or other Human Rights abuses. Bound by Article 11 of the OHCHR Code of Conduct herself, she clearly had grounds to believe this was misconduct.²⁹

The Ethics Office, however, are going to great lengths to determine that Ms. Reilly's actions in bringing this to the attention of OHCHR senior management was not a "protected act" and therefore hold that anything she suffered as a consequence would entitle her to protection against retaliation.

Bribery, Corruption & Memories of Confidential Information

Zeid Ra'ad Al Hussein was appointed the UN High Commissioner for Human Rights on 1 September 2014.³⁰ At the end of October, OHCHR sent a complaint of possible misconduct to OIOS/ID, reporting two senior OHCHR officials, Mr. Anders Kompass and Mr. Bacre Waly Ndiaye for possibly 'leaking confidential information relating to the Western Sahara to the Moroccan Permanent Mission.

In early March 2015, Susanna Malcorra – who was Ban Ki Moon's Chief of Staff - informed Zeid that the OIOS/ID investigation into the these leaks had failed to establish misconduct by Mr. Kompass.³¹

Ndiaye had already retired.

That Malcorra should be discussing this with Zeid is troubling. It is indicative of the improperly close relationship that the supposedly "independent" then Under-Secretary-General of OIOS, Carman Lapointe had with Malcorra and others in the most senior levels of the UN. No party outside OIOS/ID should have known the results of that investigation until the report was sent out, and the Closure Reports in the Kompass and Ndiaye investigations were not issued until 1 June 2015.³²

Malcorra had clearly been briefed on Mr. Kompass being cleared three months before the report was issued. How she knew this was never investigated and has never been satisfactorily explained.

OHCHR was nevertheless clearly intent on dismissing Mr. Kompass and were looking for an excuse to do so. They did this by revisiting the matter of a report of child sex abuse in the Central African Republic, that he had passed to the French authorities the previous year.

On 6 March 2015, after nothing had happened for eight months, Zeid's Senior Legal Policy Advisor, Mohammed Ali Alnsour finally followed up with Ms. Gallianne Palayret, the OHCHR Human Rights Officer who had first reported the child sex abuse in the CAR; she identified Mr. Kompass as the person who wrote the letter passing the report to the French authorities.³³

29 Annex B. para 28

30 <http://www.ohchr.org/EN/AboutUs/Pages/HighCommissioner.aspx>

31 <http://www.codebluecampaign.com/carstatement/>

32 OIOS Annual Report for year to 30 June 2015. A/70/318 (Part I)/Add.1, dated 12 August 2015.

Online at: <https://oios.un.org/resources/2015/09/UY2RdomI.pdf>

33 <http://www.codebluecampaign.com/s/04-1-Statement-by-Mohammed-Ali-Alnsour-Nicole-Oberholzer-OHCHR-March-26-2015.pdf>

That appears to have jogged Flavia Pansieri's memory. Mr. Kompass claimed he informed her about the CAR report at the time he passed it to the French Ambassador³⁴ but in the absence of documentary proof, she could deny it. Her Special Assistant certainly knew, but Ms. Pansieri could not remember.³⁵ She claims her earliest recollection of the matter was in September 2014 when it was brought to her attention by Senior Legal Advisor Cecile Aptel.³⁶

That would be the same Cecile Aptel who informed Zeid,³⁷ and while Zeid claimed he knew about the sexual abuse, he claimed not to know it was Kompass who had informed the French authorities. Ms. Aptel, however, only knew about the matter because Ms. Palayret and other OHCHR staff in the CAR had been approached by French investigators and they had referred them to the legal branch, and Ms. Palayret had explained that the French investigators had a copy of the letter signed by Mr. Kompass.³⁸

OHCHR appears to have some collective difficulty with recollection of past events that are inconvenient to their predetermined objectives.

On 12 March 2015 and acting on Zeid's instructions, Pansieri asked Mr. Kompass to resign.³⁹ He declined to do so, so Zeid's next step was to arrange for OIOS/ID to carry out a misconduct investigation. Zeid's memo to OIOS is dated 9 April 2015, but the signature of then Ethics Director Joan Dubinsky appears on the second page and is dated the previous day.⁴⁰ The Ethics Office role in the affair has never been satisfactorily explained, but raises the suspicion that the consequences of past misdeeds have had an influence on their willingness to recognise *further* retaliation in OHCHR.

