

United Nations  Nations Unies  
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR  
Ethics Office / Bureau de la déontologie

**STRICTLY CONFIDENTIAL**

TO: Ms. Emma Reilly  
A: Human Rights Officer, OHCHR

DATE: 7 October 2016

Time taken: 85 days!

FROM: Elia Yi Armstrong  
DE: Director, UN Ethics Office



ST/SGB/2005/21 para 5.3  
"The Ethics Office will seek to complete its preliminary review within 45 days of receiving the complaint of retaliation."

SUBJECT: Your request for protection against retaliation  
OBJET:

**I. Background**

1. You informed this Office that you initially joined the Organization on 6 January 2012 as Human Rights Officer with the Human Rights Council in OHCHR at the P3 level<sup>1</sup> on a fixed-term appointment. Your appointment was renewed on 6 January 2014 and on 6 January 2016. From 30 September 2013 to 1 December 2015, you held several temporary appointments, mainly at the Development and Economic and Social Issues Branch ("DESIB") of OHCHR while maintaining a lien on your post at the Human Rights Council Branch.<sup>2</sup>
2. On 15 July 2016, you submitted to the UN Ethics Office a request for protection against retaliation ("PaR") pursuant to Secretary-General's bulletin ST/SGB/2005/21, *Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations*.
3. In your submissions, you claimed retaliation from Mr. E.T., Chief, Human Rights Council Branch ("Chief HRCB"); Mr. C.M., Chief, Development and Economic and Social Issues Branch ("Chief DESIB"); Mr. M.D., Chief, Millennium Development Goals Section ("Chief MDGS"); and Mr. [REDACTED] following your reports of misconduct filed to several authorities in the Organization between 2013 and 2016.

Eric Tistounet

Craig Mokhiber

Mac Darrow

<sup>1</sup> Email from Emma Reilly to F.P., *Request for a meeting*, 12 December 2014. In this email you indicate that you are looking to move laterally to a P3 post, which indicates you held at the time a P3 post.

<sup>2</sup> Email from Emma Reilly to [REDACTED], *Re: Your request for protection against retaliation*, 22 September 2016.

- Eric Tistounet
4. With respect to Mr. E.T., you claim, in particular, that he created a hostile work environment, that he repeatedly attempted to undermine your work, that he refused to add an additional reporting officer in your 2013-2014 e-PAS, that he spread rumors and gossip against you, and that he interrogated your colleagues to find out who had filed a report to OIOS in 2015.
- Mac Darrow & Craig Mokhiber
5. With respect to Mr. M.D. and C.M., you claim that they requested changes in your 2015-2016 workplan in order to prevent you from obtaining a rating of “exceeds expectations” and deliberately delayed your 2015-2016 e-PAS; that you have been excluded from consideration for all temporary posts in DESIB and that they created a hostile work environment within DESIB.
6. With respect to Mr. [REDACTED] you claim in particular, that he approached former supervisors of yours inquiring about your teamwork competencies and that he deliberately delayed informing you that the temporary post for which you had been selected was no longer funded.
7. Pursuant to Section 5.2(c) of ST/SGB/2005/21, the role of the Ethics Office, when it receives a complaint of retaliation, is to conduct a preliminary review of the complaint to determine (i) if the complainant engaged in a protected activity, and (ii) if there is a *prima facie* case that the protected activity was a contributing factor in causing the alleged retaliation. Note: The report of possible misconduct only has to be “a contributing factor” in the retaliation that the s/m then suffers.
8. On the basis of its comprehensive review of your submitted case materials, the Ethics Office has determined that you engaged in certain protected activities but that there is not a *prima facie* case that the protected activities were a contributing factor in causing the alleged retaliation, pursuant to the requirements of ST/SGB/2005/21, for the reasons listed below.

## II. Did you engage in a protected activity?

9. According to Section 2.1 of ST/SGB/2005/21, protection against retaliation applies to any staff member who (a) “[r]eports 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 administrative issuances, the Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service [...]”; ...” The section further provides: “The individual must make the report in good faith and must submit information or evidence to support a reasonable belief that misconduct has occurred”.
- Eric Tistounet
10. Concerning Mr. E.T., you state that you reported the “failure of Mr. E.T. to comply with staff regulation 1.2(j): No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government”; Mr. E.T.’s “instructions to staff of OHCHR to share information on whether members of a list of named human rights defenders would be attending the Human Rights Council with the State X delegation” and “harassment and abuse of authority by Mr. E.T.” as follows:

“State X” is China

- i) In person to [redacted] and Ms. N.P. (former High Commissioner for Human Rights) in February and March 2013;
- ii) In person to Ms. F.P. (former Deputy High Commissioner for Human Rights) in December 2014;
- iii) In writing to OIOS in 25 June 2015;
- iv) In person to Mr. Z.H. (current High Commissioner for Human Rights) on 8 July 2015, followed up by email on 9 July 2015;
- v) In person to Ms. K.G. (current Deputy High Commissioner for Human Rights) on 9 March 2016.<sup>3</sup>

Navi Pillay  
 Flavia Pansieri  
 Prince Zeid  
 Kate Gilmore

So, a number of very senior officials knew what was happening.....

11. Concerning Mr. M.D. and Mr. C.M., you claim that you reported “[a]buse of authority in recruitment” as follows:

and did nothing about it.

- i) In writing to the High Commissioner for Human Rights on 29 July 2015;
- ii) In writing to MEU on 1 September 2015;
- iii) In person to the Deputy High Commissioner for Human Rights on 9 March 2016 to whom you handed a copy of your 1 September 2015 complaint to MEU;
- iv) In writing to ASG/OHRM and to the High Commissioner for Human Rights on 12 July 2016.<sup>4</sup>

Prince Zeid  
 Kate Gilmore  
 Carole Wainanu & Prince Zeid

**I. Reports against Mr. [redacted] Eric Tistounet**

**n reports in 2013**

respect to your in-person reports to Mr. [redacted] and Ms. N.P. of 2013, you clarified he misconduct you reported concerned the handling of requests by the Permanent Mission of State X to OHCHR which you describe as follows:

...They sent to OHCHR a list of named individuals and asked us to confirm whether or not those specific people had requested accreditation, and to also inform them during sessions in case of any changes. It was not a case of post-facto sharing a list of participants (which I imagine does sometimes happen with public meetings), but informing one specific delegation in advance about whether or not named individuals would be travelling to attend the session. I felt this would place anyone travelling from [State X] in danger; as they could simply be disappeared at the airport”. You clarified that “Mr. [E.T.] claimed (including in the emails I have shared previously) that this was within the rules, but refused to contact OLA to seek legal advice. I have already forwarded the email in which I pointed out that it constituted a change to the rules, not the

Bacre Ndiaye Navi Pillay

Ndiaye was the other OHCHR official (along with Anders Kompass) investigated (and cleared by OIOS) for allegedly leaking confidential information to the Moroccan Permanent Mission in the complaint about the Western Sahara.

So Ms. Reilly was reporting Tistounet’s very close relationship with the Moroccan Ambassador to Ndiaye, who is alleged to have also enjoyed a close relationship with the same Moroccan Ambassador!

Is it really any wonder that Ms. Reilly’s complaints were ignored?

**Ms. Reilly’s concern here was that the Head of the UNHCHR Human Rights Council Branch provided information to the Chinese government that may have facilitated the arrest and subsequent death of a Chinese Human Rights lawyer.**

OHCHR did not deny the practice took place. They only denied that it was misconduct - so what is the explanation for the EU being told a different story?

This indicates that Kate Gilmore (Deputy High Commissioner for Human Rights) is made aware of evidence that Mr. Tistonet **lied** to the European Union about having provided the person's name to the government of the country concerned.

*application of existing ones. The Human Rights Council Branch is in principle the secretariat of the Council, and is supposed to apply the rules decided by that intergovernmental body. Yet, when a group of EU member states explicitly asked Mr. [E.T.] about this practice, he strongly denied that it had ever happened (witnesses are ██████ of the EU delegation and ██████ of the Irish delegation). The current Deputy High Commissioner also confirmed to me in our meeting of 9 March 2016 that Mr. E.T. denied the practice internally to her. When I provided her with evidence that it had happened, on the instructions of Mr. [E.T.], she said 'Sometimes good people make bad decisions.' Thus, it is fairly clear that he was in fact aware that his instruction was against the rules, as if he genuinely believed he was applying the rules as decided by the intergovernmental body he would have no reason to publicly deny it to members of that body, or to deny a practice that was well-known to have occurred internally once there was a change in HC.<sup>6</sup>*

OHCHR did not deny the practice took place. They only denied that it was misconduct - so what is the explanation for the EU being told a different story?

