



By Rasna Warah



### *Malindi, Kenya* - AN UGLY WAR THAT MAKES A MOCKERY OF THE UN'S CORE MANDATE

On World Press Freedom Day on May 3, the United Nations Secretary-General Antonio Guterres called on world leaders to 'defend a free media' and to put an end to 'all crackdowns against journalists because a free press advances peace and justice for all.' Yet the UN's own senior officials are engaged in an ugly war against the media that has made a mockery of the Secretary-General's message and the UN's commitment to uphold Article 19 of the UN Charter that protects everyone's right to freedom of opinion and expression.

The heads of both the Geneva-based World Intellectual Property Organisation (WIPO) and the Rome-based Food and Agricultural Organisation (FAO) have taken the unprecedented step of suing journalists for defamation - a highly unusual act because the UN and its employees enjoy immunity from prosecution, which means that in order to bring a case before a national court they have to surrender this immunity - which rarely happens.

The WIPO case is particularly intriguing as it has surfaced at a time when North Korea is amassing sophisticated military weapons and threatening a nuclear war. According to those who are familiar with the case, in 2014, James Pooley, Moncef Kateb and Miranda Brown, three high-level WIPO staff members, alleged that Francis Gurry, the Director-General of WIPO, had authorised the shipment of high-level American information technology to North Korea in violation of United State sanctions against the country and without the approval of the UN Security Council. For their efforts, all three staff members suffered severe retaliation; Pooley was investigated for misconduct, Kateb was fired

and Brown was forced out of the organisation after being continuously harassed.

In February 2016, Brown told lawmakers in the United States that Gurry had told her that WIPO was not bound by US or UN sanctions and that as a member state of the UN, North Korea deserved 'technical co-operation.' In her testimony to the US House Committee on Foreign Affairs, Brown stated that one her colleagues had informed her that the shipment was a reward for North Korea's support for Gurry's election as Director-General of WIPO in 2008. Interestingly, despite all these developments, Gurry continues to enjoy his hefty salary and top job at WIPO.

## BLOW YOUR WHISTLE... AND GET FIRED

Even though the UN has a whistleblower protection policy, UN whistleblowers' experiences show that the policy has proved to be largely ineffective; in fact, most UN whistleblowers are ostracised, demoted, fired or blacklisted because they are perceived to be an existential threat to the UN's moral authority and legitimacy.

In 2014, for example, when Anders Kompass, the director of field operations at the Office of the UN High Commissioner for Human Rights, reported to the French government that French peacekeepers operating under the authorisation of the UN Security Council in the Central African Republic were sexually abusing boys as young as nine-years-old, he was asked to resign. When he refused to do so, he was suspended for 'unauthorised disclosure of confidential information.' He was only exonerated after an inquiry cleared him of all charges. Kompass has since resigned from his UN job. He told the *Guardian* newspaper that his ordeal at the hands of the UN had left him 'disappointed and full of sadness.'

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Unfortunately, cases of peacekeepers sexually exploiting women, girls and boys have not stopped since Kompass exposed them to the French government, nor has the UN taken significant steps to stem these crimes. A recent investigation by the Associated Press found that UN peacekeepers have been routinely sexually abusing minors in countries such as Haiti for years, and that few of them are reprimanded or jailed. The UN's normal reaction to these cases is to first to engage in a cover-up, then to deny the scale of the problem instead of ordering an investigation.

The case of Emma Reilly, who works in the same organisation where Kompass worked, illustrates how difficult - and perilous - it can be to report criminal, illegal or unethical activities within the UN. In 2013, Reilly told Navi Pillay, the then UN High Commissioner for Human Rights, that a senior member of staff was giving the Chinese government the names of Chinese dissidents who were to attend a meeting of the Human Rights Council in Geneva. Instead of reprimanding the staff member who was placing the dissidents' lives in danger, Pillay's senior staff began harassing Reilly. Only in 2016, when Reilly informed the Irish government of this betrayal of human-rights defenders by her organisation did the practice stop. Now Pillay's successor, Prince Zeid Ra'ad al Hussain, wants to have Reilly investigated for 'leaking' information.