A week after requesting the OIOS/ID investigation, Zeid publicly humiliated Kompass by having him escorted from his office in full view of his colleagues and subordinates.⁴¹ Kompass was accused of having "leaked confidential information" *in the past tense*, so how his continued presence in the office would be detrimental to the investigation of that allegation has never been satisfactorily explained.

OHCHR also appears to have some difficulty with the concept of the presumption of innocence, but they do have a somewhat ambivalent attitude towards leaking confidential information.

Leaking Confidential information

Ms. Reilly never suggested that Mr. Tistoune leaked confidential information to the Moroccan Permanent Mission – only that he had permitted the Head of the Moroccan Permanent Mission to pay for a reception to celebrate the launch of a book he had written.

34 <http://www.codebluecampaign.com/s/04-2-Statement-by-Anders-Kompass-OHCHR-March-29-2015.pdf>

35 <http://www.codebluecampaign.com/s/04-2-Statement-by-Anders-Kompass-OHCHR-March-29-2015.pdf> Page 1 para 6.

36 <http://www.codebluecampaign.com/s/04-3-Statement-by-Flavia-Pansieri-OHCHR-March-26-2015.pdf>

37 <http://www.codebluecampaign.com/s/04-4-Statement-by-Zeid-Raad-Al-Hussein-OHCHR-March-29-2015.pdf>

38 <http://www.codebluecampaign.com/s/04-1-Statement-by-Mohammed-Ali-Alnsour-Nicole-Oberholzer-OHCHR-March-26-2015.pdf> Para 4

39 <http://www.codebluecampaign.com/s/04-3-Statement-by-Flavia-Pansieri-OHCHR-March-26-2015.pdf>

40 <http://www.codebluecampaign.com/s/04-Memo-to-request-investigation-OHCHR-to-OIOS-April-9-2015.pdf>

41 <http://foreignpolicy.com/2015/06/22/un-france-child-sex-abuse-central-african-republic-obama-whitehouse-ban/>

She cited it as an apparent violation of Staff Regulation 1.2(f), which is unequivocal in stating: “*No staff member shall accept any honour, decoration, favour; gift or remuneration from any Government.*” The evidence of this was a website that stated the Moroccan Ambassador paid for the reception; “*une collation sera offerte par l'ambassadeur du Maroc auprès des Nations-Unies.*”⁴²

Tistounet’s own website shows photographs of several OHCHR staff members present at that function.⁴³ None of them appear to have reported this irregularity, despite it being widely known in the office.

Mr. Tistounet’s book had nothing to do with the UN, Morocco or the Western Sahara. One cannot altogether dismiss the possibility that this largesse was entirely just the milk of human kindness and the Moroccans expected nothing in return from this amicable relationship but Ms. Reilly states that she first spoke to Deputy High Commissioner Flavia Pansieri about this in March 2013.⁴⁴

Unfortunately, Ms. Pansieri appears to suffer from selective memory syndrome, because 18 months later⁴⁵ she had no recollection of Mr. Tistounet’s book launch or knowing about his relationship with the Head of the Moroccan Permanent Mission. There were only two subjects in her complaint about confidential information being leaked to the Moroccans: Anders Kompass and Bacre Ndiaye.⁴⁶

Ms. Reilly also brought it to Pansieri’s attention again in December 2014, but this additional information about Tistounet does not appear to have been passed on to OIOS/ID. That is suspicious given that OHCHR had made a report about Kompass and Ndiaye for leaking information to the Moroccan Permanent Mission not long before that, in October 2014.

There is a curious irony in the investigation into Ndiaye, because he was Eric Tistounet’s boss and it was widely known in his office that Eric Tistounet had a close relationship with the Moroccan Ambassador. In fact, Ms. Reilly had reported Tistounet’s book launch to him back in 2013.⁴⁷ It would be improper to make assumptions about what he could, would or should have done, but if Ndiaye was being investigated himself, it begs the obvious question; *why didn’t he just push Tistounet under the bus?*

From an international and diplomatic perspective of course, the more pressing question, of course, is ***who was leaking confidential information to the Moroccan Permanent Mission?*** OHCHR appear to have some difficulty with the identification of priorities and that question remains unanswered.

