

Briefing Note on UN Ethics Office Denial of 'Protection against Retaliation' for OHCHR s/m Emma Reilly

Annex B

Case of Emma REILLY: Response to memo from Ethics Office, 25 October 2016

1. Introduction

1. The complainant seeks protection against retaliation regarding the following reports:

- a. Concerning Mr. Eric Tistoune:

1. In-person report to Mr. [REDACTED] on 13 or 14 February 2013 that Mr. Eric Tistoune had instructed staff to provide information on named human rights defenders to the Chinese delegation, that he had accepted favours with a financial value from the Moroccan delegation, and that he had led unethical recruitments.
 2. In-person report to Ms Navi Pillay, former High Commissioner for Human Rights, in March 2013 that Mr. Eric Tistoune had instructed staff to provide information on named human rights defenders to the Chinese delegation, that he had accepted favours with a financial value from the Moroccan delegation, and that he had led unethical recruitments.
 3. In-person report to Ms Flavia Pansieri, former Deputy High Commissioner for Human Rights, on 16 December 2014 that Mr. Eric Tistoune had instructed staff to provide information on named human rights defenders to the Chinese delegation, that he had accepted favours with a financial value from the Moroccan delegation, and that he had engaged in unethical recruitment practices, other abuses of authority, and harassment in retaliation for my previous complaints, at which the complainant submitted a written summary and offered further written evidence (print-outs of emails and website where Mr. Tistoune's book launch had occurred);
 4. Written reports to OIOS, leading to an interview on 25 June 2015 and follow-up emails. These reports included that Mr. Eric Tistoune had instructed staff to provide information on named human rights defenders to the Chinese delegation, that he had accepted favours with a financial value from the Moroccan delegation, and that he had engaged in unethical recruitment practices, other abuses of authority, and harassment in retaliation for the complainant's previous reports;
 5. In-person report to Mr. Zeid Ra'ad Al Hussein, current High Commissioner for Human Rights, of 8 July 2015, that Mr. Eric Tistoune had instructed staff to provide information on named human rights defenders to the Chinese delegation, that he had accepted favours with a financial value from the Moroccan delegation, and that he had engaged in unethical recruitment practices, other abuses of authority, and harassment in retaliation for the complainant's previous reports, followed up by email of 9 July 2015;
 6. In-person report to Ms Kate Gilmore, current Deputy High Commissioner for Human Rights, of 9 March 2016, that Mr. Eric Tistoune had instructed staff to provide information on named human rights defenders to the Chinese delegation, that he had accepted favours with a financial value from the Moroccan delegation, and that he had engaged in unethical recruitment practices, other abuses of

→ 4 years ago

[REDACTED]

[REDACT

authority, and harassment in retaliation for the complainant's previous reports, at which the complainant handed over copies of emails and the website of the bookshop where Mr. Tistounet's book launch had occurred.

b. Concerning Mr. Mac Darrow and Mr. Craig Mokhiber:

1. Written report to the High Commissioner for Human Rights, via his Executive Office, of an ongoing unethical recruitment on 29 July 2015;
 2. Written report of the same ongoing unethical recruitment to MEU and UNDT on 1 September 2015;
 3. In-person report to the Deputy High Commissioner for Human Rights on 9 March 2016, of the same unethical recruitment, at which the complainant handed over a copy of the MEU report;
 4. Written complaint of harassment of 12 July 2016 to ASG/OHRM, followed up on 20 July 2016 to the High Commissioner for Human Rights.
2. The complainant accepts the following findings of the Ethics Office:
- The report of acceptance of financial benefit to OIOS (a4 above) constitutes a protected activity;
 - The report of unethical recruitment to the High Commissioner (b1 above) constitutes a protected activity;
 - The report to MEU and UNDT (b2 above) does not constitute a protected activity;
 - The complaint of harassment (b4 above) constitutes a protected activity.
3. The complainant disagrees with the following findings of the Ethics Office, which are addressed in more detail below:
- The reports of sharing information on named human rights defenders with the Chinese delegation (a1, a2, a3, a4, a5 and a6 above) did not constitute protected activities, as this was within Mr. Tistounet's discretion;
 - The protected report of acceptance of financial benefit to OIOS (a4 above) did not contribute to any retaliation; **This is the Ethics Office making assumptions about the motives for the retaliation suffered by Ms. Reilly.**
 - The report of unethical recruitments to the Deputy High Commissioner (b3 above) did not constitute protected activity;
 - The protected report of unethical recruitments (b1 above) did not contribute to any retaliation.
4. The complainant respectfully requests that the Ethics Office consider whether or not the following reports constitute protected activities, and whether these may be linked to the subsequent retaliation:
- The internal reports of acceptance of financial benefit (a1, a2, a3, a5 and a6 above);
 - The internal and external reports of abuse of authority, notably in recruitment, and harassment by Mr. Tistounet (a1, a2, a3, a4, a5 and a6 above).
- To do this, they accept the self-serving denials from the officials who would face disciplinary action if their actions were actually found to be misconduct.

2. Reports relating to Mr. Eric Tistoune and associated reprisals

Mr. Tistoune's decision to provide information to the Chinese delegation constituted misconduct

5. Paragraph 27 of the Standards of Conduct of the International Civil Service provides:

"The main function of all secretariats is to assist legislative bodies in their work and to carry out their decisions. The executive heads are responsible for directing and controlling the work of the secretariats. Accordingly, when submitting proposals or advocating positions before a legislative body or committee, international civil servants are presenting the position of the executive head, not that of an individual or organizational unit." (emphasis added)

6. Human Rights Council ("Council") Resolution 5/1, the "Institution-building package" which lays out how the Council will operate, provides that its methods of work "should be transparent, impartial, equitable, fair, pragmatic; lead to clarity, predictability, and inclusiveness."¹ The methods of work of the Human Rights Council are set and periodically reviewed by the Council itself, and the Secretariat has no authority to set or change these, but rather has as its function, consistent with para. 27 of the Standards of Conduct of the International Civil Service, to carry out decisions of the Council as regards its own methods of work.

7. Article 100 (1) of the UN Charter provides:

"In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization." (emphasis added)

8. The principle included in Article 100 (1) of the UN Charter is reflected in Staff regulation 1.2 (d), which provides:

"In the performance of their duties staff members shall neither seek nor accept instructions from any Government or from any other source external to the Organization" (emphasis added)

9. The principle is further reflected in paragraph 8 of the Standards of Conduct of the International Civil Service, which provides:

"If the impartiality of the international civil service is to be maintained, international civil servants must remain independent of any authority outside their organization; their conduct must reflect that independence. In keeping with their oath of office, they

¹ Human Rights Council Resolution 5/1, paragraph 110, available at:
http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

should not seek nor should they accept instructions from any Government, person or entity external to the organization. It cannot be too strongly stressed that international civil servants are not, in any sense, representatives of Governments or other entities, nor are they proponents of their policies. This applies equally to those on secondment from Governments and to those whose services have been made available from elsewhere. International civil servants should be constantly aware that, through their allegiance to the Charter and the corresponding instruments of each organization, member States and their representatives are committed to respect their independent status.”

10. The assertion in the response of the Ethics Office that it was within Mr. Tistoune's discretion to take a decision to share with the Chinese delegation, upon their request, information on whether or not specific individuals had sought accreditation is legally flawed. This is not, as claimed in footnote 15 of the memo,² analogous to the case of Mr. Kompass, who acted as a staff member of OHCHR, under its independent mandate laid out in General Assembly Resolution 48/141. Mr. Tistoune acted as part of the Human Rights Council Secretariat. When it acts as Secretariat of an inter-governmental body, OHCHR must apply the rules determined by that body, and individual staff members do not have discretionary power to change them or to apply them in a discriminatory manner among States.

11. Mr. Tistoune denied this practice when directly asked by State delegations, so it is clear that he did not in fact consider himself to be applying rules determined by those same States.³

Clear evidence of dishonesty; and the Ethics Office is not concerned.

12. Paragraph 5 of the Standards of Conduct of the International Civil Service provides:

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

Mr. Tistoune's decision to explicitly deny to other State delegations the practice he was in fact applying to the Chinese delegation's request clearly breaches this obligation of integrity. The practice itself, which was applied only to the Chinese, demonstrates partiality and thus also breaches this standard.