**NO ACTION IS TAKEN!**

**The action that may have lead to the death of a Human Rights campaigner is condoned.**

13. When asked by this Office to specify the relevant standard procedure that you alleged was violated by this practice, you stated:

*... There is no written standard operating procedure. This was the standard process followed, and resolution 5/1 of the Human Rights Council did not set out any new process. I refer to the relevant rules in the attached email, sent to Mr. [E.T.] following a meeting with the [State X] delegation in February 2013 - where there was no change, previous practice was to be followed. Information about participants of other delegations, whether State or NGO, was never shared before the Council. No exception was made for any other delegation, only for the [State X]. There is indeed no list of members of delegations issued after the session, but I do not believe the information is technically confidential at that stage, as those who speak would appear on the public record of the meeting in the form of the webcast<sup>7</sup>. You then added: "I just realised I maybe was not as clear as I should have been in my initial application for whistleblower status. My main issue with Mr. [E.T.]'s application of a different practice for the [State X] delegation was that I felt it would place human rights defenders on the list, as well as their families and colleagues, in danger. I'm not sure which precise rule states that UN staff should not do so, but just wanted to make sure that my primary motivation was not lost in the rather more technical issues of how the practice breached rules of procedure!<sup>8</sup>*

The Ethics Office is not concerned that a UN official took action that resulting in someone being detained and then dying in custody; only that the staff member applying for Protection against Retaliation cannot point out exactly what Procedure was not followed.....

14. In support of your allegations, you provided this Office with the copy of an email that you sent to several colleagues in early 2013 concerning a meeting with representatives of the State X mission in which you state:

<sup>6</sup> Email from Emma Reilly to ██████, Your request for protection against retaliation, 22 September 2016.

<sup>7</sup> Email from Emma Reilly to ██████, Re: email to FRO - 2 of 2, 23 August 2016.

<sup>8</sup> Email from Emma Reilly to ██████, Re: email to FRO - 2 of 2, 24 August 2016.

Given that they were dealing with information about human rights activists attending a UN meeting when the Chinese Government's human rights record was being discussed; Ms. Reilly clearly had reasonable grounds to be concerned that the Chinese Government wished to prevent these activists from attending, and there was therefore a risk to them if they did.

Kyung-Wha Kang

now 'Senior Advisor on Policy' to Secretary-General Antonio Guterres

... [T]hey are still insisting that we should provide them with information on whether or not the named individuals have requested accreditation prior to the session...

Following the meeting, June indicated that she would raise the matter directly with the DHC to ensure a consistent approach to such question throughout the house...

If my understanding is correct, the list of individual participants accredited to sessions of the Commission was not made public prior to the session itself. As rule 7(a) of the Rules of Procedure provides that participation of the NGOs shall be based on arrangements including ECOSOC Res 1996/31 and "practices observed by the Commission on Human Rights", we could perhaps rely on this to maintain the position of requesting documentation to back up any security concerns, as we did for the [State Z] mission...<sup>9</sup>

15. Mr. E.T. responded:

So China is being treated **DIFFERENT** from (State Z)! Annex B  
Para 13

i.e. This had clearly happened before

...I was briefed by Emma on your meeting with the [State X] delegation. As far as I am concerned the matter is plain. The [State X] delegation will send us the usual note concerning those individuals who have been or will be accredited to the session. To do this, they need to get a confirmation of the presence of one or more of the listed individuals during HRC12. Since the list of participants to a UN public meeting is by definition public, there is not much we can do to resist their inquiry. The best we can do is delay by few days (until 25 February) the confirmation of those present in March but this will amount to nothing and will exacerbate the [State X] mistrust against us. We'll have more leeway at a later stage and we all know that security will eventually authorize the NGOs participants to attend the session. Finally, I would like to add that I would find it appropriate for the NGO concerned to be informed about the [State X] request... transparency goes both ways.<sup>10</sup>

Annex B  
Para 16

16. You also provided us with the copy of an email from Ms. J.R., Chief, Civil Society Section, Executive Direction Management, addressed to several directors of OHCHR, including Mr. E.T. and copied to a number of colleagues from different branches within OHCHR in which she stated:

... we had numerous exchanges with the [State X] PM of late with regard to a list of individuals of concern to the [State X] PM.

In brief, they requested to know if a list of 12 or so individuals were accredited to HRC22. Following consultations with [E.T.] and colleagues, we noted that in principle this information is public, and that we would therefore have to notify the PM in due course regarding their participation...

Requests for accreditation were received from the individuals below... and the PM informed this morning. My understanding is that they plan to send a note

Would the information be "public" BEFORE the meetings?

Annex B  
Para 19

How does this correlate with the denials to the EU member states referred to in para 12 above?

<sup>9</sup> Email from Emma Reilly to Eric E.T. and others, *Meeting with State X delegate*, 8 February 2013.

<sup>10</sup> Email from Eric E.T. to J.R. and others, *For further advice – Fw. Re:Re:Re: Please help us check a list of names*, 11 February 2013.

By acknowledging that the Chinese Permanent Mission had indicated that these persons "pose a security threat" - OHCHR were aware there was a risk they might be subject to arbitrary detention!

verbale indicated that they pose a security threat (following usual procedures with UNOG)....<sup>11</sup>

17. You also submitted a copy of the *note verbale* from the Permanent Mission of State X in Geneva to OHCHR requesting OHCHR not to provide accreditation to or meet with a number of individuals belonging to the an NGO which, they alleged, "is listed as a terrorist organization by the United Nations Security Council".<sup>12</sup> The individual who died was a lawyer.

18. On the same day, Ms. J.R. wrote to a certain Mr. [REDACTED] to inform him that "the Permanent Mission of [State X] has been informed by us, upon their request, about your request to accredit the following individuals for the current session of the Council [...]"<sup>13</sup>. Does the UN mean it was therefore their own fault for travelling and getting arrested?

19. The Ethics Office interviewed [REDACTED] whom you had identified as a witness in your submissions. [REDACTED] stated that there is no rule in OHCHR governing the accreditation of NGOs to sessions of the Human Rights Council. [REDACTED] recalled that several Permanent Missions submitted lists of names of individuals expected to attend these sessions but was not aware that the request from the State X mission had received a special treatment by OHCHR.<sup>14</sup>

There is no "rule" about compromising someone's personal information or travel details, even when it is foreseeable that the information could result in their being arrested for promoting Human Rights in their country....

Annex B  
Para 20

20. In light of your explanations and the information that you submitted in support of your assertions, the Ethics Office notes that the way in which OHCHR handled the request from the Permanent Mission of State X does not appear to violate any rule or principle of the Organization. Therefore, we draw the conclusion that granting this request fell within Mr. E.T.'s discretion.<sup>15</sup>

21. The evidence at hand does not support a conclusion that Mr. E.T. exceeded such discretion. We note in this respect that other senior managers at other branches of OHCHR were aware of and applied this practice, i.e. it can't be "misconduct" because everyone does it. ...

22. Moreover, the evidence shows that additional measures were taken by OHCHR, such as informing the concerned individuals of the State X request and OHCHR's response, in order to minimize any potential detriment caused in confirming the accreditation of certain individuals to the sessions of the Human Rights Council to the Permanent Mission of State X. How does this make sense?

The Ethics Office relies on Tistouneit having "discretion" to make the decision - ignoring the obvious point that by exercising that "discretion" could have resulted in the death of a Human Rights activist!

How does telling the activist that their Government is aware of their travel plans "minimise the potential detriment" if the risk is that they may be subject to arbitrary arrest when they attempt to travel?

<sup>11</sup> Email from J.R. to [REDACTED], E.T. and others, *State X PM*, 1 March 2013.

<sup>12</sup> Note verbale from the Permanent Mission of State X to the United Nations Office at Geneva and other International Organizations in Switzerland, 1 March 2013.

<sup>13</sup> Email from J.R. to [REDACTED] *Re. accreditation request - S.T.P.*, 1 March, 2013.

<sup>14</sup> Note to file, telephone interview with [REDACTED], 23 September 2016.

<sup>15</sup> We refer to the similar reasoning followed in determining that sharing information with the French authorities did not constitute improper use of a position of authority by the director of the Field Operations and Technical Cooperation Division of OHCHR in the Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers*, 2 November 2015, p. 60-62.

This is the basis of the Ethics Office argument in denying Ms. Reilly's application for Whistleblower Protection:

**OHCHR provided information that lead to a Human Rights activist DYING after nearly SIX MONTHS IN POLICE CUSTODY because her Government wanted to prevent her being present at a UN Human Rights meeting - and the UN Ethics Office does not believe that a UN staff member had reasonable grounds to believe that compromising that person's life should constitute "misconduct"!!!**

The Ethics Office is arguing that Tistounet cannot have done anything wrong because everyone else did the same, after he told them to do so!

