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OPEN LETTER to:

United Nations Secretary-General Mr António Guterres

17<sup>th</sup> August 2021

Dear Secretary-General,

We, the undersigned, are writing to express our deep concern at the latest action taken by the United Nations to dismiss Office of the High Commissioner of Human Rights (OHCHR) whistleblower, Emma Reilly.

**We call on you, the Secretary General of the United Nations, to intervene and immediately suspend any further action being taken against Ms. Reilly.**

It is essential that the United Nations – as the international upholder of human rights globally - take responsibility for any failure to protect human rights defenders, and **we call for a full, credible and independent investigation of Ms. Reilly’s original concerns about the potentially harmful consequences of OHCHR staff sharing names of vulnerable human rights activists with the Chinese authorities.**<sup>1</sup>

It is also imperative that you respond to repeated calls to improve the UN internal justice system and **commit publicly to critical reforms to ensure UN whistleblower protections meet international best practice consensus.**

#### Improper removal of whistleblower status

Late on Friday 30<sup>th</sup> July 2021, the UN Ethics Panel sent Ms. Reilly a communication that effectively and retrospectively removed her protected whistleblower status. Minutes later, she received the judgment from the UN Dispute Tribunal (UNDT) which only partially upheld her claims of detrimental treatment, providing her with inconsequential moral damages that do nothing to protect her employment position.<sup>2</sup> In a matter of hours, Ms. Reilly received a formal disciplinary notice setting out allegations of misconduct against her for having engaged in external communications without authorisation, for historic statements she is alleged to have made about her case dating back to June 2020.

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<sup>1</sup> See [amended Dutch parliamentary record of questions from members Sjoerdsma \(D66\), Omtzigt \(CDA\) and Voordewind \(ChristenUnie\) to the Minister of Foreign Affairs](#) (21st January 2019).

<sup>2</sup> Ms. Reilly was awarded moral damages of USD3,000 for four years’ worth of stress and anxiety due to her hostile work environment, lack of due process and inaccuracies of statements made about her case in a press release; see [UNDT Judgement NDT/2021/093](#) (30<sup>th</sup> July 2021).

The effective removal of Ms. Reilly's whistleblower status and the UNDT decision to reject the majority of her claims leave her vulnerable to imminent dismissal. It is unlikely these allegations of misconduct could have been pursued against her without the UNDT ruling that the veracity of the press release regarding OHCHR's policy, and her claims of retaliation, could not be examined by the Tribunal and rejecting her claims of conflicts of interest in the handling of her case on the basis that she had not been able to prove them. The perceived orchestration of these latest developments would be the latest in a series of escalating detrimental acts in a case plagued by serious delays and procedural irregularities since its beginning, which calls into question their probity and validity; they also run counter to your instruction of April 2018 to mediate her case.

You will recall that the original UNDT judge hearing Ms. Reilly's cases was abruptly removed from post in July 2019. The judge already heard the evidence in all three of Ms. Reilly's claims and issued a first ruling in her favour before being suddenly terminated. He was replaced prior to issuing the judgements he prepared in the remaining cases. 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 was particularly concerning. It is also exceptionable that no allowance was made to permit the judge to issue rulings in the cases of which he was seized and had heard all the evidence, as has been allowed in similar circumstances.

**As it stands, it is nearly impossible for any UN whistleblower to survive the UN internal justice system and Ms. Reilly is no exception.**

Nearly a full year after the Alternate Chair of the Ethics Panel found that Ms. Reilly had blown the whistle on potentially serious violations of human rights and had suffered retaliation for doing so, she was informed on 4<sup>th</sup> June 2021 that this decision was 'defective' and that a new Alternate Chair would review her complaint *de novo*. UN policy requires a full investigation once retaliation has been determined.<sup>3</sup> That did not happen. Instead, the original decision in Ms. Reilly's favour was improperly replaced with a new one that retrospectively removed her status as a protected whistleblower.

In July 2020, the Alternate Chair of the Ethics Panel found that Ms. Reilly

*"...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."*

He went on to say that Ms. Reilly's

*"...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*

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<sup>3</sup> The International Civil Service Commission's 2001 Standards of Conduct for the International Civil Service, para. 19 states that "[i]t must be the duty of international civil servants to report any breach of the organization's rules and regulations to a higher level official, whose responsibility it is to take appropriate action. An international civil servant who makes such a report in good faith has the right to be protected against reprisals or sanctions".