Disparity in treatment

13. Mr. Tistoune was not applying a decision of the executive head within the meaning of paragraph 27 of the Standards of Conduct of the International Civil Service. Ms Pillay as executive head of OHCHR at the time was unaware of this new procedure when the complainant informed her of it in March 2013, so the complainant explained both the standard procedure and the new procedure applied only to requests from the Chinese delegation.

² Memo from Elia Yi Armstrong to Emma Reilly, *Your request for protection against retaliation*, 7 October 2016, henceforth “the memo”.

³ Further details, including names of witnesses, included in email from Emma Reilly to ██████████ Re: *Your request for protection against retaliation*, 22 September 2016.

14. Rule 45 of the Rules of Procedure of the General Assembly provides that the Secretary-General shall act in that capacity in all meetings of the General Assembly (based on Article 98 of the UN Charter), its committees and its subcommittees, but that he may designate a member of the Secretariat to act in his place. The rules of procedure applicable to the Council are those which apply to a Committee of the General Assembly.⁴ There is no evidence that Mr. Tistounet was applying a decision of the Secretary-General, and he in fact refused the complainant's proposals to refer the issue to the Office of Legal Affairs.

15. Paragraph 28 of the Standards of Conduct of the International Civil Service provides:

"In providing services to a legislative or representative body, *international civil servants should serve only the interests of the organization, not that of an individual or organizational unit...*" (emphasis added)

16. While his motivation is not directly relevant to the issue of whether his instruction amounted to misconduct, there is evidence that Mr. Tistounet acted in the interest of reducing political pressure on members of the Secretariat, rather than in the interest of the organisation, in breach of this standard. In a meeting held on 11 February 2013, Mr. Tistounet indicated that his concern was to avoid complaints about the Secretariat from the Chinese, notably to the High Commissioner. The Chinese ambassador had sent the High Commissioner an invitation to lunch (for the date of 21 February 2013) immediately following the meeting of 7 February 2013 between a member of the Chinese delegation, Ms ██████████ Chief, Civil Society Section, OHCHR) and the complainant, at which the Secretariat had not taken a firm position, but had indicated that provision of such information was unlikely to be possible. Mr. Tistounet took the decision to provide the information to the Chinese delegation on 11 February 2013, immediately following the meeting at which he orally raised this concern, and referred in his email to the mistrust of the Chinese delegation towards the Secretariat.⁵

Since when did minimising complaints from Governments take precedence over Human Rights concerns?

17. Based on the above, it is thus well established that the role of the Secretariat of the Human Rights Council was to apply the methods of work and rules of procedure decided by the Council. Mr. Tistounet did not have discretion to apply any other procedure, and was not following any instruction from his superiors in this regard.

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

"The Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and the participation of and consultation with observers,

⁴ General Assembly Resolution 60/251 (establishing the Human Rights Council), paragraph 11.

⁵ See attachment labelled "Instruction to give names to the Chinese delegation" submitted to the Ethics Office on 15 July 2016, and attachment labelled "Email following meeting with Chinese delega ██████████" submitted to the Ethics Office on 23 August 2016.

including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and *practices observed by the Commission on Human Rights*, while ensuring the most effective contribution of these entities.”⁶ (emphasis added)

19. As there is no specific, written rule on advance sharing of information on accreditation, the Council in this regard was required to follow the practices of the former Commission on Human Rights (“the Commission”). The list of individual participants accredited to sessions of the Commission was not made public prior to the session itself. The emails and documentation already submitted demonstrate that sharing such information represented a departure from, and not an application of, established practice.⁷ [REDACTED]

[REDACTED] the complainant explicitly opposed the sharing of the information.⁸ There was no precedent for sharing such information; this was a decision taken by Mr. Tistoune alone against advice of colleagues, contrary to the presentation in paragraph 23 of the memo. Mr. Tistoune did not consult the Bureau for their approval of what amounted to a change to the rules of procedure of the Human Rights Council, which would therefore have required their approval.

20. The misconduct concerned providing confirmation as to whether or not specific, named individuals had requested accreditation.⁹ A different practice was applied to the Chinese delegation from March 2013 to, for example, that that had been applied to the Turkish delegation in the previous session of the Human Rights Council in September 2012.¹⁰ The suggestion in paragraph 19 of the memo that the practice applied to the Chinese delegations did not constitute special treatment is false. The witness cited in support of this contention was in fact aware of only one such request, that of the Chinese.¹¹ The witness, [REDACTED] did not work on NGO issues in February-March 2013, and so was not aware of or

State Z
Annex A
Para 14

⁶ Human Rights Council Resolution 5/1, section VII:

http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

⁷ See, for example, *Note for the file – Meeting with Mr. Chen Chuandong, Counselor, PM of China, 7 February 2013* submitted as attachment “JR meet with China PM, 7 Feb 2013” in email from Emma Reilly to [REDACTED] *further information*, 26 September 2016.

⁸ See, for example, email from [REDACTED] Eric Tistoune of 6 February 2013, first included in attachment “Instruction to give names to Chinese delegation” in folder “Emails to OIOS” in email from Emma Reilly to [REDACTED] *e: Request for a meeting*, 15 July 2016.

⁹ See, for example, attachment labelled “Follow-up to meeting with HC” (email from Emma Reilly to Mohammad Ali Alnsour of 9 July 2015) in email from Emma Reilly to [REDACTED] *e: Request for a meeting*, 15 July 2016.

¹⁰ See, for example, reference in email from Emma Reilly to Eric Tistoune and [REDACTED] *e: Meeting with Chinese delegate*, 8 February 2013, submitted to Ethics Office as attachment labelled “email following meeting with Chinese Delegate” in email from Emma Reilly to [REDACTED] *e: Request for a meeting*, 26 July 2016.

¹¹ Confirmed by [REDACTED] telephone, 11 October 2016. It is relevant to note that interviews with witnesses were conducted late in the week of 29 August 2016 (Email from [REDACTED] Emma Reilly, *Re: Fw: Formal complaint of harassment*, 6 September 2016), but an email of 29 September 2016 from the Ethics Office (Email from [REDACTED] to Emma Reilly, *Your request for protection against retaliation*, 29 September 2016) indicated that the investigator may have misunderstood the Chinese request as being one of providing, rather than responding to, a list of names. It is not known to the complainant at what stage this paragraph was drafted.

copied into communications regarding the practice itself, but only started to work on NGO issues after the practice had been adopted. He was cited by the complainant as a witness of the subsequent retaliation against the complainant. He was not, to the best of the complainant's knowledge, aware of the reason for the harassment, but this is not a requirement in establishing a *prima facie* case that harassment in fact occurred as a result of the reports.

21. The silence of other staff cannot be interpreted as implying that the behaviour was permitted, as implied in paragraph 21 of the memo. Mr. Tistoune is perceived in OHCHR as holding the institutional memory of the Council, with which he has worked for a very long time, and so his decision was not challenged by his peers who merely deferred to him. Both his manager and the High Commissioner also deferred to his "political judgement" when the complainant reported the practice to them. The complainant, who had worked on NGO issues in the previous session of the Human Rights Council in September 2012, and staff in the Civil Society Section (including notably [REDACTED] were better placed to realise that this clearly overstepped the role of the Secretariat.
22. While there is no written rule on provision of advance information on whether specific persons are accredited, the practices of the Commission included the following practice for verification or confirmation of NGO representatives present during the session:

"Whenever any Government participating in the work of the Commission requests the secretariat to verify or confirm the accreditation of any particular NGO representative(s), immediate action is taken in this regard and *the results of the verification are publicly reported by the secretariat to the plenary of the Commission or brought to the attention of the Expanded Bureau of the Commission*" (emphasis added)¹²

23. Staff regulation 1.2 (i) provides:

"Staff members shall exercise the utmost discretion with regard to all matters of official business. *They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General...*"

24. The request from the Chinese delegation was received prior to and not during the session. It related to requests for accreditation, and not existing accreditation. However, this practice should, by analogy, have indicated to Mr. Tistoune that prior provision of information on accreditation to a single delegation would not be consistent with the more transparent practices applied in the Commission which required that the information either be made

Annex A.
Para 23

What about those activists ALREADY accredited by OHCHR?