23. We further note that the decision to confirm the names of certain individuals to the State X mission does not appear to be a unilateral decision imposed by Mr. E.T. but rather a course of action adopted by OHCHR following Mr. E.T.'s advice. Ms. J.R.'s email circulated among several branches of OHCHR stating that "[f]ollowing consultations with [E.T.] and colleagues, we noted that in principle this information is public, and that we would therefore have to notify the PM in due course regarding their participation..." supports this conclusion.
24. Accordingly, the Ethics Office is unable to conclude that the information or evidence you submitted supports a reasonable belief that confirming the attendance to a session of the Human Rights Council of named individuals to the Permanent Mission of State X constituted misconduct. This is the Ethics Office confirming that recklessness by UN officials can get people killed but that is still never considered "misconduct"!
25. As discussed above, you also contend that the practice of confirming the participation of named individuals to sessions of the Human Rights Council with the Permanent Mission of State X was discontinued following your reports. To support this allegation, you provided this Office with an email sent to you by [REDACTED] from OHCHR on 24 March 2014. You state:
- ... The colleague who forwarded the email chain below following the death of [C.S.] was aware of my reports to the HC and other senior managers in 2013 to try to stop the practice, hence her 'no comment' remark. You can see that even following the death of a human rights defender who was trying to attend UPR, the concerns remained procedural rather than extending to any consideration as to whether information on human rights defenders should have been shared.<sup>16</sup> OHCHR is not concerned with the death of a Human Rights activist; only cares about "procedures."
26. Ms. [REDACTED]'s email contains a series of emails that Mr. E.T. sent Ms. N.P. in March 2014 providing updates on an incident occurred during the Human Rights Council session. In the last one of his emails, Mr. E.T. states:

... The saga about the longest 20 seconds in the history of the HRC ended up tonight and it did not end up very well. Here is the story: Throughout the past days and hours we explored all possible options on how to deal with the NGO request for a minute of silence in a dignified manner. Yesterday, we were very close to a deal with the [State X] delegation almost agreeing to let the NGOs remaining silent but without standing up for a brief period of time. This did not fly because [State X] could not agree to remain silent at the invitation of the NGOs. Today, we tried every possible way out and eventually agreed with the [State X] side few minutes before the meeting started on the following scenario: [State X] would have made a point of order rejecting the possibility for NGOs to use their speaking time for a minute of silence. This would have been followed by a number of points of order at the end of which the President would have ruled by sending the matter to the bureau while reiterating the importance of 16/21.

<sup>16</sup> Email from Emma Reilly to [REDACTED] Confidential: update 20032014, 28 September 2016.

Why would the practice be "discontinued" if there was nothing wrong with it?

**In summary:**

During a meeting to discuss the 'Human Rights' situation in China and where China was being considered for membership of the Human Rights Council; the UN High Commissioner for Human Rights agreed with the Chinese Government that the UN would not allow any public expression of concern over the fate of a Chinese Human Rights activist who had been detained after the High Commissioner for Human Rights shared information with the Chinese Government about which Chinese activists were traveling to attend that UN meeting on Human Rights.

*However, when the International Service's delegate ended his statement, the carefully written script derailed rapidly. First, all NGOs stood up and most of them displayed pictures of Ms. [C.S.], something which is obviously against the rules. Second, the points of order accumulated to above 40 from all sides. Third, we were informed midway through that [State X] had new instructions to call for a vote despite the promises made before the meeting.*

*We therefore adjusted ourselves rapidly and the President facing a call for a vote remained in line with the rules of procedure and asked that his ruling, which was a technical one (sending the matter back to the Bureau), be put to a vote. He remained firm on this and the roll-call vote was conducted on these premises. As we had been expected it, 20 countries voted against his ruling.... Hence, the President's ruling was defeated by 13 in favour; 20 against and 12 abstentions.*

*Thereafter we worked very hard and fast to limit the negative impact of the vote by circumscribing it to the President's ruling only. There were other series of points of order but what remains is that the use of the NGO time was not subjected to a new vote which would have been devastating.*

*The consequences of this vote are not anodyne. Tension has risen to a very high level, a President's ruling was defeated, commitments were not held, and the situation of NGOs was weakened. In a way, 24/24 died tonight, but this may a bit too much to say. On the positive side, we should reckon that NGOs stood up for 20 minutes in the room with pictures of Ms. [C.S.] without being prevented from doing so. We now expect many points of order to be made during the general debates to follow and lots of tension around the vote of resolutions at the end of the session.*

*Lastly, I would like to thank all involved for their support and in particular [G.] whose conduct of the vote and the response to a question on NGO practices were impeccable.<sup>17</sup>*

27. The Ethics Office observes nothing in this series of emails supporting the conclusion that the practice with respect to the requests from the Permanent Mission of State X was discontinued. Why did the Ethics Office not ask OHCHR to confirm if it was or was not discontinued?
28. We further note that none of the evidence you provided shows that you reported Mr. E.T. for having accepted financial benefits from the delegation of State Y in February or March 2013.
29. In sum, the Ethics Office finds that the evidence submitted does not support your allegation that you reported misconduct to Mr. [REDACTED] or Ms. N.P. in 2013 and is therefore unable to determine that you engaged in a protected activity at that time.

Annex B  
Paras 29 -32

The Ethics Office penalises the staff member for not leaving a written record of a confidential discussion on a sensitive matter relating to a senior OHCHR official, because the Deputy High Commissioner claims not to remember it.

This is UN Ethics Office logic:

- senior management knew about the allegations,
- Ms. Reilly was the only person making a fuss about it
- there was no evidence that anyone else told them therefore
- there was no evidence that Ms. Reilly told them!

<sup>17</sup> Email from E.T. to [REDACTED], Confidential: update 2003014, 21 March 2014 forwarded in email from [REDACTED] to Emma Reilly, Confidential, update 2003014, 24 March 2014.

Flavia Pansieri's selective memory also played a significant part in the case of Anders Kompass; when she conveniently failed to remember she knew about passing the information to the French Government....



Flavia Pansieri

**B. In-person to Ms. F.P. (former Deputy High Commissioner for Human Rights) in December 2014**

30. In support of your claim you state: “The entire meeting was witnessed by Mr. [REDACTED]. As he has participated in my subsequent harassment, I am not sure of the degree to which he will confirm this”.<sup>18</sup>

31. You attached the copy of an email you sent Ms. F.P. on 12 December 2014 which in your view “indicates that the summary was sent, and that I sought to have the meeting at a time when an independent witness could be present but I was wary of attaching initial emails with the instructions to share information with the State X in electronic form, as [E.T.] had explicitly said I should not send them to anyone. I provided print-outs of the email above and the email in which Mr. E.T. shared his view that the information should have been given”.<sup>19</sup>

Excuse me????

Is this not an “admission” of something???

In this email, you state:

... To summarise what I would like to discuss, I was subjected to harassment in my fixed-term post in the Human Rights Council Branch, by the Chief of the Branch. I reported this harassment to human resources in October 2013. My temporary reassignment to RRDD, where I have been since September 2013, will end on December 31. As I have recently been recommended, but not selected, for a number of temporary P-4 positions, I had been confident in my ability to move laterally into one of the open P-3 posts through a competitive process. However, following the announcement in the last all-staff meeting that such a process will not apply in these exceptional circumstances, I am now faced with returning to a situation of harassment. I am therefore left with no option but to make a more formal complaint”. You go on to state “I would also like to discuss whether, in light of the Office’s duty of care to protect me from attacks on both my physical and my mental health, I may be accorded the same priority as those whose posts have been cut...”.<sup>20</sup>

You also refer to the emails you exchanged with Mr. E.T. and other colleagues in February 2013 concerning the sharing of information with the State X delegation which you reportedly provided to Ms. F.P. in support to your claim against Mr. E.T. discussed above.

32. You provided us with a copy of an email that you sent Mr. [REDACTED] with copy to Ms. F.P. on 17 December 2014 in which you state: “[...] Further to our meeting yesterday with [F.P.], I wanted to propose concrete actions that could be taken to protect me from further harassment [...] The Chief of Branch is aware that I am proposing this solution,

Flavia Pansieri is aware of Ms. Reilly's concern about retaliation and does NOTHING

<sup>18</sup> Email from Emma Reilly to [REDACTED] Request for a meeting, 26 July 2016.

<sup>19</sup> Email from Emma Reilly to [REDACTED] Request for a meeting, 26 July 2016.

<sup>20</sup> Email from Emma Reilly to F.P., Request for a meeting, 12 December 2014.

Ms. Reilly is clearly looking to resolve the situation and shows reluctance to make a formal complaint. She informed her superiors of her concerns, but

- OHCHR management was not interested in avoiding the problem before it escalated, and
- the Ethics Office exploit this reluctance to claim there is no evidence she made a complaint of misconduct.

*and would be agreeable to the Deputy High Commissioner using her authority to laterally transfer me to it [...].*<sup>21</sup>

You go on to list a number of posts for which you have applied and state: *"I also wanted to ensure you had the full list of the P-3 posts advertised in Inspira for which I have applied, and to which I could also simply be laterally transferred [...]"*<sup>22</sup>.

Proactive problem solving is clearly not a skill in which Ms. Pansieri is particularly adept.

You close by stating: *"Once again, I wish to reiterate that I am keen to resolve this without resorting to a formal complaint if at all possible [...]"*<sup>23</sup>.

33. The Ethics Office has already determined that your reports of 2013 concerning the policy of confirming the accreditation of named individuals to the sessions of the Human Rights Council with the Permanent Mission of State X did not support a reasonable belief that misconduct occurred. The documentation you provided concerning similar reports made to Ms. F.P. in December 2014 does not provide any additional information which would allow a different conclusion. Accordingly, the Ethics Office is not satisfied that this report constitutes a protected activity as defined by ST/SGB/2005/21.

What about the **harassment** Ms. Reilly reported in October 2013?

#### C. Written report to OIOS, 25 June 2015

Violation of ST/SGB/2008/5, i.e. misconduct and therefore a "protected activity" for the purposes of ST/SGB/2005/21?

Fact: Ms. Reilly reported to OIOS.

She was told to report it to her own boss - who had already been ignoring her complaints for 2 years.....