*(perhaps on financial grounds justified by funding shortages following the Covid-19 pandemic)... Retaliation has been constant since 2013, and continues now, and will continue into the future if something is not done."*

Now Ms. Reilly's protected status has been removed and she is being threatened with dismissal for misconduct.

#### Human rights violations

Since reporting her concern about OHCHR's practice in February 2013 there has been no credible investigation into Ms. Reilly's disclosures. The fact that some of the names handed over were of people speaking up about the treatment of the Uyghur population should have raised serious alarm bells at the time, but recent international condemnation of China's treatment of the Uyghurs should remove any remaining doubt that Ms. Reilly's concerns warranted proper investigation. We note that by reconstructing events there is strong evidence of documented reprisals against the families of those named human rights activists.<sup>4</sup>

The very basis for whistleblower protection is to ensure the free flow of information to promote institutional accountability. It is vital that whistleblowers' disclosures are investigated early enough to prevent harm or stop its continuation. An independent investigation into OHCHR policies, and whether any risk of harmful practice continues, should have been given high priority at the time, and should still be a high priority. It is essential that the UN engages in a critical examination of its own practices to maintain its credibility, and to assure the trust and future engagement of human rights defenders with the UN.

We are aware that the Board of Trustees of the Whistleblowing International Network (WIN) wrote to you on the 26<sup>th</sup> of October 2020, and again on the 12<sup>th</sup> March 2021, setting out detailed concerns about how Ms. Reilly's case was unfolding and highlighting that key flaws in the UN justice system - as it applies to whistleblowers - continues to hinder rather than to protect.

*The fairness in the application of rules and systems cannot be examined in a vacuum. In the case of workplace whistleblowing, it is absolutely essential that any steps to change a person's employment status or failures to protect someone's career progression once they have blown the whistle be examined in their proper context. **This means that the burden of proof must fall to the employer to prove that any such actions are wholly unrelated to the whistleblowing and independently fair.***

*It is also a well-established principle that individuals who witness suspected wrongdoing be afforded the freedom to choose the most appropriate reporting channel. **Indeed, disclosing concerns publicly, particularly when there has been no satisfactory outcome to the original concerns raised internally, is a***

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<sup>4</sup> The people most obviously and directly affected do not want their names in the public domain for fear of further reprisals. The reprisals against Dolkun Isa are documented in his witness statement, and now include forced confessions of his family members and exclusion from UN premises at the request of China. See [Witness Statement of Mr. Dolkun Isa](#) (22<sup>nd</sup> May 2019).

**protected activity.**<sup>5</sup> Ms. Reilly assiduously followed the internal processes available to her since first raising her concerns in 2013 about an unofficial OHCHR policy of handing over the names of human rights defenders planning to speak out against violations of human rights in China to the Chinese delegation. She has also worked hard to defend herself within the UN system - Despite repeated requests from Ms. Reilly, UN lawyers have yet to provide any clarity as to whether or not this policy remains in place. **It should be obvious that there is nothing to be gained by investigating or dismissing Ms. Reilly for commenting publicly on publicly available information.** However, there is clearly an urgent need for an investigation to ensure there is no further endangerment of human rights defenders and to ensure equal treatment of all member states.

It is clear that Ms. Reilly reasonably believed that a secretive unwritten policy, applied discriminatively to a single member state, was a cause for concern and should be reported. In July 2020, an Alternate Chair of the Ethics Panel agreed with her. It is well established worldwide that having a reasonable suspicion or grounds to believe wrongdoing occurred is the accepted legal basis for protected whistleblower speech, including in the new EU Directive to protect reporting persons.<sup>6</sup> In our view, there is no legal or moral basis for removing Ms. Reilly's protected status as a whistleblower.

Ms. Reilly's case has continued for more than 8 years. To restore credibility and due process, any further employment action against Ms. Reilly should be immediately suspended to allow for independent review of her case, and for full and fair mediation to be offered to ensure your instructions of April 2018 are finally followed.

#### Lack of effective UN whistleblower protection

As repeatedly highlighted to you by whistleblowing, anti-corruption and human rights experts, the whistleblower protection policies of the UN and its agencies have been a long-standing cause for international concern. The evidential burden on UN staff to prove the causal link between blowing the whistle and the retaliation they suffer runs counter to international best practice consensus that holds a reversed burden of proof as the cornerstone for securing credible whistleblower rights.