That must include Cao Shunli & Chen Jianfang, both of whom had visas to travel to Geneva

¹² Main rules and practices followed by the Commission on Human Rights in the organization of its work and the conduct of business (Note by the Secretariat, doc.E/CN.4/2001/CRP.1), in Compilation of recent documents in relation to the enhancement of the working methods of the Commission on Human Rights (1999 – 2005) <http://www.ohchr.org/Documents/HRBodies/HRCouncil/CompilationDocuments1999-2005.pdf>, p.28, para 42.

public or be provided to all States members through the expanded Bureau. Mr. Tistounet therefore should have been aware that any change of practice would certainly require approval from the Bureau, if not the Council as a whole. The results of the verification of requests for accreditation carried out on Mr. Tistounet's instructions were not reported to the plenary or brought to the attention of the Bureau, but rather were reported only to the Chinese delegation itself.

Why is the Ethics Office unconcerned about the evidence of the subject of Ms. Reilly's complaint having LIED about something they are trying to argue was "within his discretion"?

25. While the change in practice was not in fact brought to the attention of the Bureau of the Human Rights Council, subsequent actions taken by State delegations which became aware of the practice indicate that the change would not have been approved. Mr. Tistounet was questioned about, and denied, the practice in late 2013 at a working-level meeting of the EU. It was subsequently raised in a Bureau meeting by the Irish ambassador in 2015, and raised by the US ambassador with the President of the Council in 2016.¹³
26. The contentions in paragraphs 24-27 of the memo are false. The evidence submitted by the complainant in support of the allegation that the practice was discontinued following her more recent reports was not the email detailed in those paragraphs (which in fact pre-dates the discontinuation of the practice), but rather an attachment sent in an email of 26 September 2016 clearly labelled "email indicating practice now changed."¹⁴ This attachment is an email from [REDACTED] to [REDACTED] dated 16 June 2016, which reads as follows:

"Dear [REDACTED]
I've received the usual NV from the PM of China requesting that accreditation not be granted to certain persons.
For your information the only person on their list so far accredited is [REDACTED] accredited both with the [REDACTED] until 23 June and the [REDACTED] until 1 July. To date he hasn't picked up a badge.
I'll keep you posted if and when there are any further developments
Best
[REDACTED]

27. It is clear from the content of the email that the requests from China now follow the standard format of requests not to accredit named individuals (presumably with the standard response asking for details of any security threat posed), and not requests for confirmation as to whether or not named individuals have sought accreditation. This change to the practice as a result of the complainant's reports provides further evidence that Mr. Tistounet's instruction to provide the Chinese delegation with the information constituted misconduct. At the very least, an explanation for the disparate treatment should be required.
28. It is thus established that Mr. Tistounet exceeded his authority and committed misconduct in sharing information on whether named human rights defenders had applied to attend the

¹³ Information provided to the complainant by a member of the EU delegation, 10 October 2016.

¹⁴ Email from Emma Reilly to [REDACTED] *Further Information*, 26 September 2016.

Human Rights Council. Most seriously, sharing such information clearly had the potential to place human rights defenders in danger, in breach of Article 11 of the Code of Conduct for OHCHR staff, which provides that staff shall:

"Refrain from endangering, by way of their words or action during or after their service with the OHCHR, the safety and privacy of the people with whom they come into contact and their own safety, strictly comply with all DSS security directives, and refer any security queries to the appointed security advisor or Designated Official" (emphasis added)¹⁵

29. It is clear from the above analysis that Mr. Tistoune's decision and instruction to provide information to the Chinese delegation was in breach of Article 100 (1) of the UN Charter; Staff regulations 1.2 (d) and 1.2 (i); paragraphs 5, 8, 27 and 28 of the Standards of Conduct of the International Civil Service; and Article 11 of the Code of Conduct for OHCHR staff. The instruction therefore constituted misconduct, and the complainant's belief in this regard was reasonable, *contra* paragraph 24 of the memo.

Annex A
Para 29
Annex A
Para 29

Internal reports of acceptance of a favour with financial benefit from a government were also protected activities

30. Without citing any evidence, the Ethics Office concludes in paragraph 28 of the memo that the complainant did not report Mr. Tistoune for having accepted financial benefits from the delegation of Morocco in February or March 2013. This is incorrect. The complainant has provided evidence to the satisfaction of the Ethics Office that the reports to the Director of the Human Rights Council and Special Procedures Division and to the High Commissioner occurred, and further submits a witness statement to support this.¹⁶ The complainant's testimony about what was discussed at these meetings has been consistent and unchanged. To the best of her knowledge, OHCHR has never denied the content of the meetings.

Annex A
Para 28

31. The Ethics Office does not address at all the fact that the complainant also reported the acceptance of financial benefit and other abuses of authority to the former Deputy High Commissioner in December 2014 (including handing over a print-out of the website), to the High Commissioner in July 2015 and to the Deputy High Commissioner in 9 March 2016 (at which a print-out of the website was also handed over).

Flavia Pansieri

32. The print-out of the website in question consisted of the following summary of the event, held on 4 December 2012:

"Rencontre avec ERIC TISTOUNET

¹⁵ Code of Conduct for OHCHR staff, accessed on OHCHR intranet at https://intranet.ohchr.org/GuidelinesProcedures/CodeofConductforOHCHRStaff/Documents/Code_conduct_OHCHRStaff.pdf, but also available here: http://www.parkdatabase.org/files/documents/2010_OHCHR-Code-of-conduct-for-OHCHR-Staff_ProCap.pdf. The case of Ms Cao Shunli, documented in the complainant's submissions to the Ethics Office, demonstrates that the concerns raised by the complainant and the Civil Society Section in this regard were not misplaced.

¹⁶ Witness statement of [REDACTED]

Eric Tistounet, né en 1961, marié, deux enfants, vit à Genève, travaille à l'ONU dans le domaine des droits de l'homme, et écrit, inlassablement. A peu près une vingtaine de textes à son actif y compris un certain nombre de manuscrits inachevés ou erreurs de parcours. Depuis peu, il maintient un blog qui lui permet d'écrire ses romans en direct, sans filet de sécurité.

La rencontre sera suivie d'une séance de signatures
une collation sera offerte par l'ambassadeur du Maroc auprès des Nations-Unies. ¹⁷

The complainant submits the following, unofficial translation for reference:

"Meet ERIC TISTOUNET

Eric Tistounet, born in 1961, married with two children, lives in Geneva, *works at the United Nations in the field of human rights*, and writes tirelessly. He has approximately twenty texts to his name, including a number of unfinished manuscripts and literary missteps. Recently, he had begun a blog that allows him to write his novels live without a safety net.

The conference will be followed by a book signing

Refreshments will be offered by the Ambassador of Morocco to the United Nations"

(emphasis added)

And WHY would the
Moroccan Ambassador
pay for a thing like that
for just an ordinary UN
official (who was not
doing something for him
in return)????

Permission for the
book launch is a
RED HERRING.

This is prima facie
evidence of "accepting
an advantage"

33. In paragraph 38 of the memo, the Ethics Office concludes that the information provided to OIOS in June 2015 supports a reasonable belief that Mr. Tistounet "may have engaged in irregular outside activities if he had not obtained clearance for the presentation of his book," and concludes, in paragraph 39, that this therefore constituted a protected activity. However, the basis for this decision, namely the provision of the website address, and the explicit note from the complainant that it identified Mr. Tistounet as working at the UN, and identified the refreshments as being paid for by the Moroccan ambassador, were also contained in the print-out of the website submitted to both Deputy High Commissioners, and were presented orally by the complainant to both High Commissioners.
34. It is inconsistent for the Ethics Office to find that the report to OIOS constitutes a protected activity, and to simultaneously find that the reports of precisely the same information to the Deputy High Commissioners and High Commissioners do not constitute protected activities.
35. In addition to her testimony, the complainant has provided written evidence that this misconduct was in fact reported along with her report of sharing information with the Chinese delegation. Some of this evidence is directly quoted in the memo received from the Ethics Office (e.g. paragraph 42 quoting email from Emma Reilly to Kate Gilmore of 14 January 2016), although it is never addressed.
36. As part of her submissions to the Ethics Office, the complainant provided a copy of an email sent to the High Commissioner's special assistant on the day before her meeting with the High Commissioner, which includes the following text:

"...may I suggest that we try to meet in one of the offices behind room XX or somewhere else a little private? The information I want to report has significant potential

¹⁷ <http://www.arabooks.ch/archive2012.htm>, accessed 19 October 2016.