Failure to establish the source of the Western Sahara leak

In June 2015, Ms. Reilly again reported the matter of Eric Tistounet’s book launch to OIOS/ID⁴⁸ but they failed to take any action. This is suspicious because at that time the CAR sexual abuse scandal was

42 <http://www.arabooks.ch/archive2012.htm>

43 <https://erictistounet.org/2012/12/06/a-very-nice-evening-at-lolivier/>

44 See Ethics Office memo (Annex A) para 28.

45 <http://www.codebluecampaign.com/carstatement/>

46 See Malainin Lakhal. 31 October 2014. “Western Sahara: Moroccan shame at UN human rights council” Online at: http://article.wn.com/view/2014/11/03/Moroccan_Shame_At_UN_Human_Rights_Council/

47 See Annex B, para 30 & 31

48 See Annex A, para 37.

getting extensive coverage in the press, and OIOS/ID was carrying on a second investigation into Mr. Kompass for having passed the information about that abuse to the French authorities, but it also came at a time when OIOS/ID had just completed the two Closure Reports in which they were unable to identify anyone who had leaked the Western Sahara information to the Moroccan Permanent Mission.⁴⁹

The complaint against Tistounet may not have involved large cash sums, but is nevertheless a *prima facie* example of *bribery of an official of a public international organization*, a violation of Article 16 of the UN Convention against Corruption, and also appears to be a violation of Staff Regulation 1.2(f).

Under the circumstances, the complaint against him has to be considered in light of the gravity with which OHCHR considered the information leaked to the Moroccan Permanent Mission when they were so anxious that Anders Kompass be investigated.

Selective Permission to disclose OHCHR information

The OHCHR Human Rights Officer who first interviewed the children who were being sexually abused in the Central African Republic was later identified as Ms. Gallianne Palayret. She spoke to the press in October 2015. She was interviewed by French news organisations^{50 51} and the New York Times⁵² and claimed that she had taken it upon herself to report the sexual abuse to the French authorities - the very thing for which Zeid had insisted that Kompass should resign.

While Ms. Palayret's press interviews were of considerable PR value to the OHCHR, but were unfortunately not reflected in the statements she gave back to Alnsour in March⁵³ that year.

Moreover, this begs the question of why High Commissioner Zeid should be demanding the resignation of Anders Kompass (a D-2 level Director, in charge of the Field Operations and Technical *Co-operation* Division for doing something *that was his job*, but protecting (and promoting) Gallianne Palayret (only a P-3 Human Rights Officer) for doing the same thing when it was *not* her job.

Ms. Palayret also claimed she have been granted 'whistleblower status'.⁵⁴ This cannot be the case because while she reported that children were being sexually abused, and while that was clearly a criminal offence, none of the perpetrators were UN personnel so they were not subject to the UN Staff Regulations & Rules, as is a requirement for ST/SGB/2005/21 to apply.⁵⁵

Ms. Reilly, on the other hand, *did* report possible misconduct by UN officials who most certainly *were*

49 OIOS Annual Report for year to 30 June 2015. A/70/318 (Part I)/Add.1, dated 12 August 2015. Online at: <https://oios.un.org/resources/2015/09/UY2RdomI.pdf>

50 http://www.francetvinfo.fr/replay-magazine/france-2/envoye-special/video-envoye-special-centrafrique-scandale-dans-l-armee-francaise_1108137.html

51 <http://www.franceinfo.fr/actu/monde/article/viols-en-centrafrique-l-auteur-du-rapport-de-l-onu-raconte-736605>

52 <http://www.nytimes.com/2015/10/15/world/africa/un-official-says-french-learned-early-of-abuse.html>

53 <http://www.codebluecampaign.com/s/04-1-Statement-by-Mohammed-Ali-Alnsour-Nicole-Oberholzer-OHCHR-March-26-2015.pdf>

54 <https://www.nytimes.com/2015/10/15/world/africa/un-official-says-french-learned-early-of-abuse.html>

55 See footnote 3 above

subject to the jurisdiction of the UN Staff Regulations & Rules; but OHCHR retaliated against her for doing so and the Ethics Office is clearly very anxious *not* to recognise her as a whistleblower.

Independence from the member states is the fundamental principle on which the international civil service operates. It is encapsulated in Article 100 of the UN Charter and reflected in the UN Staff Rules.

In October 2014, OHCHR had been very concerned about someone leaking confidential information to the Moroccan Permanent Mission, and Deputy High Commissioner Flavia Pansieri was most insistent that OIOS/ID investigate Anders Kompass and another director-level official for these leaks.

Now it appears that Ms. Reilly had told Pansieri, as early as February or March 2013, that Mr. Tistounet had an unhealthily close relationship to the Head of the Moroccan Permanent Mission, but that does not appear to have been of interest to her, or it could be something else that she was unable to remember.

