

February 26, 2018

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Chief of Staff

United Nations

New York, New York 10017

Dear Ms. Viotti,

I am writing on behalf of GAP’s whistleblower clients at the United Nations who have requested protection from retaliation through the Ethics Office and been refused it. Recently, I have seen your correspondence with David Kaye, the UN Special Rapporteur for Freedom of Expression, and I would like to summarize with you the contested points of the exchange.

In your letter, you assert that the Secretary General is committed to strong protections from reprisal for whistleblowers. In my experience, investigating many United Nations cases, such a commitment would represent a departure from the actions taken by the previous Secretary General. A review of the chronology of binding actions related to UN whistleblowers taken by Kofi Annan and Ban Ki-Moon is revealing. Since 2005, the UN has been through multiple iterations of anti-retaliation policy reforms:

* SGB/2005/21, establishing an anti-retaliation policy;
* ST/SGB/2005/22, establishing an Ethics Office to enforce the policy,
* SGB/2007/11, making the previous SGBs inapplicable to most whistleblower cases across the UN system, including the most serious case to surface after the two previous SGBs were issued.
* A/RES/61/261, reforming the Justice System to allow appeals of unfavorable tribunal rulings;
* UNDT/NY/2009/044 – awarding damages to UN whistleblower James Wasserstrom, who disclosed a far-reaching kick-back scheme in Kosovo and lost his job;
* UNAT/2014/457 – Vacating Wasserstrom’s favorable ruling and withdrawing jurisdiction of the tribunal system from whistleblower disputes in response to the Secretary General’s appeal of UNAT/NY/2009/044 on procedural grounds;
* SGB/2017/2, purporting to restore tribunal jurisdiction over whistleblower disputes, but doing so in only a small percentage of cases (based on current statistics, less than 3 percent of them).

The record shows a clear pattern. The Secretariat or the General Assembly takes a positive step to protect whistleblowers. Subsequently, Secretary General Ban Ki-Moon backtracked in an obscure but crucial way, (e.g. SGB/2007/11 and the Secretary General’s appeal of UNDT/NY/2009/044) leaving whistleblowers without an objective review and without access to the formal justice system.

SGB/2017/2 represents an advance by management. Through this measure, the Secretariat appeared to extend access for whistleblowers to the formal justice system. If the operations of the Ethics Office are un-reformed, however, such access is provided only in the small percentage of cases that manage to clear a high hurdle raised by that Office.

The Government Accountability Project, which has made repeated efforts in good faith to advise the Secretariat on drafting an effective whistleblower protection policy, has run aground on endless semantic disputes over what is meant by “external,” “independence (for the Ethics Office), and “reasonable belief” (that misconduct has occurred). An objective observer intuitively knows the meaning of these words. Moreover, in the legal world, attorneys agree that the meaning of a term is the generally accepted definition, unless otherwise noted on justifiable grounds.

The Secretary General, both the past two and the current one, defend the putative independence of the Ethics Office – which is responsible for protecting whistleblowers from retaliation – in the face of conflicts of interest that are structural, operational and material. The Ethics Officer does not make a decision about an allegation of retaliation. Instead, she makes a recommendation for resolving the dispute to the Secretary General, who is the whistleblower’s *de facto* adversary in ***any*** dispute, as well as the Ethics Officer’s boss. In effect, when a whistleblower suffers retaliation and appeals for relief from the Ethics Office, the Secretary General is both the defendant and the judge.

Nonetheless, you assure Mr. Kaye that the Secretary General takes whistleblower Emma Reilly’s case “very seriously.” At GAP and elsewhere in the whistleblower community, these words hold little to no value in the face of conduct and application to the contrary. You then cite multiple levels of review, impartiality, and a multi-phase, multi-party denial of protection that is so protracted that Ms. Reilly sought a post in Mauritania rather than continuing to work for a retaliatory supervisor in Geneva.

You incorrectly state that the reviews to which Ms. Reilly submitted herself found no retaliation. The correct accounting of what happened is worse than that for Ms. Reilly. For three allegations filed by Ms. Reilly, protected disclosures were identified, but no retaliation was found, ***and on the most serious allegation***, the disclosure was not deemed protected and therefore, the claim of retaliation was not even examined.

In this review of wrongdoing, the Ethics Officer documents how she, herself, failed to interview the whistleblower and glossed over inconsistencies that would have prompted an honest broker to request an investigation. For example, the Ethics Officer did not concede that Ms. Reilly had a reasonable belief that misconduct had occurred, when she was instructed to inform the Chinese government of the identities of its human rights critics before they could leave China. If exposing human rights defenders’ (HRDs) identities to a potentially repressive government before the dissidents could reach the safety of another country is not misconduct, why did one of Ms. Reilly’s alleged retaliators deny the practice when asked about it by a Member State delegate?

The problems I have identified are not inclusive. However, I have no access to a fair forum in which to make my argument; I am reduced to writing to you and pointing out red flags in this case that two reviewers have ignored, as well as errors of fact in your letter to Mr. Kaye. For example, Ms. Reilly’s assignment in Mauritania is not a measure of protection afforded her by the Ethics Office. It is the consequence of her own efforts to secure a transfer as a means to escape reprisal after the Ethics Office left her without recourse.

More importantly, you repeat an error of fact that the two Ethics Officers each asserted: that Ms. Reilly’s case was re-opened because she submitted new information. She did not. The case was reviewed again by a colleague of the Ethics Officer because of the mishandling of the case by the first Ethics Officer. We have a transcript of a phonecall in which the first Ethics Officer concedes as much.

Ms. Viotti, in Ms. Reilly’s case, we find that you and the two Ethics Officers assert exactly the same factual errors, yet you insist on your independence.

In closing, I can only state that the Ethics Office’s independence is compromised by ***any*** relationship to a party to the disputes it is called upon to resolve. An objective third party resolving a dispute must not have a pre-existing relationship (financial or otherwise) with the disputants. Further, the Alternate Chair of the Ethics Panel is no more independent of management than the Ethics Officer herself. These people all know each other and work together. They depend on each other for job transfers and for recommendations at work. To try to present them as independent of each other and therefore insist that they review claims independently is not persuasive.

You write to Mr. Kaye: “I should start by emphasizing the deep commitment of the Secretary General to a strong and effective policy that protects whistleblowers from retaliation.”

Ms. Viotti, with all due respect, no, you should not start your letter that way. You might start by explaining why it is that United Nations whistleblowers reporting vicious abuse, child rape, procurement fraud, etc. have departed the UN, while abusers, profiteers, and traffickers remain in place, undisciplined.

Sincerely,



Beatrice Edwards

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Cc: David Kaye, UN Special Rapporteur for Freedom of Expression