*reputational damage for OHCHR, so I am concerned about being overheard in a public room. To very briefly summarise, information on human rights defenders was shared with the Chinese delegation, and the very senior staff member responsible also accepted personal favours with a financial value from the Moroccan delegation. I have been subjected to reprisals and harassment for reporting this information and related abuses of authority over the last two years (most recently, internally, I shared it with the DHC in December 2014)...*¹⁸

37. The complainant further provided the Ethics Office with an email sent to the current Deputy High Commissioner on 14 January 2016, requesting a meeting. This includes the following text, which is also quoted, but not considered, in the memo from the Ethics Office:

*"... I also reported a number of other abuses of authority by the same person, ranging from accepting financial benefit from the Moroccan delegation to corrupt recruitment practices."*¹⁹

38. These two emails clearly indicate that the complainant reported this misconduct both in her meeting with the High Commissioner in July 2015 and in her meeting with the Deputy High Commissioner in March 2016. The complainant clearly refers in both emails to her previous reports, indicating that this particular misconduct was also included in her previous reports.

i.e. a documented history of reporting misconduct that OHCHR has ignored

39. While the Ethics Office finding regarding the complainant's reasonable belief that Mr. Tistoune may have engaged in irregular outside activities are sufficient for these reports to clearly qualify as protected activities, the basis on which the Ethics Office has determined to limit its consideration of this issue to "outside activities" is unclear to the complainant. While there is evidence to suggest that Mr. Tistoune may have participated in irregular outside activities, not least, as the Ethics Office notes, the issuance of a report by OIOS, the text of the website clearly indicates that he accepted a favour with financial value from a government.

NOT the same thing!

40. Acceptance of favours from governments is prohibited, *inter alia*, by Staff Regulation 1.2 (i) and Staff Rule 1.2 (l). There is no indication that Mr. Tistoune received the required exception to these rules, and so the fact that the favour may have been given in the context of a broader outside activity is not relevant to the fact that these rules may also have been breached.

41. Given the publication in the context of the book launch of the role of Mr. Tistoune as a UN staff member, as well as the explicit identification of the Ambassador of Morocco as financing the refreshments at the book launch, this constituted a potential conflict of interest. Staff Rule 1.2 (q) provides:

¹⁸ Email from Emma Reilly to Mohammad Ali Alnsour, *Fw: Re: Request for meeting with HC*, 7 July 2015. Despite having been provided with this email on 15 July 2016 (attachment labelled "Reference to content of meeting with HC"), the Ethics Office claimed in paragraph 41 of the memo, as regards the report of 8 July 2015 to the High Commissioner, that the "evidence at hand does not show that you reported additional wrongdoing." While this is correct in that the complainant reported this in every instance, it is not correct to allege that the report to the High Commissioner did not include this element. This is clear from the text of the email.

¹⁹ Email from Emma Reilly to Kate Gilmore, *Request for a meeting*, 14 January 2016.

"A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant shall disclose any such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation." (emphasis added)

42. Paragraph 50 of the Standards of Conduct of the International Civil Service similarly provides:

"To protect the international civil service from any appearance of impropriety, international civil servants must not accept, without authorization from the executive head, any honour, decoration, gift, remuneration, favour or economic benefit of more than nominal value from any source external to their organizations; it is understood that this includes Governments as well as commercial firms and other entities." (emphasis added)

43. Paragraph 23 of the Standards of Conduct of the International Civil Service specifically deals with conflicts of interest:

"Conflicts of interest may occur when an international civil servant's personal interests interfere with the performance of his/her official duties or call into question the qualities of integrity, independence and impartiality required the status of an international civil servant. Conflicts of interest include circumstances in which international civil servants, directly or indirectly, may benefit improperly, or allow a third party to benefit improperly, from their association with their organization. Conflicts of interest can arise from an international civil servant's personal or familial dealings with third parties, individuals, beneficiaries, or other institutions. If a conflict of interest or possible conflict of interest does arise, the conflict shall be disclosed, addressed and resolved in the best interest of the organization. Questions entailing a conflict of interest can be very sensitive and need to be treated with care." (emphasis added)

Staff regulation 1.2 (m) includes a similar provision.

44. The complainant submits that Mr. Tistounet accepting a favour from the Moroccan ambassador when both individuals were expressly identified with their professional functions raised at least an appearance of a conflict of interest, and thus cannot be considered as a normal part of the broader outside activity of writing and publishing novels, but should have been the subject of a separate disclosure.
45. The complainant relied on the same reasonable belief that misconduct may have occurred, and provided the same evidence, in her reports to [REDACTED] and to the present and former High Commissioners and Deputy High Commissioners as in her report to OIOS regarding acceptance of a favour from the Moroccan ambassador. It is inconsistent to find

that the report to OIOS constituted a protected activity, but that the internal reports did not.

The complainant submits that all reports of this issue constitute protected activities.

In the alternative; if reporting internally does NOT constitute a “protected activity” for the purposes of ST/SGB/2005/21; the managers to whom the information was reported should be subject to disciplinary action for failing in their duty to report misconduct, contrary to Staff Rule 1.2c.

Reports of abuse of authority and harassment were protected activities

46. The memo does not at any point address whether the complainant’s reports of abuse of authority and harassment by Mr. Tistoune were protected activities.
47. The complainant provided the Ethics Office with a copy of a one-page summary of other abuses of authority by Mr. Tistoune, which was submitted to the former Deputy High Commissioner for Human Rights (both by email and in person on 16 December 2014).²⁰ This same summary was also provided to the current Deputy High Commissioner in person on 9 March 2016.²¹
48. The summary includes specific information and evidence to support a reasonable belief that misconduct may have occurred, laid out according to the definitions contained in ST/SGB/2008/5, as follows:

“Abuse of authority (appointment) - examples:

- 13/OHCHR/025/GENEVA [REDACTED] wrote job description, sent for posting, applied, was copied on recruitment emails, was recommended (but not selected)
- JO 26624: Report in Inspira changed without consent or informing panel members, falsely stating that they had discovered candidates did not meet criteria in interview. In fact, ET had insisted on screening through a preferred candidate [REDACTED] who did not meet criteria
- Insisted hiring managers change recommendation on certain candidates to ensure his selections were approved, resulting in them not being rostered.

Abuse of authority (assignment):

- Selected programme management functions arbitrarily reassigned to another staff member, I was excluded from relevant meetings
- While on sick leave in December 2012, I was told that if I did not immediately return to work against medical advice, my NGO role would be reassigned. I tried to return the next day [REDACTED] but had to go home after a few hours. When I returned to work in January 2013, my first assignment was to advertise the NGO function

Abuse of authority (hostile work environment):

²⁰ Attachment labelled “Summary of complaint as submitted to DHC in 2014,” submitted to the Ethics Office on 15 July 2016.

²¹ In paragraph 46 of the memo, the Ethics Office refers to an email to M.A. providing insufficient information, but it is unclear to the complainant which email is referred to in this section dealing with her complaint to the Deputy High Commissioner, Ms Kate Gilmore. The complainant provided written evidence of the harassment in person at the meeting with the Deputy High Commissioner.

- Refused to pass through current managers at start of temporary reassignment (October 2013), claimed salary still paid by HRCB, thus I was obliged to continue to do work on recruitment, programme management and NGOs. This was not the case.
- Sent emails complaining about the performance or attitude of some staff members to more junior staff rather than addressing with them directly

Abuse of authority (performance evaluation):

- Insisted that I prepare a report on 'problems with NGOs during the session,' referring to 'complaints.' Refused to specify complaints, used the report in which I detailed interactions with NGOs that most frequently complained to generate complaints. ET further insisted that minutes of meetings with said NGOs were amended to paint me in the most negative possible light (reported by [REDACTED]). These complaints were then used to justify a 'mid-point review' that did not comply with the rules but was clearly designed to intimidate me. Both my FROs categorised my performance as excellent. ET refused to speak to a single witness or provide any concrete example of what exactly I was accused of.