In 2015, the UN Special Rapporteur on freedom of opinion and expression specifically recommended the UN and its agencies adopt effective policies to enable greater public access to information and protect whistleblowers, which follow similar criteria as those recommended to states, including a reversed burden of proof once a *prima facie* case is established, as well as access to an independent forum.

Importantly, his report also highlighted the necessity of protection from retaliation when making a public disclosure to the media, civil society, or Governments:

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<sup>5</sup> See Article 15, [Directive \(EU\) 2019/1937 on the protection of persons who report breaches of Union law](#).

<sup>6</sup> See Article 5 (2), *ibid*.

*To be sure, disclosures should respect the rights and reputations of others, but in the absence of effective internal systems, external disclosure provides a necessary safety valve to promote accountability and ensure that the public has information about serious wrongdoing.<sup>7</sup>*

We acknowledge your public commitments to protect UN whistleblowers who respect their obligations under UN rules to report suspected wrongdoing but submit that the internal justice system can become a trap for UN staff, causing them to suffer needlessly for doing the right thing and ending their careers.<sup>8</sup>

There exists a wealth of expertise on implementing best practice whistleblower protection policies across the Whistleblowing International Network; last year, the Government Accountability Project wrote to the UN Internal Justice Council with 48 points for consideration on how to improve the UN's internal justice systems.<sup>9</sup> Leading global expert practitioners on whistleblowing law and practice are available and willing to offer independent support to any UN initiative to improve trust and confidence in the UN internal justice systems to ensure all UN staff feel safe reporting public interest information, both internally and externally.

Whistleblower protection must be demonstrated with examples of workers who blow the whistle on dangerous misconduct in the UN and who are able to continue and progress in their UN careers. We are not aware of a single example of this happening to date. The chilling effect of this carries a huge risk for the UN as it stops others from speaking up when they should. **This must change.**

Yours sincerely,

Access Info Europe

African Centre for Media & Information Literacy (Nigeria)

AWTAD Anti-Corruption Organization (Yemen)

Blueprint for Free Speech

Campax (Switzerland)

Centre for Free Expression (Canada)

Centre for Peace and Development Initiatives - CPDI (Pakistan)

Centre for Research in Employment and Work, University of Greenwich (United Kingdom)

European Federation of Journalists - EFJ

European Organisation of Military Associations and Trade Unions - EUROMIL

GlobaLeaks

Government Accountability Project (USA)

Osservatorio Balcani Caucaso Transeuropa (Italy)

Pištaljka (Serbia)

Protect (United Kingdom)

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<sup>7</sup> See paras. 57 & 69 A/70/361 [Thematic Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#) (8th September 2015).

<sup>8</sup> See '[The Judge's view: The UN justice system is not independent and needs to be fixed](#)' UNtoday (8<sup>th</sup> April 2021).

<sup>9</sup> See Government Accountability Project [Letter to the United Nations Internal Justice Council](#) (13th May 2020).

SpeakOut SpeakUp Ltd (United Kingdom)  
The Coalition for Accountability and Integrity - AMAN (Transparency Palestine)  
The Ethicos Group (Australia)  
The Ethicos Group (France)  
The Daphne Caruana Galizia Foundation (Malta)  
The Signals Network (USA / France)  
Transparency International Bulgaria  
Transparency International Cambodia  
Transparency International Ireland  
Transparency International Italia  
Transparency International Macedonia  
Transparency International Secretariat  
Whistleblowing Canada Research Society (Canada)  
WBN - Whistleblower-Netzwerk (Germany)  
Whistleblowing International Network  
Xnet (Spain)

CC:

- *Ms. Irene Khan, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*
- *Prof. Fernand de Varennes, UN Special Rapporteur on minority issues*
- *Ms. Mary Lawlor, UN Special Rapporteur on human rights defenders*
- *Mrs. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*
- *Selected representatives of Permanent Missions to the UN including:*
  - *Dame Barbara Woodward DCMG, OBE (UK)*
  - *Ms. Linda Thomas-Greenfield (USA)*
  - *Mrs. Geraldine Byrne Nason (Ireland)*
  - *Mr. Michael Gaffey (Ireland)*
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  - *Ms. Tamara Mawhinney (Canada)*
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