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CALCULATED OFFICE OF THE SECRETARY-GENERAL
 CABINET DU SECRETAIRE GENERAL

5 October 2017

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Dear Mr. Kaye,

I am writing on behalf of the Secretary-General in response to your letter dated 9 August 2017, in which you bring attention to the case of Ms. Emma Reilly. Ms. Reilly is a Human Rights Officer in the Office of the High Commissioner for Human Rights (OHCHR), and she has complained that she suffered retaliation for having reported a practice by OHCHR that she claimed has placed human rights defenders at risk.

I should start by emphasizing the deep commitment of the Secretary-General to a strong and effective policy that protects whistle-blowers from retaliation. This commitment stems from the Secretary-General's vision of prevention, which he intends to apply to all activities of the Organization, including prevention of retaliation. Indeed, to that end, within the first month of his tenure, the Secretary-General issued a new, robust whistle-blower protection policy (ST/SGB/2017/7) based on elements deemed to be international best practice. In a further demonstration of his commitment to have the most robust policy possible, the Secretary-General has continued his efforts to improve the policy of whistle-blower protection, and a new and further strengthened policy will be issued shortly. I will provide you below with more details regarding this policy.

The Secretary-General therefore takes complaints, such as those Ms. Reilly has raised, very seriously. The protection of whistle-blowers is a top priority of the United Nations, and Ms. Reilly's requests for protection from retaliation have been treated accordingly. Ms. Reilly has availed herself of the framework for protection against retaliation. In fact, she has twice had her requests for protection against retaliation reviewed – the first time by the Ethics Office of the Secretariat and a second time by the Alternate Chairperson of the Ethics Panel of the United Nations, who is not an employee of the Secretariat. In both instances, no retaliation was found. At Ms. Reilly's request another independent review of the most recent ~~investigation~~ ~~is currently~~ ~~being~~ ~~conducted~~ by a member of the Ethics Panel of the United Nations, who is not employed by the Secretariat.

Mr. David Kaye
 Special Rapporteur on the Promotion and
 Protection of the Right to Freedom of
 Opinion and Expression
 Office of the United Nations High
 Commissioner for Human Rights
 Geneva

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At this time, Ms. Reilly is on a temporary reassignment in Mauritania, which reassignment was at her request and which constitutes one of the measures of protection afforded to staff complaining of retaliation. Ms. Reilly will remain in Mauritania until the end of this year. If the second review of her complaint is not completed by the end of the year, the Secretary-General will then consider, at that time, your request for interim measures of protection for Ms. Reilly.

Additionally, you made several specific requests for information in your letter. These requests are addressed below.

1. *Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

In your letter, you allege that the Ethics Office conducted its review of Ms. Reilly's request for protection from retaliation in an "anomalous fashion" and "admitted procedural errors." You also allege that Ms. Reilly was "caught in a procedural cul-de-sac" following the initial finding by the Ethics Office and that the Ethics Office leaked documents related to Ms. Reilly's case.

I welcome this opportunity to correct the record. Following the preliminary finding of the Ethics Office in October 2016 that Ms. Reilly had suffered no retaliation, Ms. Reilly contested the finding, alleging procedural and material errors. The Ethics Office agreed to review its preliminary determination based on new and fresh evidence that Ms. Reilly provided. The willingness of the Ethics Office to reconsider Ms. Reilly's request should not be understood to mean an admission of errors, whether procedural or substantive, by the Ethics Office.

During this reconsideration process, the preliminary determination of the Ethics Office pertaining to Ms. Reilly's case appeared on the blog of the *Inner City Press*, and Ms. Reilly alleged that the Ethics Office was the source of the disclosure. However, an internal investigation by the Ethics Office and by information technology personnel concluded that there was no breach of confidentiality nor attempted penetration of the Ethics Office e-mail system that could have caused the disclosure.

Nonetheless, given this accusation, the Director of the Ethics Office determined that the Ethics Office was placed in a potential conflict of interest in reviewing Ms. Reilly's case and recused the Ethics Office of the Secretariat from considering it further. The Director of the Ethics Office referred the case to the Alternate Chairperson of the Ethics Panel of the United Nations, as provided by Section 7.7 of the new whistle-blower protection policy. The Alternate Chairperson of the Ethics Panel is a high-level ethicist from one of the separately administered United Nations organs or programmes. The Alternate Chairperson of the Ethics Panel completed her preliminary review of Ms. Reilly's request for protection against retaliation in April 2017, finding no prima facie case of retaliation.