Failure to act against harassment and intimidation by third parties (hostile work environment):

- Cuban delegate physically intimidated and threatened, ET refused even to request a copy of the report of UNOG Security on the incident ???
- Repeatedly undermined fair application of rules with NGOs, to extent that one stated in a public meeting that NGOs should bypass NGO Liaison staff and go straight to ET
- Refused to clarify roles when temporary staff member, on first day I returned from sick leave, told me she did not have to listen to me because her 'UN contacts' were better than mine."

49. Paragraphs 17-18 of the Standards of Conduct of the International Civil Service provide:

- "16. Managers and supervisors are in positions of leadership and it is their *responsibility to ensure a harmonious workplace based on mutual respect*; they should be *open to all views and opinions and make sure that the merits of staff are properly recognized*. They need to provide support to them; this is particularly important when staff are subject to criticism arising from the performance of their duties. Managers are also responsible for *guiding and motivating their staff and promoting their development*.
17. Managers and supervisors serve as role models and they have therefore a special *obligation to uphold the highest standards of conduct*. It is quite improper for them to solicit favours, gifts or loans from their staff; they must *act impartially, without favouritism and intimidation*. In matters relating to the appointment or career of others, international civil servants should not try to influence colleagues for personal reasons." (emphasis added)

50. The abuses of authority by Mr. Tistounet outlined in the summary submitted by the complainant to the Deputy High Commissioners clearly breached these two standards.
51. The abuses of authority reported relating to hostile work environment and performance evaluation would breach, *inter alia*, Staff Rule 1.2 (f) and (g), which provides:
- (f) *Any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited.*
- (g) *Staff members shall not disrupt or otherwise interfere with any meeting or other official activity of the Organization, including activity in connection with the administration of justice system, nor shall staff members threaten, intimidate or otherwise engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official functions. Staff members shall not threaten, retaliate or attempt to retaliate against such individuals or against staff members exercising their rights and duties under the present Rules.* (emphasis added)
52. These abuses of authority also breach paragraphs 21 and 22 of the Standards of Conduct of the International Civil Service, which provide as follows:
- “21. Harassment in any shape or form is an affront to human dignity and *international civil servants must not engage in any form of harassment.* *International civil servants have the right to a workplace environment free of harassment or abuse.* All organizations must prohibit any kind of harassment. Organizations have a duty to establish rules and provide guidance on what constitutes harassment and abuse of authority and how unacceptable behaviour will be addressed.
22. *International civil servants must not abuse their authority or use their power or position in a manner that is offensive, humiliating, embarrassing or intimidating to another person.*” (emphasis added)
53. The abuse of authority relating to performance evaluation further breaches the provisions of ST/AI/2010/5 as regards the conduct of mid-point reviews.
54. The complainant submits that, in combination with her provision of further details orally and her offer to provide full, written evidence to the person of the Deputy High Commissioners' and High Commissioner's choice, the initial, written information provided on at least some of these abuses of authority was sufficiently detailed to support a reasonable belief that misconduct had occurred. At minimum, the reports to the Deputy High Commissioners of 16 December 2014 and 9 March 2016, at which the written information was submitted, thus constitute protected activities.
55. The complainant also provided general information on Mr. Tistounet's failure to comply with recruitment procedures to the High Commissioner on 8 July 2016, although she did not on

that occasion hand over the one-page summary. The complainant referred to this oral report in her email to Mr. Mohamad Al Alnsour of 29 July 2015.²²

Retaliation for reports of misconduct by Mr. Tistounet

56. The complainant submitted an itemised list of detriments suffered, with supporting evidence and details of possible witnesses, to the Ethics Office on 28 July 2016.
57. In the course of consideration of her case by the Ethics Office, the complainant also submitted information on further detriments suffered following submission of her initial application. These included the spreading of unfounded rumours about her to her current supervisor, and the instruction from Mr. Tistounet to all staff in his Branch of 27 July 2016 to stop the long-established practice of copying the group email HRCTeam in favour of HRCB, where the only email addresses included in HRCTeam and not HRCB were that of the complainant and that of one GS staff member. This clearly affected the complainant's ability to carry out her assigned functions, which included analysing internal communications in the Human Rights Council Branch. As they occurred or came to the complainant's attention after the submission of her initial request for protection of 15 July 2016, these detriments clearly followed all of the complainant's protected reports. They were nonetheless apparently not considered by the Ethics Office during its preliminary review.
58. As the Ethics Office found only the report to OIOS concerning Mr. Tistounet to constitute a protected activity, it considered only one detriment, which the complainant presented as follows:

"Following my second report to OIOS, which led to an investigation in 2015 and a subsequent report, Mr. Tistounet 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. Witness: Ms [REDACTED]

Retaliation!
*(per definition in
ST/SGB/2005/21)*

Is there an innocent explanation for this?

59. The Ethics Office determined that the complainant's claim of retaliation in this case was not supported, apparently because the named witness was not aware of the complainant's report to OIOS. In this regard, the complainant notes that UN staff members making reports to OIOS are prohibited from disclosing this information to colleagues. The time identified by [REDACTED] as the period in which the conversation took place pre-dates the complainant's report to the High Commissioner of July 2015, but is consistent with the time of her report to OIOS. While it is certainly possible that there was an independent report by another staff member against Mr. Tistounet, or that Mr. Tistounet was reacting more to one of the complainant's earlier reports, it is submitted that the evidence provided by [REDACTED]

**Annex A
para 65**

²² Submitted to Ethics Office in attachment labelled "Emails reporting irregularity in ongoing recruitment", 15 July 2016.

nonetheless supports the complainant's central allegation that Mr. Tistounet took active measures to determine the source of the reports about his behaviour, whether or not [REDACTED] was personally aware of the precise nature of each of the reports.

→ WHY was the witness not interviewed?

The Ethics Office should not have accepted the OIOS report if they were aware of a material witness not being interviewed.

60. The Ethics Office further notes that [REDACTED] was not interviewed by OIOS. As OIOS investigations are confidential and the complainant is not authorised to disclose her complaint, she is unfortunately not in a position to approach possible witnesses to determine who may have been interviewed. The complainant would be happy for the Ethics Office to contact any of the persons named in her complaint to OIOS in this regard.

61. The complainant notes that the relevant evidentiary standard for establishing a *prima facie* case is normally considered a preponderance of the evidence. It is in the nature of complaints against the management of an organisation that the management itself holds certain evidence to which the complainant does not have access, but which could be obtained in the course of an investigation by OIOS.

62. It is also the case that some retaliatory acts were apparently in retaliation for the combination of reports rather than each act of retaliation being linked with only a single report. This is consistent with the complainant's treatment from late 2012 (detailed in the information provided to the Deputy High Commissioners, quoted in paragraph 48 above), which followed an internal report to human resources of irregular recruitment processes led by Mr. Tistounet, including some of those later reported to OIOS. The complainant understands that a report to the Chief of human resources regarding ongoing recruitment processes would not constitute a protected activity for the purposes of ST/SGB/2005/21, and so did not include this in her application. However, previous inappropriate behaviour by a manager cannot be grounds for determining that subsequent, more serious, inappropriate behaviour is not in retaliation for subsequent, more serious reports of wrongdoing by that same manager.

63. The complainant remains available to provide any further details the Ethics Office may require regarding this or any of the other detriments suffered. However, the complainant as an individual can neither compel other UN staff members to provide witness statements, nor require confidentiality from other UN staff members. In contrast, UN staff members are obliged to cooperate in a confidential manner with the Ethics Office. Should the Ethics Office need further witness statements to corroborate the complainant's submission, the complainant respectfully requests that the Ethics Office conduct the interviews rather than requiring the complainant to contact witnesses to request written statements, which may raise legitimate concerns among witnesses of the complainant's treatment that Mr. Tistounet could find out about their involvement and take similar reprisals against them to those taken against the complainant. The complainant is further concerned that some potential witnesses may inform Mr. Tistounet of her complaint if not subject to a requirement of confidentiality.

The s/m is not under any legal obligation to prove that the retaliation in contravention of ST/SGB/2005/21 - that is the role of OIOS!