The UN is also known for sacking or not renewing the contracts of individuals who threaten to expose fraud or corruption within the organisation. For instance, when Rehan Mullick, a database manager, informed UN senior managers about stark irregularities in the UN's Oil-for-Food programme in Iraq, his contract was not renewed. However, two years later, UN Secretary-General Kofi Annan was forced to appoint a team of international investigators to look into irregularities within the programme after the *Wall Street Journal* published a shocking exposé that showed that

the Iraqi dictator Saddam Hussein was using front companies that were receiving kickbacks from the programme and the UN preferred to look the other way. The Volcker Commission's investigations found that more than 2,000 companies and individuals from over 40 countries had paid bribes or kickbacks to Saddam to participate in the programme and that billions of dollars had been lost. Despite having forewarned the UN Secretariat in New York about what would turn out to be the biggest scam in the UN's history, Mullick remains just a footnote in a long list of scandals that have plagued the UN in recent years.

## INSIDERS ARE FAIR GAME, BUT JOURNALISTS?

But while the UN has a well-known history of retaliation against staff members who report wrongdoing within the organisation, its senior managers rarely retaliate against journalists who report misconduct, abuse of office, fraud or corruption within this world body. Which is what makes the WIPO and FAO cases so interesting.

In January this year, a journalist with World Radio Switzerland reported a protest against WIPO boss Francis Gurry over alleged corruption and abuse of power. The reporter also quoted a US Congressional Committee that had described WIPO as 'the Fifa of the UN' for the scale and number of scandals that the organisation had witnessed under Gurry's tenure. The WIPO boss filed a criminal case of defamation against the reporter.

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Matthew Parish, the lawyer who is acting as defence counsel for the reporter, says that he finds it ironic that the UN, which has long sought to abolish criminal penalties for journalism and free speech, has condoned - and not even commented on - Gurry's unusual action. On the contrary, UN Secretary-General Antonio Guterres, not only sat alongside Gurry at a meeting of top UN executives held in Geneva recently, but also praised WIPO for its excellent work.

Parish told the *New American* magazine that Gurry's actions against the reporter were a violation of everything the UN stands for. 'The very notion of a criminal complaint for defamation being an anathema to the principles and values underlying the United Nations, it is unthinkable improper that a UN agency itself, and its Director-General, initiate a domestic legal procedure so abhorrent to UN values,' he said.

Gurry also appears to have flouted the UN's own rules pertaining to the privileges and immunities that UN staff enjoy. The UN Charter and the UN's staff rules accord immunity from prosecution to UN staff and its representatives, not just in the country where they are stationed but also in their own countries. This type of immunity is not even accorded to ambassadors, who may be tried in their own countries, if not in the countries where they are serving.

In order to bring a criminal case to a national court, the UN has to bypass its own internal justice systems and flout its own rules and regulations. This rarely happens because it would mean that as either plaintiff or defendant, UN officials subject themselves to the laws and courts of the country where the case is filed, and in doing so, surrender their legal immunity. This scenario could end up being a double-edged sword for the UN - if a UN official can waive his or her immunity and appear in a national court, then aggrieved parties, including UN whistleblowers and families of children abused by UN peacekeepers, can use that waiver to countersue a UN official or take the UN to

court. This case thus represents a legal quagmire that may end up hurting, rather than helping, the UN.

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Meanwhile in Rome, FAO has a filed a case against the English language publication *Italian Insider* and its editor John Phillips for damaging the UN agency's reputation through articles exposing corruption, cronyism and nepotism. FAO is demanding hefty damages in this case, which could force the publication to shut down. One of the scandals that the *Italian Insider* exposed was the appointment of former Peruvian First Lady Nadine Heredia to a senior post at FAO, apparently so she could escape charges of corruption and money laundering in her own country.

This is not the first time that the Rome-based agency has come under attack. A few years ago, D.T Krueger, a former FAO employee, wrote a book called *UN: A Cosa Nostra* that described the mafia-like management culture at FAO. According to Krueger, three-quarters of the funding received by FAO is spent on administration, staff, travel and accommodation costs, and little reaches those who need it the most. Which could explain why so many of the FAO's agricultural and food security projects have failed in countries such as Somalia, which has been suffering from chronic food insecurity for decades.