It appears that when Mr. Tistounet was eventually investigated by OIOS, it was not for the corruption aspect of accepting an advantage from the Permanent Mission of a Member State known to be receiving confidential OHCHR information, but instead primarily for “*engaging in an outside business activity.*”

OIOS/ID appear to have issued the Investigation Report in that case on 23 May 2016.⁵⁶

Determination of “a reasonable belief”

A complaint based on “*a reasonable belief that misconduct had occurred*” is a pre-requisite for protection against retaliation’ under ST/SGB/2005/21.⁵⁷

In Ms. Reilly’s case, the Ethics Office rely on the fallacious argument that if there is no specific violation of any office procedure, there can be no misconduct.⁵⁸ This is a misrepresentation of the staff member’s duty, which is not to frame the precise charge of misconduct, but only to report something they *believe*, in good faith, to be misconduct - and to support that complaint with information or evidence to support a reasonable belief that misconduct has actually occurred.

If an investigation – for whatever reason – fails to prove the alleged misconduct; that does not magically eliminate the retaliation experienced by the complainant for having reported the matter in the first place.

The protection is required for having *reported* misconduct, or where the staff member reported something they *genuinely believed* was misconduct. In this case, the Ethics Office failed to look at the foreseeable consequences of the request from the Chinese Permanent Mission. Instead they fixated on the fact that by disclosing the names of the Human Rights activists who were accredited to attend the

⁵⁶ OIOS Annual Report for the year to 30 June 2016. Addendum. A/71/337 (Part I)/Add.1/Rev.1, dated 16 September 2016
Online at: <https://oios.un.org/resources/2016/10/ehbjHkf0.pdf> (Page 32)

⁵⁷ Footnote 3 *supra*

⁵⁸ This was the basis of the Secretary-General’s argument in [Nguyen-Kropp & Postica 2013/UNDT/176](#) - that Michael Dudley, Deputy Director OIOS/ID could *not* be guilty of misconduct for withholding and tampering with evidence in an investigation because there was no policy stating that evidence *must not* be withheld from the assigned investigators and *must not* be tampered with. Online at: <http://www.un.org/en/oaj/files/undt/judgments/undt-2013-176.pdf>

UPR, Mr. Tistounet was *not violating any OHCHR policy*, and used that to justify the decision not to investigate the retaliation experienced by Ms. Reilly.

By the peculiar logic of Ethics Office, if the staff member reports something that they cannot show breached any OHCHR policy, the presumption is that it is could not be misconduct, so whatever reprisals they might suffer as a consequence cannot be “retaliation” so no investigation is warranted.

This perversity of logic has been described as ‘the Auschwitz Fallacy’ because it can be compared to a situation where genocide is official government policy. The fact that there is no specific UN policy outlawing a fundamentally immoral or unethical act does not support the Ethics Office conclusion that a staff member like Ms. Reilly would not have “*a reasonable belief that misconduct has occurred.*”

In this case, Ms. Reilly raised understandable concerns about the risk to the human rights of the activists affected, and did that six months before Cao Shunli was even detained. Ms. Reilly can also trace the considerable harm done to her career from that point forward.

Nevertheless, the Ethics Office’s argument is that even where the UN Office of the High Commissioner for Human Rights appears to be complicit in causing the death of a human rights activist, and that complicity was an attempt to appease a government whose human rights record is being considered at a forthcoming UPR, and where it was foreseeable that such complicity could contribute towards a violation of that activists human rights; a UN staff member (who is a Human Rights Officer) should *not* consider that to be indicative of “misconduct” on the part of the UN official who failed to act in the best interests of the activists whose human rights were violated.

Retaliation – but not for the purposes of ST/SGB/2005/21

The UN Ethics Office claims to promote an ethical organisational culture, fostering the highest standards of integrity, accountability, transparency and respect.⁵⁹

In practice however, by adopting a strict and narrow interpretation of their mandate and pursuing the policies and the tactics demonstrated in the case of the application by Ms. Reilly, the Ethics Office is clearly neither independent nor impartial. A study by the Government Accountability Project in 2012 found over 97% of all applications for whistleblower protection in the UN to be dismissed.⁶⁰

This is a function of the Ethics Office corporate culture. It is not a reflection of the content of the ‘whistleblower protection’ policy document, it is a function of the attitude of the staff who implement it.