64. The complainant continues to suffer harm as a result of the retaliation, including significant health impacts. The complainant includes in this regard a medical certificate from the doctor

This puts the Organisation in a lose-lose position; if the Ethics Office decide that the "retaliation" suffered by a staff member does not meet the legal definition of retaliation under ST/SGB/2005/21, but it still causes the s/m to require medical attention for the effects of stress, this is a *prima facie* case of 'harassment' contrary to ST/SGB/2008/5 - but the Organisation elects to ignore the findings of the Ethics Office investigation.

This is clear medical evidence of 'harassment' and almost certainly 'abuse of authority'.

I proposed to her superiors that the patient be reassigned to other functions in the same organisation in order to reduce the likelihood of further work-related tension, in particular with her direct supervisor. This solution appears not to have been adopted as a method to reduce the stress factors which have a causal link with the aforementioned symptoms."

How can a complaint be "time-barred" if the harassment" is ongoing?

65. In particular in light of the significant effect on her health, the complainant is seeking protection from further retaliation. The Ethics Office correctly notes in paragraph 35 of the memo that the complainant has not made a *complaint* of harassment internally within OHCHR as regards Mr. Tistoune. The complainant received legal advice in 2014 that such a complaint was time-barred due to her temporary reassignment in OHCHR and, upon realising in 2015 that this advice was incorrect, felt that making a formal complaint of harassment would be likely merely to exacerbate the retaliation. The complainant has chosen instead to pursue protection against retaliation as this is not merely an issue of harassment, but is more properly understood as retaliation for the complainant's reports of misconduct. It is the complainant's understanding that there is no requirement that she simultaneously pursue other avenues.

3. Reports relating to Mr. Mac Darrow and Mr. Craig Mokhiber, and subsequent reprisals

In-person report of the corrupt recruitment to the Deputy High Commissioner of 9 March 2016 was a protected activity

66. In paragraph 11(iii) of the memo, the Ethics Office notes that in the meeting of 9 March 2016, the complainant handed the Deputy High Commissioner a physical copy of her complaint to MEU dated 1 September 2015.
- Correction: A referral to MEU is not a "complaint" - it is a request for evaluation of a decision the s/m believes to be unlawful.
67. The complainant understands that her complaint to MEU does not constitute a protected activity. However, this complaint contained all relevant information and evidence of the unethical recruitment process. Its submission to the Deputy High Commissioner constitutes a separate, detailed report of misconduct. The report is of precisely the same misconduct that was reported to the High Commissioner on 29 July 2015, which the Ethics Office found to be a protected activity. The more detailed report to the Deputy High Commissioner, the official responsible for overseeing recruitment within OHCHR, should therefore also constitute a protected activity.

This is evidence that the Deputy High Commissioner was aware of the matter and took no action.

68. The reference in the email quoted in paragraph 54 of the memo to the "complaint to UNDT" indicates that the complainant did indeed report this misconduct to the Deputy High Commissioner. The complaint to MEU and UNDT was made on 1 September 2015. The Deputy High Commissioner took up her functions on 1 December 2015. The complainant would have no reason to presume the Deputy High Commissioner was aware of said complaint if she had not in fact handed a copy to the Deputy High Commissioner at the meeting of 9 March 2016.

69. The quotation selected from the email by the Ethics Office is, however, highly misleading. The sentence directly preceding that quoted by the Ethics Office in paragraph 54 explicitly states "On another note, OHCHR is also failing to respect my right as a staff member to have an evaluation" (emphasis added). The language used in this sentence clearly and unambiguously indicates that the content following, regarding failures by Mr. Mokhiber and Mr. Darrow (who were not directly named in the email) to comply with their responsibilities as SRO and FRO, was not discussed at the meeting, but rather that this part of the email constituted provision of new information. The Ethics Office has no basis for its conclusion in paragraph 55 that this email "shows that the concerns [the complainant] raised with the Deputy High Commissioner pertain to the procedure applicable to [the complainant's] annual performance evaluation." In fact, when the relevant sentence is not removed, the email clearly indicates precisely the opposite, i.e. that these issues were not discussed, but that the report to UNDT was.

This appears to indicate the Ethics Office selectively mis-quoted the e-mail in order to deliberately misrepresent the facts.

This should be investigated as misconduct!

Retaliation by Mr. Darrow and Mr. Mokhiber

70. The Ethics Office is satisfied that Mr. Darrow and Mr. Mokhiber were aware of her report of corrupt recruitment processes, which the Ethics Office has determined to represent a protected activity, at least by 2 September 2015.
71. The Ethics Office nonetheless finds that the complainant has not substantiated her claim that the retaliation taken against her by Mr. Darrow and Mr. Mokhiber was linked to the report. The complainant disputes this finding.
72. In paragraph 94 (iii) of the memo, the Ethics Office concludes that the complainant has not supported allegations that she was excluded from consideration from temporary posts. However, this is based on a decision by the Ethics Office to accept at face value an email from Mr. Craig Mokhiber of 20 November 2015 (paragraphs 80-81). The Ethics Office does not refer at all to the evidence submitted by the complainant that financing for the post in question was confirmed by the Human Rights and Economic and Social Issues Section on 16 October 2016, the morning on which the memo recommending the complainant was sent, or the email from the person who composed the memo indicating that the non-approval was "a bit strange, to be honest."²³ Furthermore, the complainant had submitted the name

The Ethics Office are aware of the motive and aware of the reprimand

....but do not believe that the motive was a contributing factor in the reprimand

²³ Email from ██████████ to Emma Reilly, Re GTA not approved, 24 October 2015.

of the hiring manager [REDACTED] as a witness, but the Ethics Office chose not to contact [REDACTED].

Why would this material witness not be interviewed?

73. In support of her allegations, the complainant submits a witness statement from [REDACTED] paragraph 4 of [REDACTED] statement [REDACTED] explicitly states that the withdrawal of the post was "highly unusual" and, in [REDACTED] view, "was related to the fact that the selected candidate was [the complainant]." The testimony of the hiring manager should be sufficient to establish a *prima facie* case that the protected activity was a contributing factor to this retaliation by Mr. Mokhiber.
74. In paragraph 92, the Ethics Office concludes that it "sees no evidence" that the prejudicial material in the complainant's ePas is linked to either the comments made during her ePas discussion or to her protected activity. The Ethics Office contacted neither of the witnesses whose names were provided by the complainant in support of this allegation [REDACTED]
75. The prejudicial material in the complainant's ePas all relates to respect, communication and teamwork. [REDACTED] notes in this regard, in paragraph 3 of her statement:
- "From early September 2015 I became aware of Ms. Reilly being vilified in the corridors of DESIB and negative references made to her by some colleagues. She was characterised as a difficult and poor team player. I had not heard them make such comments prior to Ms Reilly asking me for the witness statement, and so believe that this apparent change in views was due to her complaint."
76. The temporal link with Mr. Darrow and Mr. Mokhiber becoming aware of the complainant's report is clear; the "vilification" of the complainant began in early September 2015, and involved her characterisation as a "difficult and poor team player," which relates directly to the competencies on which the complainant received low grades in her ePas. While [REDACTED] was aware only of the complaint to MEU, the retaliation was clearly in response to OHCHR senior management becoming aware of the complaint, which was due to both the direct report by the complainant (the protected activity) and the complaint to MEU, which was presumably transmitted to the same senior managers. It is impossible to separate reprisals arising from these two reports, but it is clear that the protected activity was at least "a contributing factor in causing the alleged retaliation," as required by ST/SGB/2005/21.²⁴ The complainant had held a variety of posts, initially at P-3 and then at P-4 level, in DESIB since September 2013, a period of two years before the "vilification" commenced. Prior to her report, she received only positive ePases, including in the areas of teamwork, respect and communication.
77. In paragraph 74, the Ethics Office dismisses the complainant's concerns regarding her ePas as "premature" on the basis that the complainant has "not yet received [her] ePas document." This is untrue. Indeed, the Ethics Office quotes directly from the complainant's

²⁴ At paragraph 5.2(c).