34. To support your claim that you filed a report of misconduct against Mr. E.T. to OIOS in June 2015, you provide, among others, a copy of an email that you sent OIOS on 21 June 2016 inquiring as to the status of your complaint.<sup>24</sup> OIOS responded on the same day stating: *"You reported possible harassment, which was referred back to you for action under 2008/5..."*<sup>25</sup>.
35. There is no evidence that you undertook further action after OIOS informed you that it would not retain your complaint but referred it back to you for appropriate action under ST/SGB/2008/5. *Why is the s/m being penalised for a decision made by OIOS?*
36. You claim further that you reported Mr. E.T.'s failure to comply with staff regulation 1.2(j) regarding the acceptance by staff members of gifts or remunerations from Governments.<sup>26</sup> You explain that you reported Mr. E.T.'s *"acceptance of financial benefit from the delegation [of State Y]"*<sup>27</sup>.

<sup>21</sup> Email from Emma Reilly to [REDACTED] follow-up to our meeting, 17 December 2014.

<sup>22</sup> Email from Emma Reilly to [REDACTED] Follow-up to our meeting, 17 December 2014.

<sup>23</sup> Email from Emma Reilly to [REDACTED] Follow-up to our meeting, 17 December 2014.

<sup>24</sup> Email from Emma Reilly to OIOS Referrals, Confidential: OIOS referral under ST/SGB/2008/5 (ID Case No. 0315/15), 21 June 2016.

<sup>25</sup> Email from OIOS to Emma Reilly, Confidential: OIOS referral under ST/SGB/2008/5 (ID Case No. 0315/15), 21 June 2016.

<sup>26</sup> PaR Request form, p. 1.

<sup>27</sup> Email from Emma Reilly to [REDACTED] *temisation of detriments – email 1*, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Ms. Emma Reilly*, p.1.

37. With respect to this part of your report, you had provided OIOS with the following information:

...The name of the bookshop at which Mr. [E.T.] launched his book is Librairie L'Olivier. ... (<http://www.arabooks.ch/archive2012.htm>) ... Mr. [E.T.] is identified as working for the UN, and it expressly states that the food at the event is paid for by the (now former) Ambassador of [State Y] to the UN. As I said, I do not have firm proof of inappropriate influence of the [delegation of State Y], but the combination of this event ...and reports from NGOs close to the [delegation of State Y] that they used to have special arrangements for moving up NGO lists of speakers at the Human Rights Council, or even deleting other NGOs from lists, gives me concern.<sup>28</sup>

The UN Ethics Office does not appear to understand that "inappropriate influence" means a BRIBE!

You also provided OIOS with a list of names of OHCHR staff members who attended Mr. E.T.'s book launch.<sup>29</sup>

38. The Ethics Office is of the opinion that the information you provided supports a reasonable belief that Mr. E.T. may have engaged in irregular outside activities if he had not obtained clearance for the presentation of his book. This conclusion is supported by OIOS' statement in June 2016 that "[...] we retained some matters under a separate case but mainly pertaining to outside activities, for which a report was made"<sup>30</sup>.

No! The misconduct is that he accepted an advantage from the Ambassador who paid for the reception for his book launch!



39. Based on the above, the Ethics Office is satisfied that your report to OIOS of June 2015 pertaining to Mr. E.T.'s book launch constitutes a protected activity under ST/SGB/2005/21.

It is NOT that he would require permission to publish the book!

The Ethics Office concedes that this is the basis for whistleblower protection - but for the WRONG reason!

#### D. In-person report to the High Commissioner for Human Rights, 8 July 2015

40. You claim that "the meeting [with the High Commissioner] was witnessed by Mr. [REDACTED] ...]"<sup>31</sup> In support of your claim, you provided this Office with the copy of an email you sent Mr. [REDACTED] on 9 July 2015 in which you explain in detail the procedure applied for the accreditation of NGOs and state:

... The standard procedure in cases where delegations enquire about named individuals would be to verify whether the delegation alleged a security threat, and request evidence of any such threat. This would then be shared with UNOG security, who would objectively determine whether a security threat in fact existed. An email would then be sent to the delegation with the outcome, confirming that should the person seek accreditation, it would be granted or, in case of a threat, refused. This standard procedure was not

<sup>28</sup> Email from Emma Reilly to U.K., Confidential: Requested information, dated 29 June 2015.

<sup>29</sup> Email from Emma Reilly to U.K., Persons who attended Mr. [E.T.]'s book launch, 3 July 2015.

<sup>30</sup> Email from OIOS to Emma Reilly, Confidential: OIOS referral under ST/SGB/2008/5 (ID Case No. 0315/15), 21 June 2016.

<sup>31</sup> Email from Emma Reilly to [REDACTED] Request for a meeting, 26 July 2016.

- (1) This appears to suggest that UN Security did not consider there to be a credible terrorist threat from any person accredited by OHCHR to attend those UN Human Rights meetings.
- (2) It is known that OHCHR did co-operate and respond to the Chinese Permanent Mission's request with the information they requested, and
- (3) It was reported that later some Chinese Human Rights activists who had been accredited by OHCHR were detained to prevent them travelling to those UN Human Rights meetings.

*applied to requests from the [State X] delegation. Prior to every session, the [State X] delegation send a list of named human rights defenders, and request to know whether or not they are registered to attend the session. The list includes high profile figures, but also, increasingly, individuals who delivered statements critical of [State X]'s human rights records at previous sessions. [E.T.] instructed that this information be provided to the delegation prior to every session, despite objections from both me and [J.R.] that this violated the fundamental principle that we should do no harm.*

*At the time of the Commission, a list of participants was annexed to the report of the session. At the Council, the webcast serves as the summary record, and includes the names of speakers as well as their affiliation. There is no equivalent list of members of delegations issued at the end of the session. [E.T.]'s position was that the rules therefore required the secretariat to furnish any delegation that should ask information on whether or not a specific individual had sought accreditation to the Council session. I disagreed with this legal analysis – the list of participants was not made available before the session had started, was public and was not shared on a priority basis with any delegation or group of delegations...*

*I suggested that we seek the views of OLA to avoid setting a precedent that could expose HRDs to danger and the Office to reputational risks. [E.T.] declined this suggestion and instructed me to respond to the request. I did succeed in persuading [E.T.] to allow me to contact the concerned NGOs in order to inform them of the request and OHCHR's intended date of response, to reassure them that OHCHR did not consider the individuals to be a security threat, to offer to meet or speak with them to discuss any concerns and to provide information on how to report any reprisals as well as the (very limited) possible responses of OHCHR in such cases. While NGOs expressed their appreciation for the information, it could only ever mitigate potential harm. I also waited until the last possible moment to share the information with the delegation...<sup>32</sup>*

41. The Ethics Office has already determined that your reports concerning the policy of confirming the accreditation of named individuals to the sessions of the Human Rights Council with the Permanent Mission of State X does not support a reasonable belief that misconduct occurred. The documentation you provided concerning similar reports made to the High Commissioner for Human Rights in July 2015 do not provide any additional information which would allow a different conclusion. The evidence at hand does not show that you reported additional wrongdoing. Accordingly, the Ethics Office is not satisfied that this report constitutes a protected activity as defined by ST/SGB/2005/21.

Let us assume that the Ethics Office is correct and Ms. Reilly was wrong in believing that providing the names of the Human Rights activists to China might actually be "misconduct"; why did Zeid not point out how and why she was mistaken?

Why had Flavia Pansieri not already explained it to her?

Did it not occur to ANYBODY to explain it to her?

<sup>32</sup> Email from Emma Reilly to M.A., *Information shared with [State X] delegation*, 9 July 2015.

**E. In-person report to the Deputy High Commissioner for Human Rights, 9 March 2016**

42. To support your claim that you met with the Deputy High Commissioner to report misconduct against Mr. E.T., you provided a copy of an email you sent Ms. K.G. on 14 January 2016 requesting such meeting. In that email you state:

Kate Gilmore

*... Some three years ago, I reported that the Chief of the Human Rights Council Branch had instructed me to provide the [State X] delegation with information on whether or not named individuals were due to travel to attend the Human Rights Council. Such information was not in general shared with other delegations, and I felt that sharing it amounted to facilitation of reprisals against human rights defenders. The [C.S.] case unfortunately demonstrates how such information is likely to be used. I also reported a number of other abuses of authority by the same person, ranging from accepting financial benefit from the [delegation of State Y] to corrupt recruitment practices.*

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*Unfortunately the only response of OHCHR has been to permit harassment and slander of me in retaliation for speaking out, which has taken a very serious, and now likely permanent, toll on my health. Human resources and the Chief of PSMS have, for three years, simply ignored my requests to meet. While I met with your predecessor, who recognised that harassment had occurred, her only response was that it would be "to my credit" to return to a situation of harassment and "make it work" (I have over the past two and a half years been on a series of temporary posts). I do not feel that whistleblowers should be punished, and would like to discuss both whether it is possible to stop the practice of sharing information in advance with a delegation which may use it to detain and torture human rights defenders, and whether I may be reassigned to another post where I will not be subjected to harassment. Resignation is unfortunately not an option in light of my need of medical insurance...<sup>33</sup>*

Flavia Pansieri - who informed Mr. Anders Kompass that he should resign when he had done nothing wrong - but here shows no interest in taking any action against Eric Tistounet, for clear breaches of ST/SGB/2008/5.

