

26 October 2020

URGENT LETTER SENT BY EMAIL to:
United Nations Secretary-General

Dear Secretary-General,

We are writing to express our concern at the ongoing retaliation against UN whistleblower Emma Reilly. After so many procedural irregularities, **we urge you to ensure that Ms Reilly is given immediate protection against further retaliation, and that her allegations are the subject of a credible, independent investigation.**

We welcome your repeated, public commitment that UN whistleblowers who respect their obligation under UN rules to report suspected wrongdoing will be protected. Following previous recommendations in Ms Reilly's case, we understand that in April 2018, you wrote to the former High Commissioner instructing that Ms Reilly be transferred, and that her case be mediated. It is deeply unfortunate to learn that your clear message was ignored, and that Ms Reilly has been left exposed to retaliation. We are disappointed that your lawyers continue to argue in Ms Reilly's court case that there was no obligation to act, and that final determinations of Ethics Officers - in this case that the fundamental human rights principles of "do no harm," confidentiality, and equal treatment of all UN member states - could be subverted to the mere possibility of a better political relationship of the UN Human Rights Office with the Chinese government and can never be challenged in any forum.

Ms Reilly's case has been plagued by procedural irregularities, of which the Government Accountability Project and Ms Reilly herself have kept you apprised. These have included excessive delays, with an initial Ethics finding taking 595 days instead of the 30 foreseen in the revised policy. A first judgement in Ms Reilly's favour found that the Administration breached its own rules by simply taking no action on her complaint of abuse of authority, and yet the Administration now repeats that inaction relating to her complaint of abuse of authority against the very UN Ethics mechanisms charged with protecting whistleblowers.

Most seriously of all, the judge who had almost completed writing his judgements in Ms Reilly's two remaining cases was removed with no notice whatsoever in July 2019. The argument of your Administration that there is no requirement in the UN rules to provide judges with notice of the end of their mandate is shocking. There can be no good management reason not to provide a judge with adequate notice to allow for proper disposal of the cases of which he is seized. That Ms Reilly's cases were the only ones at deliberation stage, and that his comments from the bench strongly indicated the direction of his reasoning, makes this only more egregious, and points to a deliberate interference in the independence of the judiciary in order to cover up an embarrassing failure of the UN to respect its mandate. Then, in July 2020, the UN Human Rights Office went so far as to repeat the very conduct for which it was criticised in the CAR report, interfering in the independence of OIOS to shut down an internal audit of UN whistleblower protection policies specifically because the auditors had spoken to Ms Reilly.

We are pleased that the Alternate Chair of the Ethics Panel of the United Nations has now overturned the findings of previous Ethics Officers, explicitly and unambiguously recognising that

*the [OHCHR] management was naturally and perhaps primarily interested in good relations with the member state; the Complainant was interested in human rights and protection of human rights activists. OHCHR was, by virtue of the Complainant's whistleblowing, placed in a very awkward diplomatic position by a human rights issue that it struggled to handle well. **A whistleblower's reporting of such a practice, which was contrary to fundamental UN principles and values, is exactly the sort of activity that must be protected; it is far more important than minor infractions of bureaucratic rules, which the system finds it much more easy to classify as protected.***" [emphasis added]

We agree that whistleblowers who act in the public interest, reporting practices that place people in danger, are especially deserving of protection when they experience reprisals. We are, however, extremely disappointed that your Administration still refuses to protect Ms Reilly, a decision apparently taken by managers directly involved in the actions found to be retaliatory; Ms Reilly's forcible transfer to a post without functions or stable funding, apparently with a view to subsequently cutting this non-existent post

Importantly the Alternative Chair found a prima facie case of retaliation stating that:

*The principal disclosure of 2013 was a protected activity and remains so today. This has led to a process (not yet completed, clearly likely) whereby the complainant risks to be declared redundant by abolition of post (perhaps on financial grounds justified by funding shortages following the Covid-19 pandemic). Such a termination would be culmination of 6 years or so of marginal status and constant moving between temporary postings, her adverse listing preventing her being considered for other posts, the refusal to put her back on her original P3 post, the placement on what appears to be an extra-budgetary post made up for the purpose of finding somewhere to put her placement on SLWP (sick leave with pay) without function... **Retaliation has been constant since 2013, and continues now, and will continue into the future if something is not done.*** [emphasis added]

You yourself, Secretary General, ordered that Ms Reilly be protected in April 2018, some two and a half years ago. Ms Reilly is an employee of the UN Secretariat, and as such you have a responsibility to ensure she is urgently protected against retaliation. We understand that your Administration has failed to respond to even the most basic recommendation that Ms Reilly be protected against adverse personnel actions for the duration of the investigation into the retaliation against her.

We welcome the recognition by the Ethics Office that OIOS has a conflict of interest in conducting any investigation in this case. After so many procedural irregularities, it is vital that Ms Reilly is given immediate protection against further retaliation, that she is and that her allegations are the subject of a credible, independent investigation.

The Government Accountability Project, a co-founder of WIN, has represented whistleblowers across the UN agencies, programs and funds and has provided expert advice, including drafting whistleblower protection laws at all levels of government in the United States and in the corporate sector, to governments around the world, and for multiple inter-governmental and multilateral bodies including the United Nations, the Asian Development Bank, the African Development Bank, the World Bank, the International Monetary Fund, and the International Labour Organization.

In May 2020, the Governmental Accountability made a [detailed submission](https://whistleblower.org/wp-content/uploads/2020/05/GAP-SUPPLEMENTAL-Letter-to-UN-Internal-Justice-Council-1-1.pdf)¹ to the Honourable Yvonne Mokgoro, Chair of the United Nations Internal Justice Council. The submission provides detailed recommendations which we urge you to consider seriously in a programme of reform. We refer

¹ <https://whistleblower.org/wp-content/uploads/2020/05/GAP-SUPPLEMENTAL-Letter-to-UN-Internal-Justice-Council-1-1.pdf>

specifically here to Recommendations 13 and 14 to provide access to effective due process and ensure that justice is not delayed and therefore denied, as has happened in far too many UN whistleblower cases and again here, in the case of Ms Reilly to her severe detriment.

Recommendation 13 is to provide access due process adjudication to the UN tribunal without having to exhaust administrative remedies first, and importantly, as per Recommendation 14, to allow UN staff the right to appeal decisions of the UN Appeals Tribunal to the International Labour Organisation Administrative Tribunal (ILOAT).

Other important Recommendations on good faith (Rec 8 and 10), implementing a reverse burden of proof (Rec 9) and ensuring a full remedy for the harm caused by “eliminating all the direct and indirect consequences of the retaliation, including but not limited to reinstatement with back pay and seniority” (Rec 16) are not only sensible but meet international best practice consensus and the requirements of most current legal requirements, including the new [EU Directive on the protection of whistleblowers](#)².

Without a clear and deliberate effort by the UN to reform its internal systems and ensure external oversight, vital public interest protection for UN staff will remain mired in bureaucratic mechanisms that work to blindly protect the institution. Such a system inevitably crushes those who report important matters of public interest the organisation finds difficult to handle, despite such information falling squarely within the mandate for which the United Nations was created: to protect human rights and to “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”

While she remains on 50% sick leave, Ms Reilly will return to work on Tuesday morning (27 October 2020) which is why we are writing to you today. We trust that you will intervene to remedy the situation with immediate effect; to ensure that Ms. Reilly is protected from any further reprisals and that in terms of remedy, she is made whole. Whistleblower protection cannot be viewed in the abstract; but must be demonstrated with examples of actual people who blow the whistle on dangerous misconduct in the UN and are able to continue and progress in their UN careers. At WIN, we are not aware of a single example of this happening. This must change.

Yours sincerely,



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Executive Director of WIN

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² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&from=EN>