ePas document in paragraph 91, apparently erroneously considering this relevant to the detriments suffered as a result of retaliation by [REDACTED] The complainant notes that, in her itemisation of detriments, she very clearly lists the ePas among detriments suffered as a result of the report of wrongdoing by Mr. Darrow and Mr. Mokhiber, her FRO and SRO. Apart from erroneous advice given by [REDACTED]’s service, she did not at any point list her ePas among the detriments suffered as a result of retaliation by [REDACTED]

78. Such internal contradictions, errors of fact, and apparent failure to read the complainant’s itemisation of detriments, combined with the choice not to contact named witnesses, clearly indicate that the Ethics Office has failed to properly consider the complainant’s submissions.
79. The Ethics Office claims in paragraph 94(ii) that the evidence provided does not support allegations that Mr. Darrow and Mr. Mokhiber did not comply with their obligations as managers. However, managers are obliged, *inter alia*, to conclude a workplan and to conduct a mid-point review, but there is no dispute on the facts that Mr. Darrow did neither (indeed, Mr. Darrow admits this in writing in the ePas document), and that Mr. Mokhiber took no steps to ensure compliance with the rules. This conclusion is thus clearly flawed.
80. The further abuses of authority in this process are exhaustively documented in the complainant’s submissions. For ease of reference, as some of the relevant facts occurred after the submission of the request for protection against retaliation on 15 July 2016, the complainant has compiled these into a single document and annexes, attached herewith.
81. Prior to the issuing of the current ePas, the complainant sought to protect herself by approaching OHCHR human resources, her second reporting officer, and [REDACTED] the supervisor of her SRO, warning that she suspected that her coming appraisal would be unfair, and asking that measures be taken to ensure an objective process free from bias or reprisals based on the complainant’s report of unethical recruitment practices. No efforts were taken to mitigate the exposure of the complainant to bias in the assessment of her performance.
82. The temporal link between the retaliation and the protected activity is clear. The interaction on 7 October 2015 represented the complainant’s first direct interaction with Mr. Darrow following him becoming aware of her report. Immediately following this, Mr. Darrow began his non-compliance with his responsibilities as a first reporting officer. This alone creates a strong presumption that the inappropriate behaviour was in direct response to the complainant’s report.
83. Failure to meet a single one of the responsibilities of a first reporting officer outlined in ST/AI/2010/5 cannot properly be presented as merely a step in the very process laid out in that administrative instruction, as in paragraph 74 of the memo. This is not an administrative issue, but the abuse of authority in retaliation for the complainant’s engagement in a protected activity. Harassment and retaliation do not cease to be so simply because managers choose as their method of retaliation abuse of an administrative process. Because the overall rating of the complainant’s ePas is “meets expectations,” the complainant’s under ST/SGB/2008/5

is not dependent on any retaliatory motive.
It is a completely separate act of misconduct.

This is a subjective opinion and “receivability” by the MEU is a complete irrelevance anyway. Neither are grounds to influence a decision on whether there is a *prima facie* case of retaliation.

challenge to MEU is unlikely to be found receivable,²⁵ and the complainant submits that her FRO and SRO are aware of this. Their prejudicial comments do not accord with a rating of “meets expectations,” and the complainant contends that this rating was awarded precisely in order to make their reprisals in the process of completion of the ePas immune from review by either MEU or UNDT.

84. Furthermore, should the Ethics Office consider that retaliation by means of the ePas cannot qualify as retaliation under ST/SGB/2005/21, the complainant notes that at least some of the failures by Mr. Darrow and Mr. Mokhiber to meet their obligations as FRO and SRO also breach the Standards of Conduct of the International Civil Service, paragraphs 16-18 of which provide:

- “16. Managers and supervisors are in positions of leadership and it is their *responsibility to ensure a harmonious workplace based on mutual respect*; they should be *open to all views and opinions and make sure that the merits of staff are properly recognized*. They need to provide support to them; this is particularly important when staff are subject to criticism arising from the performance of their duties. Managers are also responsible for *guiding and motivating their staff and promoting their development*.
17. Managers and supervisors serve as role models and they have therefore a special obligation to uphold the highest standards of conduct. It is quite improper for them to solicit favours, gifts or loans from their staff; they must *act impartially, without favouritism and intimidation*. In matters relating to the appointment or career of others, international civil servants should not try to influence colleagues for personal reasons.
18. Managers and supervisors should *communicate effectively with their staff and share relevant information with them*. International civil servants have a reciprocal responsibility to provide all pertinent facts and information to their supervisors and to abide by and defend any decisions taken, even when those do not accord with their personal views.” (emphasis added)

85. In paragraph 92, as noted above, the Ethics Office concludes that it “sees no evidence” that the prejudicial material in the complainant’s ePas is linked to either the comments made during her ePas discussion or her initial complaint. The complainant ensured that a witness was present during her ePas discussion precisely so that there could be no doubt of the content of the discussion or the basis on which comments were made. The complainant named the same witness, [REDACTED] her submissions to the Ethics Office (indeed, this is quoted in the memo at paragraph 91, where [REDACTED] name appears in full). The Ethics Office has never contacted the witness, and thus has not conducted a sufficient investigation of the facts to allow it to draw this conclusion.

²⁵ See, for example, 2014-UNAT-460 Ngokeng.

86. The complainant submits a witness statement from ██████████ confirming that the basis given for these comments in the ePas discussion was indeed that presented by the complainant. The witness further notes, in paragraph 11 of her statement:

“... It was clear that the incidents raised and the facts narrated by colleagues had not been discussed with Ms Reilly before as they had asked that it be kept in confidence. Ms Reilly raised the fact that despite this Mr. Darrow had relied on these accounts and that she had not been given the opportunity to defend herself.”

87. Mr. Darrow demonstrated following the ePas discussion that he was indifferent to the veracity of the allegations made. He indicated at the end of the ePas discussion that the complainant would be given negative ratings on respect, teamwork and communication regardless of the fact that these ratings would be based on unsubstantiated allegations, a number of which were easily proven false. Mr. Darrow raised none of these issues during the period of the complainant's assignment, but they were brought to her attention for the first time during the ePas discussion itself, i.e. after her report. The allegations which relate to a conflict of facts as to the content of discussions are all made by persons named in the complainant's report, which has been found to be a protected activity. This strongly indicates a link between the report and the prejudicial comments.

88. In paragraph 76 of the memo, the Ethics Office claims there is no evidence that ██████████ was aware of the complainant's written report to the High Commissioner (please note that the Ethics Office repeatedly refer to this report as dating from 26 August 2015, when it was in fact made on 29 July 2015 and merely forwarded on 26 August 2015). In fact, the complainant had personally informed ██████████ of the report in early August 2015, immediately after she joined METS, in an effort to ensure that the report would not affect the complainant's ability to carry out her assigned functions and would not create tension in case ██████████ was informed by a third party. The conclusion of the Ethics Office is therefore flawed, as it has failed to consider the evidence.

89. Furthermore, the complainant specifically stated in her itemisation of detriments that the allegation regarding ██████████ behaviour was the creation of a hostile working environment “apparently on [the] instruction or with [the] encouragement” of Mr. Darrow and Mr. Mokhiber. As noted in the complainant's ePas, ██████████ explicitly stated that Mr. Mokhiber would be sure to approve a negative review, regardless of the lack of any basis in fact. The Ethics Office at no point address this fact.

90. The preponderance of evidence should be sufficient to establish a *prima facie* case that the comments in the complainant's ePas and other abuses of authority by Mr. Darrow and Mr. Mokhiber were in retaliation for the report. If the Ethics Office considered that the comprehensive written information submitted by the complainant was sufficient to reach this standard, it should at minimum have interviewed the witnesses to the retaliation. The complainant's case should not simply have been rejected without a fair and objective review.

91. On the basis of the information provided, the witness statements sought from two witnesses named in the complainant's initial submission of 15 July 2016, and the errors of fact and law in the memo, the complainant submits that there is a sufficient body of evidence to support a *prima facie* case that the retaliation by Mr. Mokhiber and Mr. Darrow was linked to the complainant's report, which the Ethics Office has found to constitute a protected activity.