43. On 28 April 2016, you wrote to the Deputy High Commissioner for Human Rights following your meeting on 9 March 2016. In your email, you report the difficulties in finding an assignment away from the Human Rights Council Branch. You state:

Kate Gilmore

*... I have effectively moved from a position of possibly returning to further harassment to one of possibly returning to further harassment while camping on an inflatable mattress in an empty apartment. While I stopped applying for temporary posts in the brief period during which I thought the threat was finally gone, I have now started applying again. If there is a possibility of a temporary reassignment to a post that is funded, I would be most grateful. For example, I know that I was previously recommended, but not selected, for a six-month temporary post on business and human rights, which was readvertised and to which I applied ...<sup>34</sup>*

<sup>33</sup> Email from Emma Reilly to K.G., *Request for a meeting*, 14 January 2016.

<sup>34</sup> Email from Emma Reilly to K.G., *Follow-up to our meeting*, 24 April 2016.

44. You further stated “I believe the practice was stopped following my report to the (new) High Commissioner, and that the same rules are now applied to the [State X] delegation as apply to every other delegation”<sup>35</sup>. As discussed above, the evidence you provided in support of this allegation does not support a conclusion that the practice with respect to the requests from the Permanent Mission of State X has been discontinued. ....Why did the Ethics Office not find out for themselves?

45. The Ethics Office has already determined that your report of OHCHR’s practice with respect to the confirmation of the accreditation of named individuals to the Permanent Mission of State X does not support a reasonable belief that misconduct had occurred.

See comment at para 20 above

46. We further note that while you mention Mr. E.T.’s alleged harassment in your emails to Mr. [REDACTED] you did not provide sufficient information or evidence that would support a reasonable belief that such misconduct had occurred.

i.e. we don’t believe that this looks suspicious.....

47. In light of the evidence discussed above, the Ethics Office cannot conclude that your report to the Deputy High Commissioner of 9 March 2016 constitutes a protected activity in the sense of ST/SGB/2005/21.

Mac Darrow, Craig Mokhiber & another not identified

## 2. Reports against Mr. M.D., Mr. C.M. and Mr. N.V.

### A. Written report to the High Commissioner for Human Rights, (29 July 2015)

At this time, the Deschamps Panel has been appointed to look into OHCHR’s handling of Anders Kompass and the CAR child sex abuse scandal was in the news.

48. You claim that you submitted a written report to the High Commissioner via his Executive Office on 29 July 2015 concerning Mr. M.D. and Mr. C.M.<sup>36</sup>

49. You provided this Office with a copy of the email you sent Mr. [REDACTED] Executive Officer at the Executive Office of the High Commissioner for Human Rights, on 29 July 2015, together with a copy of the report attached.<sup>37</sup>

50. On 26 August 2015, Mr. [REDACTED] writes back to you stating: “Thanks for providing me with your views, and apologies for missing your email, maybe because I was on home leave for two weeks in July. I will bring it to the attention of the HC and the DHC”<sup>38</sup>.

51. In your report, you argue that the recruitment process for post [REDACTED] OHCHR- [REDACTED] GENEVA (R) to which you applied was rigged to ensure that another candidate, [REDACTED] be selected. You provide information to support your assertion and, in particular, your state:

<sup>35</sup> Email from Emma Reilly to [REDACTED] mail to FRO – 2 of 2, 23 August 2016.

<sup>36</sup> PaR Request form, p. 2.

<sup>37</sup> Email from Emma Reilly to [REDACTED] Irregularity in ongoing recruitment process, 29 July 2015.

<sup>38</sup> Email from [REDACTED] Emma Reilly, Irregularity in ongoing recruitment process, 26 August 2015.

... I further approached Mr. [REDACTED] of human resources, with my concerns. His response was that it was not within the power of OHCHR human resources to ensure compliance with the rules, that everyone was aware that some posts were 'reserved' in advance for particular candidates, and that he expected the system to improve in January 2016, from which point interviews would be conducted centrally by job group. It should be noted that ... [REDACTED] ... is in turn a personal friend of Mr. [M.D.] (P-5, Chief, MDGs Section).<sup>39</sup>

With respect to another post, you claim:

...temporary post [REDACTED] GENEVA was reserved by Mr. [REDACTED] for Mr. [REDACTED] P-2, now [REDACTED].  
 On 25 March 2015, I was explicitly told by Mr. [REDACTED] that, while I had been the strongest candidate, the position had been reserved for Mr. [REDACTED] to work on a different assignment (financing for development, or FFD), with the prior consent and approval of Mr. [REDACTED]. ... Mr. [REDACTED] further stated that, while my performance merited an "outstanding" rating, this would not be the rating on my e-PAS, as this was also reserved for Mr. [REDACTED] and he could not justify many such ratings...<sup>40</sup>

★  
 Basis for  
 whistleblower  
 protection!

52. The Ethics Office is satisfied that the information you provided is sufficiently specific to support a reasonable belief that favouritism was applied in the selection processes you described and therefore that you had a good faith belief to report that misconduct had occurred. Accordingly, the Ethics Office determines that your report received by the Executive Office of the High Commissioner for Human Rights on 26 August 2015 constitutes protected activity under ST/SGB/2005/21. *Having acknowledged that this complaint was made in good faith etc..... what was actually done to INVESTIGATE it?*

**B. Formal complaint to MEU, 1 September 2015.**

53. The Ethics Office notes that requests for management evaluation filed before MEU do not constitute reports of misconduct before one of the established internal mechanisms designated in Section 3 of ST/SGB/2005/21. *Technically correct - BUT - given that*

**C. In-person report to the Deputy High Commissioner for Human Rights, 9 March 2016**

54. To support your claim that you met with the Deputy High Commissioner to report misconduct against Mr. M.D. and Mr. C.M., you provided a copy of an email you sent

<sup>39</sup> Attachment entitled *Abuses of authority in recruitment against post [REDACTED]* attached to Email from [REDACTED] to Emma Reilly, *Irregularity in ongoing recruitment process*, 26 August 2015.

<sup>40</sup> Attachment entitled *Abuses of authority in recruitment against post [REDACTED]* attached to Email from [REDACTED] to Emma Reilly, *Irregularity in ongoing recruitment process*, 26 August 2015.

*(a) all staff members have an obligation to report misconduct, and (b) the MEU were advised of allegations they must have recognised as constituting possible misconduct - why did the MEU fail to advise Ms. Reilly that the matter should be reported to OIOS?*

## Staff Regulation 1.2(b)

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status;

ST/SGB/2008/5 Sec 1.2  
"Harassment"ST/SGB/2008/5 Sec 1.4  
"Abuse of authority"ST/SGB/2008/5 Sec 3.2  
on standards of conduct  
required of managers

to the Deputy High Commissioner on 28 April 2016 following up on your meeting of 9 March 2016. In that email you state:

*... Following my complaint to UNDT, when I initiated the mid-point review, my FRO (who was named in the complaint) returned my previously agreed workplan, instructing me to change the goals. This was several months after the end of my assignment, meaning that I would be judged against criteria that were never discussed.*

*He also informed me that the FRO for my subsequent temporary assignment was to be changed to a staff member at the same level...*

*I worked extremely long hours to develop the attached indicators proposal in time for it to have an impact on the final outcome.... I am fully aware of the gossip spread about me following my complaint to UNDT...*

NOT  
"misconduct"?

55. This email shows that the concerns you raised with the Deputy High Commissioner pertain to the procedure applicable to your annual performance evaluation. These appear to be purely administrative issues which would not amount to misconduct. You may have the opportunity to submit the concerns you raise in this email to a rebuttal panel when your e-PAS is completed.

**D. Complaint of harassment and abuse of authority to ASG/OHRM and High Commissioner for Human Rights, 12 July 2016**

56. You claim the following: "[t]his complaint was in fact submitted on 12 July 2016, with annexes following on 14 July 2016. The response from ASG/OHRM [...] on 20 July 2016 was that I should submit the complaint directly to the High Commissioner, which I did on the same date (20 July 2016). I have yet to receive any response [...]"<sup>41</sup>.

57. You provided this Office with a copy of the report you sent to ASG/OHRM<sup>42</sup>, as well as a copy of the email that you sent the High Commissioner on 20 July 2016 forwarding the report and requesting that he constitute a panel of investigation into your allegations.<sup>43</sup> In your complaint, you report the "inappropriate sharing of information on human rights defenders with the [State X] government and the acceptance of financial benefit from the [delegation of State Y] within the Human Rights Council Branch (HRCB)" and several alleged irregularities in recruitment processes and within DESIB and in the development of your current performance management document.<sup>44</sup>

<sup>41</sup> Email from Emma Reilly to [REDACTED] *Itemisation of detriments – email 7 of 7, 9 August 2016.*

<sup>42</sup> Interoffice memorandum from Emma Reilly to [REDACTED] *Formal complaint of harassment and abuse of authority, dated 12 July 2015.*

<sup>43</sup> Email from Emma Reilly to [REDACTED] 20 July 2016.

<sup>44</sup> Interoffice memorandum from Emma Reilly to [REDACTED] *Formal complaint of harassment and abuse of authority, dated 12 July 2015.*



58. You further informed this Office that on 29 August 2016, you were notified that an investigation would be opened following your complaint of July 2016.<sup>45</sup>

★  
Basis for  
whistleblower  
protection!