When an application for Protection against Retaliation is rejected, the Ethics Office simply washes their hands of the matter, leaving the staff member exposed to further retaliation. The fact that the Ethics Office do not recognise *aggrieved managers revenge* as meeting the definition of ‘retaliation’ as defined in ST/SGB/2005/21 does not render that conduct to be acceptable.

⁵⁹ <http://www.un.org/en/ethics/>

⁶⁰ See <https://www.whistleblower.org/blog/120003-gap-responds-critique-united-nations-ethics-office-statistic>

Retaliation often takes the form of ‘harassment’ and/or ‘abuse of authority’ both of which are violations of ST/SGB/2008/5.⁶¹ The Ethics Office could always assist the aggrieved staff member by assisting them make a complaint under that bulletin, but that never appears to be considered.

Instead, if the staff member wishes to pursue the matter and make a complaint under ST/SGB/2008/5 themselves, it is directed to their Program Manager. If not rejected, that complaint will be investigated by a panel of two staff members from the same department, hand picked by the Program Manager, and therefore unlikely to reach a conclusion that would be problematic for the Program Manager who appointed them, for fear of suffering similar retaliation themselves.

The Ethics Office will not remain interested in the matter, far less actually intervene, leaving staff member to conclude that the entire system is as incestuous as it is corrupt.

Conclusion

The Ethics Office dismisses applications for ‘Protection against Retaliation’ not after any comprehensive or thorough investigation into the alleged retaliation but after a ‘preliminary review’ to determine whether there are grounds to investigate it.

In the present case, the Ethics Office took 85 days to determine that there was no prima facie case of retaliation to be investigated, and required 27 pages to justify the decision. That justification is flawed with errors of both fact and law, misrepresentations of documentary evidence and fallacies of logic.

The Ethics Office also on the basis of there being a presumption against retaliation, which is of considerable benefit to the Organization and puts staff members at a distinct disadvantage.

In that regard, it is particularly duplicitous of them to rely heavily on self-serving protestations of innocence by senior officials who clearly have a vested interest in denying any wrongdoing.

The lengths to which the Ethics Office have gone to dismiss Ms. Reilly’s case however illustrates the futility of any UN staff member reporting any misconduct whatsoever. She has suffered harassment and stress, to such an extent that she has required medical leave. Her career has been blighted and the Organization is content to ignore her complaints and continue the retaliation.

It is ironic that Ms. Reilly worked in the same office as Mr. Anders Kompass, particularly following the Report of the Deschamps Panel. In addition to the failure of OHCHR to take appropriate action in a case of ongoing child sex abuse, it now appears that that same office was complicit in, or at least a contributing factor to, the arrest and consequent death in custody of a human rights activist in China.

It also appears that OHCHR has a peculiarly schizophrenic policy towards allegations of misconduct when the Moroccan Permanent Mission is involved.

Then, if bias and retaliation alone were not enough, OHCHR recruitment processes also appear to be

⁶¹ Online at: <http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=ST/SGB/2008/5&Lang=E>

plagued with corruption and cronyism, thus ensuring that only those staff members favoured by corrupt officials are promoted.

While it is possible that OHCHR is an extreme example, these observations are far from uncommon in the UN and the Ethics Office handling of this case demonstrates the futility of having any UN policy on protecting staff members against retaliation administered by the Organization itself.

Ms. Reilly's experience is an illustration of why all disciplinary matters should be taken out of the control of the UN and handled by a completely independent body.

Endnote

On 20 January 2017, the UN enacted their new whistleblower policy: ST/SGB/2017/2.⁶²

For practical purposes, this will make no difference to staff members in Ms. Reilly's position in the future. The problem is not the regulations as much as the attitude of the Ethics Office in implementing it. They will still be conducting their 'preliminary review' with the same presumption against retaliation and the same bias in favour of management.

The fact that the Ethics Office is now supposed to complete this review in 30 days instead of 45 is an irrelevance; in Ms. Reilly's case they took 85 days instead of 45.

Under ST/SGB/2017/2 para 10.1, the staff member does have a right to challenge actions by management, but only *following* a recommendation from the Ethics Office that a prima facie case of retaliation has been established.

Para 10.3 however makes it clear that recommendations by the Ethics Office themselves are still not subject to appeal – so the staff member still has no recourse if – as in Ms. Reilly's case – the Ethics Office are unwilling to recognise there is a prima facie case of retaliation at all!

62 Online at: https://hr.un.org/sites/hr.un.org/files/handbook/SGB%20-%202017%20-%20%20%20%20%5BProtection%20agains%20retaliation..%5D_1.docx