#### THAT OLD TIME MAFIA METHOD: SWIFT RETALIATION

The people most likely to report unethical or criminal activities within the UN tend to be insiders, but as many of their cases have shown, the UN, like the Italian mafia, has a swift and efficient mechanism to get rid of these whistleblowers through retaliatory actions, including harassment, character assassination and dismissal. By the time the whistleblower understands what has happened to her, it is too late. The systematic cover-ups and denials, and the failure to adequately investigate the wrongdoing, make it virtually impossible for the whistleblower to receive justice from the UN's internal justice systems, which are heavily biased in favour of senior UN management. The fear of being blacklisted also prevents UN whistleblowers from speaking to the media or to seek remedy through internal channels.

The Washington-based Government Accountability Project (GAP) found that more than 95 per cent of whistleblowers' complaints to the Ethics Office never get investigated. In fact, a complaint to the Ethics Office is likely to land the whistleblower in even more trouble, as I found out

The UN Ethics Office, which is supposed to protect UN whistleblowers from retaliation, is notorious for not protecting those who report wrongdoing. The Washington-based Government Accountability Project (GAP) found that more than 95 per cent of whistleblowers' complaints to the Ethics Office never get investigated, and that whistleblowers get little moral support from this office. In fact, a complaint to the Ethics Office is likely to land the whistleblower in even more trouble, as I found out when I reported suspected abuse of office and fraud at the United Nations Human Settlements Programme (UN-Habitat) when I worked there. The retaliation against me - in the form of public humiliation, intimidation, character assassination and threats of non-renewal of contract - escalated as soon as I sent the complaint, which suggested to me that the Ethics Office shared my letter with

my bosses. My attempts to report the wrongdoing to senior managers also failed; none of them intervened on my behalf or ordered an investigation to ascertain whether my complaints were genuine.

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When I filed an official complaint through GAP, the Ethics Office responded by saying that while there was probably evidence of wrongdoing in my allegations, it could not establish whether I had experienced retaliation. This meant that my case was essentially closed because if one cannot prove retaliation, one cannot move one's case forward.

#### A HARD RAIN'S GOING TO FALL

Unfortunately, UN whistleblowers are in for an even harder time. A revised whistleblower protection policy adopted in January this year gives the Ethics Office even more powers. UN whistleblowers face the threat of being 'disciplined' if their allegations or complaints are found to be false or based on 'rumours.' 'This means that if a staff member suspects wrongdoing in his or her department, and makes a complaint so that further investigations can be carried out, and then it is determined that there was no wrongdoing (which usually happens as the UN rarely admits that wrongdoing takes place within its hallowed halls), that staff member could face disciplinary action for spreading 'rumours.'

The revised 2017 UN whistleblower protection policy is an improvement on the old 2005 policy in that it does allow UN whistleblowers to approach an external entity or individual if they believe that the internal justice system has failed them or is unlikely to protect them. However, it severely limits the kinds of information they can divulge and the types of entities and individuals they can approach.

If WIPO and FAO win their cases against the journalists, that will be another nail in the coffin of accountability and transparency at an organisation that was formed 70 years ago to protect the human rights, dignity and freedom of expression of every human being on this planet

The revised policy states that an individual can only report misconduct within the UN to an external entity or individual if the report does not cause 'substantive damage to the Organisation's operations,' which is another way of saying that the revelation does not damage the UN's reputation. In the Reilly and Kompas cases, for instance, the UN could argue that by approaching a government, they had damaged the UN's reputation, which could impact the organisation's operations (as these governments would be reluctant to fund the organisation's future operations). What's more, the UN could even 'discipline' a UN whistleblower for spreading 'rumours.'

In essence, the revised policy is a gagging order on UN whistleblowers and a significant step backwards in improving accountability within the UN. It appears to give whistleblowers greater leeway in reporting wrongdoing, but takes away this freedom through stringent conditions that cannot be met because most whistleblower cases never reach the official investigation stage. The revised UN whistleblower protection policy thus reinforces the UN's culture of cover-ups, corruption and impunity.

Having effectively silenced its own staff members, it seems the UN is now on the warpath against the media. If WIPO and FAO win their cases against the journalists, that will be another nail in the coffin of accountability and transparency at an organisation that was formed 70 years ago to protect the human rights, dignity and freedom of expression of every human being on this planet.

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