59. Based on the information you provided, the Ethics Office is satisfied that your report to the High Commissioner for Human Rights constitutes a report of misconduct under ST/SGB/2008/5. Consequently, the Ethics Office concludes that by submitting your report of July 2016, you engaged in a protected activity under ST/SGB/2005/21.

### 3. Conclusion

60. In our analysis, and for the reasons provided above, the following do not qualify as protected activities under ST/SGB/2005/21:

#### A) Concerning Mr. E.T.:

- i) In person to Mr. [REDACTED] (D-2 formerly responsible for Human Rights Council and Special Procedures Division, OHRM) and Ms. N.P. Navi Pillay (former High Commissioner for Human Rights) in February and March 2013;
- ii) In person to Ms. F.P. (former Deputy High Commissioner for Human Rights) in December 2014; Flavia Pansieri
- iii) In writing to OIOS in 25 June 2015 concerning the practice of sharing information with the Permanent Mission of State X;
- iv) In person to Mr. Z.H. (current High Commissioner for Human Rights) on 8 July 2015, followed up by email on 9 July 2015; Zeid Ra'ad Al Hussein
- v) In person to Ms. K.G. (current Deputy High Commissioner for Human Rights) on 9 March 2016.

#### B. Concerning Mr. M.D. and Mr. C.M.

- i) Your report to MEU of 1 September 2015 and Kate Gilmore
- ii) Your in-person report to Ms. K.G. of 9 March 2016 concerning Mr. M.D. and Mr. C.M.

61. The Ethics Office was satisfied that your following reports constitute a protected activity under ST/SGB/2005/21:

#### A) Concerning Mr. E.T.:

- i) In writing to OIOS in 25 June 2015 concerning Mr. E.T.'s book launch.

Note the DATES

Nothing before June 2105 qualifies as a "protected act" - so the Ethics Office can justify doing NOTHING about everything Ms. Reilly experienced from March 2013 to June 2015.....

<sup>45</sup> Email from [REDACTED] to Emma Reilly, *Formal complaint of harassment*, 29 August 2016.

**B) Concerning Mr. M.D. and Mr. C.M.: Mac Darrow & Craig Mokhiber**

- i) Your written report to the High Commissioner for Human Rights of 26 August 2015;
- ii) Your complaint of harassment and abuse of authority to the High Commissioner for Human Rights of 12 July 2016

Prince Zeid

What has Zeid DONE about these complaints against Darrow and Mokhiber?

**III. Is there a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation?**

62. Pursuant to Section 1.4 of ST/SGB/2005/21, retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in a protected activity.

*Allegations of retaliation by Mr. E.T. following your report to OIOS in June 2015*

63. The Ethics Office has determined that you engaged in a protected activity by submitting a written report to OIOS in June 2015 concerning the presentation of a book by Mr. E.T. in December 2012.

64. Accordingly, the Ethics Office will limit its preliminary review of the allegations of retaliation concerning this protected activity. In this respect, you claim the following:  
*This is the legal justification for ignoring most of the evidence of retaliation.*

*... Following my second report to OIOS, which led to an investigation in 2015 and a subsequent report, Mr. [E.T.] became aware that staff in his Branch were being called for interviews, and took active steps, including meetings with individual staff members, to find out who was the source of the complaint. This causes me significant concern, as he is now aware that it was I who complained, and my fixed-term post, while temporarily in the Office of the Director of CTMD, remains in his Branch under his direct supervision.<sup>46</sup>*

65. The Ethics Office interviewed [REDACTED] at OHCHR, who you identified as witness of this incident. [REDACTED] stated that [REDACTED] was not aware of any investigation by OIOS. All [REDACTED] could remember concerning any complaints against Mr. E.T. was a meeting she attended with Mr. E.T. and another staff member of OHCHR. At that meeting, Mr. E.T. reported the High Commissioner had recently informed him that someone had complained to the High Commissioner that Mr. E.T. did not behave appropriately with some of his staff. Mr. E.T. further told [REDACTED] and [REDACTED] colleague that the High Commissioner had not disclosed to him the name of the complainant or that of the staff Mr. E.T. was reportedly abusing. According to [REDACTED] this meeting with Mr. E.T. took place sometime during the Human Rights Council session between

Hearsay

Confirmation that Tistounet was made aware of there being a complaint.

<sup>46</sup> Email from Emma Reilly to [REDACTED] Itemisation of detriments – email 1, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Emma Reilly*, p.3.

The Ethics Office rely on hearsay to find that Tistounet was not told who the complainant was - something he would know he had to deny anyway in order to rebut any suggestion that his actions were retaliation.

of March-June 2015. According to [REDACTED], Mr. E.T. appeared shocked that someone may have accused him of mistreating his staff and could not imagine who that could have been. [REDACTED] stated that shortly after [REDACTED] meeting with Mr. E.T., you told [REDACTED] that you were the one who had reported Mr. E.T. [REDACTED] clarified that [REDACTED] never heard of any OIOS investigation after this period March-June 2015 and was never interviewed by OIOS [REDACTED] in connection with allegations against Mr. E.T.<sup>47</sup>

a) this is HEARSAY  
b) this is clearly a self-serving statement.  
- it is not evidence of anything!

66. Based on the above, the Ethics Office is unable to conclude that your report to OIOS of June 2015 was a contributing factor to any alleged retaliation. ....because the person responsible for the retaliation simply claimed innocence???

*Allegations of retaliation by Mr. C.M. and Mr. M.D. following your report to the High Commissioner for Human Rights of 29 July 2015*

67. As discussed above, you claim that you filed a report against Mr. M.D. and Mr. C.M. of 29 July 2015 concerning the recruitment process for the post [REDACTED]-OHCHR-[REDACTED] GENEVA through Mr. [REDACTED]. You state further: "I was told by [REDACTED] at a meeting held on 22 December 2015, that both Mr. [M.D.] and Mr. [C.M.] were approached, and the decision taken to withdraw the post, prior to my complaint to MEU (by a matter of days, as it appears Mr. [REDACTED] had skipped over my initial email)"<sup>48</sup>. Is there a connection?

68. You provided us with copies of the emails you exchanged with Mr. [REDACTED] concerning the scheduling of your meeting of 22 December 2015. On 23 November 2015, you requested a meeting with Mr. [REDACTED] to discuss your assignment following your return from rapid redeployment on 1 December 2015.<sup>49</sup> On 21 December 2015, Mr. [REDACTED] wrote to you: "tomorrow at 10 is fine with me, we can meet in my office [REDACTED] ...".<sup>50</sup>

69. You also provided a copy of a communication you received from MEU on 2 September 2015 stating: "[...] On 2 September 2015, the MEU was advised that the aforementioned Post [15-HRI-OHCHR-40485-R-GENEVA] was cancelled due to the decision to re-allocate the Post from Geneva to New York [...]"<sup>51</sup>.

70. The evidence shows that you met with Mr. [REDACTED] on 22 December 2015. The Ethics Office is satisfied further with your allegation that Mr. [REDACTED] informed you that he had discussed your complaint with Mr. M.D. and Mr. C.M. and a decision had been taken to cancel the recruitment process for the post concerned. This is corroborated by the notification that you received from MEU on 2 September 2015 confirming that the post had been cancelled.

The Ethics Office is clearly uninterested in investigating the CIRCUMSTANCES of why the recruitment process was cancelled.

Was this re-shuffling of posts part of the "Change Initiative" rejected by the Fifth Committee?

<sup>47</sup> Memorandum to file, witness phone interview MP, 3 October 2016.

<sup>48</sup> Email from Emma Reilly to [REDACTED] mitigation of detriments – email 7 of 7, 9 August 2016.

<sup>49</sup> Email from Emma Reilly to [REDACTED] request, 23 November 2015.

<sup>50</sup> Email from [REDACTED] to Emma Reilly, Request, 21 December 2015.

<sup>51</sup> Note from [REDACTED] to Emma Reilly, MEU/496-15 [MM], 2 September 2015.

71. In light of the above, the Ethics Office is satisfied that Mr. M.D. and Mr. C.M. were aware of your 29 July 2015 report to the High Commissioner for Human Rights at least by 2 September 2015.

72. You raise the following allegations of retaliation concerning Mr. M.D. and Mr. C.M.:

***Irregularities in the development of your 2015-2016 e-PAS***

73. You claim:

.... Mr. [M.D.] and Mr. [C.M.] have refused to comply with the rules and regulations regarding performance review. I do not currently have an e-PAS for the period 2015-16, which may adversely affect my chances of professional development...

See observations to para 55 above

Mr. [M.D.] has subsequently insisted on retroactive changes to this workplan (he in fact insisted that I copy and paste a workplan prepared by him into Inspira on 15 July 2016, several months after the end of the reporting period. The changes required will prevent any possibility of a rating of "exceeds expectations," as they present work I proposed as part of my initial workplan....

I believe that these changes to the e-PAS are being required specifically to ensure that my e-PAS is negative, in order to punish me for reporting the corrupt recruitment process and ex-post-facto justify harassment of me and in particular the hostile working environment created as a direct result of my complaint....<sup>52</sup>

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para 83

74. The Ethics Office notes that the concerns you raise appear to be administrative in nature as they reflect your disagreement with the way your managers are handling your e-PAS process. Your contentions that the changes in your ongoing e-PAS were intended to prejudice you are not supported by any evidence. Moreover, as you have not yet received your e-PAS document, it cannot be determined whether it is detrimental to you. Your concerns on this point are premature.