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Ms. Reilly has subsequently sought a review of this finding with the newly-elected Alternate Chairperson of the Ethics Panel, who is also not an employee of the Secretariat. This review is currently under way.

The facts above clearly demonstrate that the review of Ms. Reilly's complaints was neither anomalous nor containing procedural errors, nor did it place her in a "procedural cul-de-sac". On the contrary, Ms. Reilly benefited from the new policy that had meanwhile entered into effect and which entitled her to a second review since the conclusion of the first was that she had suffered no retaliation.

2. Please provide information on the ongoing process of review of the UN policy on protection against retaliation, in particular the time limits that will apply for each stage of review, and the redress available to applicants where these limits or other procedural rules are not respected.

As stated earlier, the Secretary-General is committed to ensuring that the whistle-blower protection policy reflects international best practices and is continuously working to improve the policy. Therefore, the Secretary-General decided to take one more look at the policy and to consider additional changes that had been recommended by the Government Accountability Project (GAP) and other entities.

Accordingly, the policy has been the subject of review and consultations with staff representatives over the last several months with a view to issuing a further strengthened version. Revisions will include: (i) expanding the scope of protection against retaliation to include consultants and individual contractors; (ii) expanding protective measures to include the transfer of the alleged retaliator, and not just the victim; and (iii) codifying the requirement for periodic review of the policy.

Time limits are essential in any process, and even more so when an individual is seeking protection from retaliation. For that reason, every effort is made to meet the time limits in the whistle-blower protection policy. To that end, the preliminary review by the Ethics Office of a complaint of retaliation is to be completed within 30 days of receiving all information requested. Similarly, the investigation and report of the Office of Internal Oversight Services (OIOS) is to be completed within 120 days if all documents and witnesses are available within that time frame. Furthermore, in an exceptional case in which the investigation process continues beyond 120 days, the Ethics Office has the authority to recommend the continuation of interim measures of protection.

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3. Please provide information on measures taken to ensure the independence of Ethics Officers, and the reporting lines of Ethics Officers within the UN system.

The Ethics Offices of the United Nations Secretariat and of the separately administered organs and programmes of the United Nations are independent within their organizations. Their independence is analogous, for instance, to that conferred upon similar offices in national governments, which are independent agencies within the executive branch of such governments. The Director of the Ethics Office of the United Nations Secretariat is appointed by and reports directly to the Secretary-General. Ethics Officers within the Ethics Office all report to the Director.

The reporting of the Ethics Office to the Secretary-General is limited to reporting on its human resources management and budgetary issues, and not on the cases before it or how the Ethics Office handles such cases. The Ethics Office does not report or take instructions on the substance of the requests for protection from retaliation that it independently reviews. This is demonstrated by the fact that, since the inception of the Ethics Office, there have been no instances of undue pressure or influence by management on the Ethics Office regarding its handling of retaliation complaints. The Secretary-General is very supportive of the ability of the Ethics Office to work independently of the Administration, and he has asked the Director of the Ethics Office to develop proposals to further strengthen the independence of the Office.

4. Please provide information on the process applied to applications for protection against retaliation that were under consideration by the Ethics Office at the time of adoption of the new policy.

The new whistle-blower protection policy, which was issued in January 2017, has been applied to cases that remained under consideration when the new policy became effective. This has been to the benefit of complainants. The new policy incorporated several improvements, including: (i) the right for a complainant to seek review of an Ethics Office determination; and (ii) the requirement that Ethics Office recommendations result in administrative decisions, which can be appealed in the independent internal justice system.

5. Please provide the basis for the decision to issue a press release containing prejudicial information about a UN staff member while her disclosures remained under consideration.

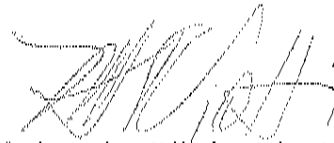
Your letter expresses concerns regarding a press release entitled, "UN rights office categorically rejects claims it endangered NGOs," which was issued by OHCHR on 2 February 2017.

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The issuance of the press release is currently the subject of a case that is currently being litigated before the United Nations Dispute Tribunal. Accordingly, out of respect for the independent internal justice system, it is not appropriate to go into the specifics of the matter at this time.

I hope that the above clarifications demonstrate the strong commitment of the Secretary-General to a robust policy for protecting whistle-blowers in the United Nations.

Yours sincerely,



Maria Luiza Ribeiro Viotti
Chef de Cabinet