4. Reports relating to Mr. ██████████ Chief of Human Resources, and the human resources team, and subsequent reprisals

Reports of failures to act by human resources constituted protected activities

92. ██████████ was present at the complainant's report to the former Deputy High Commissioner of December 2014. He was therefore aware of the full content of the complainant's report, and notably the elements relating to abuses of authority in appointment, which the complainant had previously reported to Mr. ██████████ as Chief of Human Resources. The complainant orally noted these previous, internal reports to the former Deputy High Commissioner.
93. At the complainant's meeting with the current Deputy High Commissioner of 9 March 2016, the Deputy High Commissioner orally indicated her intention to contact M ██████████ Chief of Human Resources, to determine why no action had been taken since September 2013 to protect the complainant from reprisals. The Deputy High Commissioner did not indicate whether or not she would also discuss with him the unethical recruitment led by Mr. Darrow and Mr. Mokhiber, regarding which the complainant handed over her complaint to MEU.
94. On 14 March 2016, the complainant received an email from Mr. Vanian to arrange a meeting between the complainant and Mr. Tistoune under the auspices of the ombudsman. Given that OHCHR human resources had consistently failed to act on the complainant's reports for a three-year period, this meeting was clearly arranged due to the intervention of the Deputy High Commissioner. ██████████ was therefore aware, at latest by 14 March 2016, of the complainant's report that he had failed to act upon her previous reports.
95. ██████████'s failure to take any action whatsoever regarding the complainant's reports of unethical recruitment practices in HRCB and DESIB (for which he, as Chief of Human Resources, had an oversight function) and her reports of harassment, abuses of authority and reprisals in both HRCB and DESIB in part as a result of such reports, were in breach of his obligation to properly discharge his functions (inter alia under Staff Regulation 1.3), as well as the core values, notably of non-discrimination, laid out in Staff Regulation 1.2, in turn based on UN Charter Article 101.
96. The complainant's reports of failure to act by human resources thus constituted protected activities in their own right.

97. Even should the Ethics Office disagree that these reports constituted protected activities, the complainant's reports of unethical recruitment practices by Mr. Tistounet, Mr. Darrow and Mr. Mokhiber necessarily involved at best negligence and at worst complicity by human resources in carrying out their oversight functions. The Ethics Office has already determined that the report to the High Commissioner of 29 July 2015 regarding the unethical recruitment led by Mr. Darrow and Mr. Mokhiber constituted a protected activity.

Retaliation by [REDACTED]/human resources for all protected reports concerning recruitments (i.e. both failures to act by human resources and the unethical recruitment practices conducted by Mr. Tistounet, Mr. Darrow and Mr. Mokhiber)

98. In paragraph 94 (iv), the Ethics Office concludes that the complainant has not provided sufficient evidence to support her allegation that Mr. [REDACTED] approached third parties requesting them to make negative reports about her performance. The only possible evidence would be in the form of evidence from witnesses. The complainant provided the name of one of those approached, [REDACTED] as a witness. The Ethics Office did not interview her. This is the Ethics Office preferring to make a decision to dismiss Ms. Reilly's application for protection rather than order an investigation that is likely to find that she is entitled to it.
99. In [REDACTED] witness statement, she confirms in paragraph 5 that Mr. [REDACTED] did in fact take such action:

"In March 2016, I was in a meeting in the office of the Chief of Human Resources, Mr. [REDACTED] wherein Ms Reilly's teamwork competence was raised and questioned. From the beginning of my employment at OHCHR in January 2003, I have never been approached by human resources seeking such information about any other staff member. I responded that I had found Ms Reilly professional and had never found her to have a problem with teamwork [REDACTED]
[REDACTED] was with me at the time and responded in the same manner regarding the longer period for which he had supervised Ms Reilly."

100. The date of March 2016 is consistent with the complainant's report of, *inter alia*, the corrupt recruitment process to the Deputy High Commissioner of 9 March 2016. In that meeting, as noted above, the complainant also reported the inaction of Human Resources in response to the complainant's harassment by Mr. Tistounet, which led to Human Resources proposing a meeting under the auspices of the ombudsman. The complainant had been on sick leave since 1 December 2015, and was thus absent from the office, so no other incident could have prompted Mr. [REDACTED] to inquire about the complainant. These queries can thus only have been in retaliation for the complainant's reports.
101. The Ethics Office concludes in paragraphs 90 and 94 (v) that there is no evidence supporting the allegation that OHCHR purposefully delayed informing the complainant that the post at UNOCC for which the complainant had been selected was no longer available.

102. A start date of 18 April 2016 had been agreed with UNOCC, and human resources were fully aware that the complainant was cancelling her lease on an apartment and moving her furniture on the basis of this agreement. Human resources simply failed to respond to the complainant's emails and telephone calls inquiring as to whether there were any updates between 21 March 2016, when they received the information that funding was no longer available, and 4 April 2016, when this information was received by the complainant. Human resources had agreed on 16 March 2016 to share any news with the complainant, at both her personal and professional email addresses, in light of the fact that she was taking steps with financial implications based on the confirmation of the start date. The confirmation that no funding was available clearly constituted news, and human resources were fully aware that it would impact upon the complainant's professional and living situations, as it would prevent reservation of a flight in time for the complainant to start in New York on the agreed date (a 19-day rule applies), and would impact on whether or not the complainant would need to continue the cancellation of her lease in Geneva. Thus, failure to inform the complainant, or to respond to her emails and telephone calls in the interim period, was against both standard practice and the duty of care owed to staff members.

Indicative of
bad faith?

103. The complainant notes that the time period is also precisely that in which human resources became aware of her report of their previous inaction to the Deputy High Commissioner (at latest by 14 March 2016), and in which they finally responded, after a period of some five months, to the complainant's request for instructions regarding her mid-point review (18 March 2016). In this context, the complainant submits that it is questionable that the delay in informing her of the lack of funding for the post (from 16 March 2016 to 4 April 2016), in breach with normal practice, was a mere oversight. This is especially the case as the Human Rights Council Branch was instructed during the same time period not to advertise for a temporary staff member to fill the complainant's fixed-term post (possible witness: [REDACTED])

5. Conclusion

104. The complainant respectfully requests that the Ethics Office assign another officer to her case, and that he or she conducts a professional and impartial review of the evidence, including interviewing witnesses in any case where the written evidence submitted by the complainant is considered to be insufficient.
105. The complainant remains available to respond to any further questions or provide any further information, consistent with the statement on the Ethics Office website that "The Ethics Office may request additional documentation from the complainant, or seek the complainant's consent to obtain additional case information from third parties."²⁶
106. The complainant submits that the above analysis demonstrates that the following reports also constituted protected activities:

²⁶ <http://www.un.org/en/ethics/retaliation.shtml>, accessed 24 October 2016.

- All reports of sharing information on named human rights defenders with the Chinese delegation, as this was not within Mr. Tistounet's discretion, but constituted misconduct;
- The internal reports of acceptance of financial benefit by Mr. Tistounet, which were identical in content to the report to OIOS;
- The internal and external reports of abuse of authority, notably in recruitment, and harassment by Mr. Tistounet;
- The report of unethical recruitment by Mr. Darrow and Mr. Mokhiber to the Deputy High Commissioner.

107. The complainant further submits that the review of the facts above, and the witness statements provided, demonstrate that the retaliation she experienced was a direct consequence of her reports, some of which the Ethics Office has already determined to be protected.

Attached documents:

- Medical report
- Witness statement of [REDACTED]
- Witness statement of [REDACTED]
- Witness statement of [REDACTED]
- Summary of abuses of authority in retaliation for the complainant's report of unethical recruitment by Mr. Darrow and Mr. Mokhiber, with annexes.

This is presumably the only evidence available to Ms. Reilly at this time.

The evidentiary problem that all UN staff members face is that the Ethics Office can make an arbitrary decision not to recognise there is a *prima facie* case of retaliation and the staff member has no legal right to challenge that decision.

Without a finding that a *prima facie* case of retaliation exists, OIOS will not investigate retaliation.

The staff member cannot, in any event, file an application before the UNDT which would be necessary to compel the organization to disclose documents that are evidence in proving the retaliation.

On 27 January 2017, the UN published ST/SGB/2017/2 as the new 'whistleblower protection' policy. Ms. Reilly's case is governed by ST/SGB/2005/21 which was in effect at the time.

The new policy would make absolutely no difference to her situation, the problem is not the letter of the law; it is the boas demonstrated by the Ethics Office in their desire not to recognise patent retaliation when it is reported to them.