This is typical of the Ethics Office: making a preliminary decision that "there is no evidence" in order to justify NOT investigating the allegation!

75. You claim further:

... While Mr. [REDACTED] contributed [as additional supervisor] positively to my e-PASes of both 2013-14 and 2014-15, he made exceptionally negative, personal comments in his contribution to my ongoing e-PAS of 2015-16, which he completed on 26 July 2016. All work on indicators outlined in the e-PASes relates to the same team in which Mr. [REDACTED] now claims I was unable to "develop/maintain collaborative relationship" [sic]. Furthermore, he presents a meeting organised specifically to address my complaint that he interrupted a conversation I was having with external experts in order to tell me to clean the room as being about

<sup>52</sup> Email from Emma Reilly to [REDACTED] Itemisation of detriments – email 1, 28 July 2016: Attachment entitled: Supplementary information for request for protection against retaliation of Ms. Emma Reilly, p.4.

*my communication style. If I was in fact such a negative team member, it is unclear why I was offered, and refused, an extension in the same Section...*<sup>53</sup>

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76. The Ethics Office notes that Mr. [REDACTED] does not appear to be named in your report of 26 August 2015. Accordingly, nothing indicates that he may have had any knowledge of said report at that time. Moreover, you claim that “during our “mid-point review” on 30 October 2015, Mr. [REDACTED] explicitly threatened me with a negative review if I continued to object to his behaviour towards me or his new role as FRO, expressly stating that Mr. [REDACTED] would support him in this”<sup>54</sup>. There is therefore, no indication that Mr. [REDACTED] actions may have been caused by your report of 26 August 2015.

This is clearly indicative of misconduct.

Was it not investigated?

If not, why not?

77. You state further: “[a]s a result of my initial complaint, I believe Mr. [M.D.] and Mr. [C.M.] have deliberately delayed my e-PAS in order to prevent me from accessing established complaints processes, which is my right as a staff member”<sup>55</sup>.

78. However, you provide no substantiation to this allegation.

It is not the Staff members job to conduct the INVESTIGATION!

*Irregularities in recruitment*

The role of the Ethics Office is supposed to be to determine whether there is a prima facie case to warrant an investigation.

Instead, they make prejudicial findings in order to dismiss the application for whistleblower protection WITHOUT having the case investigated.

79. You state:

*... Following my complaint, I have apparently been excluded from consideration for all temporary posts in DESIB, and one post was cancelled immediately following my selection against it (see also para. 23, memo to HC, Annex 13). While Mr. [REDACTED] claimed the post would be readvertised, all PBIs in DESIB since my complaint have been used to extend the promotion to P-3 level of a favoured staff member (Mr. [REDACTED] and not used for the purposes for which they were awarded...*<sup>56</sup>

80. In support of this allegation, you provided this Office with the copy of an exchange of emails between you and Mr. C.M. in November 2015.

You write to Mr. [REDACTED] as follows:

<sup>53</sup> Email from Emma Reilly to [REDACTED] *temisation of detriments – email 1*, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Ms. Emma Reilly*, p. 4-5.

<sup>54</sup> Email from Emma Reilly to [REDACTED] *temisation of detriments – email 1*, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Ms. Emma Reilly*, p. 4.

<sup>55</sup> Email from Emma Reilly to [REDACTED] *temisation of detriments – email 1*, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Ms. Emma Reilly*, p. 5.

<sup>56</sup> Email from Emma Reilly to [REDACTED] *temisation of detriments – email 1*, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Ms. Emma Reilly*, p. 4-5.

**Staff member expresses fear of imminent retaliation;  
- OHCHR management does NOTHING  
- UN Ethics Office does NOTHING**

See: ST/SGB/2008/5 para 3.2

... I understand I was recommended by [redacted] for a temporary position working on HRBA to vital statistics [...]. Due to my fear that I may be subjected to reprisals following the registration of a complaint with the Dispute Tribunal [...] I had asked that my name not be included in the discussions on availability of funds for this one-month post, without giving a reason for the request. My understanding is that the availability of funds was confirmed [...] on the morning that the memo was sent, but that the funds were then found to be unavailable once my name was associated with the post. I am sure you can understand that this causes me some concern, and was wondering if you could provide clarification on the basis on which the identified funds were found not to be available, and the date on which this finding was made?<sup>57</sup>

On the same day, Mr. [redacted] responds:

... I am aware that HRESIS was considering a GTA or consultancy to help out with work related to birth registration and statistics, but it was decided that no such option would be pursued in 2015. The activity in question relates to a mandate report for summer of 2016, and is to be the subject of PBIs that are not yet approved, and, if approved by the 5<sup>th</sup> Committee of the GA, would be funded as from 2016...If a GTA or consultancy is created for this purpose in 2016, candidates will be sought at the time, and a selection will be made based upon the competencies required for the assignment, and the rules of the Organization. I am not aware of any reprisal cases, but would suggest that if any such case exists, they be followed up with the appropriate channels...<sup>58</sup>

The Ethics Office accepts the explanation from the subject of a complaint as "exculpatory evidence" so as to conclude that no investigation is required.

81. Based on the information provided, it appears that the non-availability of the funds for the post for which you claim to have been selected was caused by a managerial decision. Nothing in the evidence you provided suggests that this decision was taken for considerations other than operational considerations or in connection with your report of 26 August 2015.

The Ethics Office accept any excuse offered by management in order NOT to have to order an investigation.

**Hostile work environment**

82. You claim that Mr. [redacted] and Mr. M.D. "created an exceptionally hostile work environment within DESIB". To support this allegation, you provide the following example: "in one case (involving Mr. [redacted] even interrupting a substantive conversation I was engaged in with external experts in order to instruct me to clean the room. Mr. [redacted] supervisor, Ms [redacted] has ignored my multiple requests to meet, I

How could this NOT be either harassment or an abuse of authority? (See ST/SGB/2008/5.)

<sup>57</sup> Email from Emma Reilly to [redacted] Question, 20 November 2015.  
<sup>58</sup> Email from [redacted] Emma Reilly, Question, 20 November 2015.  
<sup>59</sup> Email from Emma Reilly to [redacted] emission of detriments – email 1, 28 July 2016: Attachment entitled: Supplementary information for request for protection against retaliation of Ms. Emma Reilly, p. 5.

Go back and re-read para 71

believe on the basis of comments made about me by Mr. [M.D.] and Mr. [C.M.]<sup>60</sup> and provided a copy of the email you sent Ms. [REDACTED] informing her of this incident.<sup>61</sup>

Mac Darrow

Craig Mokhiber

83. As explained above, the Ethics Office noted that Mr. [REDACTED] was not named in your 26 August 2015 report. There is no indication, therefore, that he may be aware of such report and, as a consequence, that your report may have been a contributing factor to his alleged actions.

This is a conclusion based on the absence of evidence. This is how the Ethics Office will support their decision not to order an investigation that could elicit the evidence they clearly do not wish to see!

***Allegations of retaliation by Mr. M.D. and Mr. C.M. following your complaint to the High Commissioner for Human Rights of 12 July 2016***

84. As discussed above, on 29 August 2016, you were informed by the Office of the High Commissioner for Human Rights that an investigation would be opened following your complaint of 12 July 2016.<sup>62</sup>

This is not unusual. The Ethics Office will never agree that anything constitutes a prima facie case of "retaliation" unless the staff member provides substantive evidence!

85. We note that all the instances of retaliation that you reported to our Office allegedly occurred before 29 August 2016. However, based on the information you provide, nothing indicates that the High Commissioner took any action on your report prior to that date. Therefore, we cannot conclude that Mr. M.D. and Mr. C.M. were aware of your report prior to 29 August 2016. Accordingly, the Ethics Office cannot conclude that your report of 12 July 2016 to the High Commissioner for Human Rights could have been a contributing factor to the alleged retaliation.

Mac Darrow  
Craig Mokhiber

This begs a very pertinent question: *What is the POINT of ever requiring a formal investigation?*

***Allegations of retaliation against Mr. [REDACTED]***

86. With respect to Mr. [REDACTED] you state:

*... My report of 29 July 2015 to the High Commissioner ... also included documentation of failures to act by human resources. I believe the failures of human resources to respond even to technical issues, or provide any legal basis for their advice, documented throughout my complaints, amounts to discrimination due to my references to their involvement in abuse of authority in my complaints. In addition to the clear detriment caused by advice from human resources that there was no need for me to have a mid-point review, and failures to respond to my enquiries, I have suffered the following detriments: Mr. [REDACTED] directly approached former supervisors inquiring about my teamwork, and refused to respond as to the basis on which he took this action.<sup>63</sup>*

Why would it be necessary for a supervisor to look back beyond the past 12 months for "evidence" of any alleged shortcomings in the staff member's performance?

<sup>60</sup> Email from Emma Reilly to [REDACTED] *Remission of detriments – email 1*, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Ms. Emma Reilly*, p. 5.

<sup>61</sup> Email from Emma Reilly to [REDACTED] *Can we meet on Monday morning?*, 18 October 2015.

<sup>62</sup> Email from [REDACTED] to Emma Reilly. *Formal complaint of harassment*, 29 August 2016.

<sup>63</sup> Email from Emma Reilly to [REDACTED] *Remission of detriments – email 1*, 28 July 2016: Attachment entitled: *Supplementary information for request for protection against retaliation of Ms. Emma Reilly*, p. 5-6.

This is the Ethics Office hedging their bets. They make the assumption that Ms. Reilly's statement was NOT true, but then pre-judge the influence of a Third Party whose involvement they have decided does not need to be investigated anyway.

No; any Management Evaluation is the responsibility of the Management Evaluation Unit.

87. We note, however, that even if your statement proved to be true, nothing indicates that Mr. [redacted] has any involvement in your management evaluation which is the responsibility of your reporting officers.

88. You further allege retaliation from Mr. [redacted] as follows:

... Failure to inform me that funding for a post I had been offered on 10 March 2016 was not available. A start date of 18 April 2016 had been agreed. On 21 March 2016, human resources were informed that no funding for the post was available. Human resources were aware that I was in the process of cancelling my apartment, and was moving my furniture to my permanent address on 8 April 2016. They were further aware that I was accepting a less favourable mortgage offer on my permanent address in order to ensure I owned it before leaving for New York. Despite this, and my multiple emails asking for details, they informed me only on 4 April 2016 that no funding was available.<sup>64</sup>

What is the explanation for the delay in informing the applicant?

89. You provided this Office with copy of a chain of emails concerning the post you were offered on 10 March 2016 at UNOCC. On 21 March 2016, [redacted] from DFS/New York, informed [redacted] Human Rights Officer, OHCHR, as follows: "Sorry, no good news so far. FYI, we also had another request recently from another office seeking a Human Rights P-4 post and the missions had confirmed that they did not have any vacant posts. I will send another reminder about this particular request and will advise you"<sup>65</sup>. Ms. [redacted] writes to you on 4 April 2016: "[a]s just discussed, please see below message from DFS counterparts, FYI. I had spoken to [redacted] this morning and up to today, we had no further news"<sup>66</sup>.

90. In the opinion of the Ethics Office, this evidence shows that OHCHR Human Resources were informed of the issue with the UNOCC post on 21 March 2016. Ms. [redacted] email of 4 April 2016 seems to indicate that the situation concerning your appointment was at that time fluid as they were awaiting confirmation. The Ethics Office finds no intent to delay informing you of the status of your recruitment nor any connection between this process and your report of 26 August 2015.

How exactly did they find this absence of "intent"?

91. On 12 August 2016, you wrote to our Office to supplement your claim as follows:

Ouija board???

This is clearly evidence of Abuse of Authority on the part of Mac Darrow and Craig Mokhiber.....

... My FRO and SRO completed their parts of the e-PAS, attached. They are apparently still relying on reports that (1) I was allegedly overheard by a friend of my FRO in New York saying that he was under-prepared - at a time when I was actually in Geneva, and (2) I allegedly raised my voice to the staff member for whom the post I reported was reserved - but nobody who witnessed our entire

Was that ever investigated?

<sup>64</sup> Email from Emma Reilly to [redacted] emission of detriments – email 1, 28 July 2016: Attachment entitled: Supplementary information for request for protection against retaliation of Ms. Emma Reilly, p. 5-6.

<sup>65</sup> Email from [redacted] Temporary Recruitment P4 UNOCC New York, 21 March 2016.

<sup>66</sup> Email from [redacted] to Emma Reilly, Temporary Recruitment of P4 UNOCC New York, 4 April 2016.



interaction on that day remembers it. I will forward two related emails to my FRO. In the end-of-cycle discussion, I heard these reports for the first time [REDACTED] was a witness to that discussion.<sup>67</sup>

You provided us with a copy of the draft of the comments made by your reporting officers in your still on-going e-PAS. While the comments are in general positive, we observe the following negative comments in this review:

.... in the FRO's view the SM's interactions with other staff members were not always consistent with the indicator Treats all people with dignity and respect" under the Respect for Diversity'core value [...]taking into account the SM's self-assessment, additional supervisor comments, information available to the FRO relating to the SM's MDGS assignment and the end-of-cycle discussions with the SM, in the FRO's view the SM's performance was not always consistent with the indicator Works collaboratively to achieve organisational goals.'"[...]However, taking into account the SM's self-assessment, additional supervisor comments, information available to the FRO during the SM's MDGS assignment and the end-of-cycle discussions with the SM, in the FRO's view the SM's performance was not always consistent with the indicators Listens to others, correctly interprets messages from others and responds appropriately'and Asks questions to clarify, and exhibits interest in having a two-way communication.'"[...]the FRO notes that the SM did not succeed in maintaining effective and respectful collaborative relationships and communication with other team members during her MDGS and METS assignments. It is recommended that the SM give particular attention to these areas of professional development in the future. I note with concern however, the assessments by both Reporting Officers finding that that performance standards for key values and competencies were not achieved during this period, in particular with regard to respect, communications, and teamwork, each of which has been assessed as requiring development. I would, as such, encourage the staff member to pursue opportunities for development of these essential areas, as a matter of priority, and to include these in her workplan and development plan for the next cycle, and to discuss these with her Reporting Officers/Supervisors for the new cycle<sup>68</sup>

This is standard practice in the UN; all whistleblowers get adverse comments in their ePas!

92. The Ethics Office sees no evidence that these comments are connected to any report that your First or Second Reporting Officers may have received indicating that you criticized your First Reporting Officer or that you raised your voice. Moreover, even if such connection existed, there is no indication that your protected activity of 26 August 2015 was a contributing factor to these negative comments.

need to see all the evidence in order to decide if there appears to be a prima facie case of retaliation?

Annex B paras 74, 75 & 85

- 1) Did they actually ASK FOR the evidence? 2) Why does the Ethics Office need to see all the evidence in order to decide if there appears to be a prima facie case of retaliation?
- 1) How can the Ethics Office determine what may have been "a contributing factor" unless a full investigation is carried out?
- 2) If the connection existed; how could anyone determine that there was evidence of that NOT being "a contributing factor"?

<sup>67</sup> Email from Emma Reilly to [REDACTED] temisation of detriments – email 7 of 7, 12 August 2016.

<sup>68</sup> Document attached to the email from Emma Reilly to [REDACTED] temisation of detriments – email 7 of 7, 12 August 2016.

#### IV. Conclusion

93. On the basis of its preliminary review of your request for protection against retaliation, the Ethics Office concludes that:

i. The following reports concerning Mr. E.T. do not constitute protected activity: your in-person reports of 2013 to Mr. [REDACTED] and Ms. N.P.; your in-person report to Ms. F.P. of December 2014; your report to OIOS of 26 June 2015 concerning the practice of sharing information with the Permanent Mission of State X.

It may not be a "protected activity" but this is proof that Flavia Pansieri KNEW what was happening, and she did nothing.

ii. The following reports concerning Mr. M.D. and Mr. C.M. do not constitute protected activity: your request for management evaluation filed with MEU on 1 September 2015 and your in-person report to Ms. K.G. of 9 March 2016.

Similarly - Kate Gilmore KNEW about it, but did nothing.

iii. Your reports to ASG/OHRM and to the High Commissioner for Human Rights of July 2016 constitute a protected activity. However, the evidence does not support your allegations that Mr. C.M. or Mr. M.D. was aware of these reports. Therefore, it could not be concluded that these reports could have been a contributing factor to the alleged retaliation;

Evidence that might have been available if an investigation had been ordered....

iv. Your report to OIOS of June 2015 concerning Mr. E.T.'s outside activities and your reports to the High Commissioner for Human Rights of July 2015 received on 26 August 2015 constitute a protected activity as set out in ST/SGB/2005/2. However, the evidence you provided did not support a conclusion that the protected activities were a contributing factor in causing the alleged retaliation.

This is not about "outside activities" it is about CORRUPTION!

94. In summary, this conclusion, given the facts and evidence discussed above, is based on the following reasons:

- i. The evidence you provided this Office does not support your allegations that Mr. E.T. interviewed colleagues at OHCHR to find out the source of the report to OIOS in June 2015;
- ii. The evidence you provided this Office does not support your allegations that Mr. M.D. and Mr. C.M. did not comply with their obligations as managers with respect to your e-PAS, or that they created a hostile working environment;
- iii. The evidence you provided this Office does not support your allegations that you were excluded from consideration for temporary posts;
- iv. The provided evidence does not support your allegation that Mr. [REDACTED] approached third-parties requesting them to make negative reports about your performance;
- v. The evidence does not support your allegation that UNOHCHR purposefully delayed informing you that the post at UNOCC for which you had been selected was no longer available.

Annex B  
Para 72

Annex B  
Para 72

Annex B  
Para 98

Note that in reaching these conclusions, the Ethics Office did NOT actually interview Ms. Reilly and therefore did not avail themselves of the opportunity to obtain the evidence.

95. Therefore, the Ethics Office has determined that your claim does not raise a *prima facie* case that the protected activity was a contributing factor in causing the alleged retaliation, pursuant to ST/SGB/2005/21.

A 27 page, highly legalistic exercise in semantics and legal gymnastics, based on flawed logic and arbitrary decisions as to the adequacy of evidence and the conclusions that they support, all to explain why the staff member's Application for Protection against Retaliation should be dismissed instead of being investigated.

**The UN Ethics Office at its best; demonstrating that DENIAL is official policy and not just a river in Africa!**