



UNITED NATIONS DISPUTE TRIBUNAL

Cases No.: UNDT/NY/2009/123
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Judgment No.: UNDT/2010/176
Date: 8 October 2010
Original: English

Before: Judge Goolam Meeran
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

BUENDIA
ARIDA
FRANCISCO
MANAL
MONTEBON
NAVARRO
SUPETLAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Gilbert Raymund T. Reyes and Norman Brian P. Yap

Counsel for respondent:
Robert Nadelson, UNDP
Peri Johnson, UNDP

Introduction

1. These cases concern the imposition, on 8 July 2009, of disciplinary measures for misconduct. The applicants, all staff members of the United Nations Development Programme (UNDP) Country Office in the Philippines, filed complaints of harassment and abuse of authority by Ms. Noble, the UNDP Resident Representative. They also reported the details of their complaint to the Department of Foreign Affairs (DFA) in the Philippines. They considered that in the special circumstances of their cases it was appropriate to have done so and that they had acted in accordance with the UNDP Legal Framework for addressing non-compliance with UN standards of conduct of 6 November 2007 (UNDP Legal Framework) for reporting wrongdoing.

2. In their applications filed on 9 October 2009, the applicants claim that the respondent did not have reasonable grounds to conclude that each of them committed the misconduct in question because this conclusion was based on evidence that had been improperly obtained in breach of their rights to due process. They argue in the alternative that even if the respondent had reasons to believe that they had committed the acts in question their disclosure of the relevant allegations against the Resident Representative to an external body was justified and in accordance with the UNDP Legal Framework. According to the applicants, in the circumstances, the decision to impose disciplinary measures should be rescinded and they should be appropriately compensated.

3. The respondent asserts that at all times the applicants' due process rights were respected, that the evidence against them supported the findings of misconduct and that the disciplinary measures imposed were appropriate and proportionate.

Order for combined proceedings

4. These cases raise common questions of law and fact. Accordingly, by Order No. 184 (NY/2010), dated 27 July 2010, the Tribunal ordered that the cases be combined and considered together. However, any significant difference in relation to each applicant will be identified and distinguished in this Judgment, as appropriate.

Findings of fact

5. In July 2007, five of the applicants (Mr. Buendia, Mr. Francisco, Ms. Montebon, Ms. Navarro and Ms. Supetran) met a Ms. Opal who runs *Blas Opal*, a labour policy centre, and is also a columnist for *Panorama* magazine, a Sunday magazine of a Manila newspaper. Following the visit by the five applicants, the 20 July 2007 edition of this newspaper published an article referring to their visit without identifying them and containing details regarding their complaints against the way in which their office was managed and the allegations that had been made against the Resident Representative in the UNDP office in the Philippines.

6. On 23 July 2007, all the applicants, together with six former staff members, sent a letter to the UNDP Administrator making a number of complaints against the Resident Representative, including complaints of abuse of authority, harassment and retaliation.

7. On 26 July 2007, a document signed by 28 staff members expressed support for the Resident Representative.

8. On the same date, the applicants allegedly jointly signed and sent a letter to the Secretary of the DFA of the Philippines which stated:

We are formally lodging this complaint with the Department of Foreign Affairs as Filipinos, in particular, since [the Resident Representative]’s unilateral and abusive actions are already adversely affecting the operations of UNDP in this country, as detailed in the attached set of documentation, in addition to our letter. We are afraid that if she continues to serve in the Philippines, the development support that the UNDP is providing to this country will be seriously impaired. To this end, we hope that you can grant us an audience to shed further light on this matter.

We are confident that your office can intervene and help alleviate this untenable situation which is an affront to the dignity of Filipinos.

They attached their letter dated 23 July 2007 to the Administrator of UNDP.

9. The Office of Audit and Performance Review (OAPR) of UNDP, in consultation with the Regional Bureau for Asia and the Pacific (RBAP) decided to send a mission to the UNDP office in the Philippines to investigate the allegations of harassment, abuse of authority and retaliation. The investigative mission comprised two external consultants who were briefed at headquarters on 13–14 August 2007. They arrived in Manila on 19 August 2007 and carried out their investigation 20–29 August 2007.

10. On 16 August 2007, an article appeared in the *Business Mirror* (an online newspaper from the Philippines) entitled “UNDP staffers file complaint against their chief at DFA”. The following day the paper published an article referring to the letter to the DFA the following day. By the time the members of the investigative mission received a briefing at headquarters, on 13–14 August 2007, they would have been aware both of Ms. Opal’s article of 20 July 2007 and the applicants’ formal complaint of harassment dated 23 July 2007. By the time the investigation commenced, on 20 August 2007, the article in the *Business Mirror* had also been published. Whilst it is the case that the Tribunal did not receive evidence from the members of the

investigative mission, it is clear that on 16 August 2007 they had in their possession, prior to the commencement of their investigation, sufficient material from which a reasonable belief could and must have been formed that the applicants may well have been responsible for the leakage of information to outside bodies contrary to the UN Charter and the staff rules and regulations.

11. In answering questions put to them by the investigators, the applicants believed that they were being questioned in relation to their complaint about the Resident Representative. They were not informed that they were being treated as potential suspects in relation to the leakage of information to the press and/or the DFA.

12. The investigation team produced two separate reports. One report was into the complaints regarding Ms. Noble's conduct. Ms. Noble was exonerated of the charges levelled against her. The second report recommended that disciplinary action be taken against the applicants. It is clear that both reports were based on the finding of the investigation carried out in August 2007. No question arises in relation to the investigation of the complaint against Ms. Noble. However, that investigation was at the same time used to obtain material which formed the subject of a disciplinary charge against the applicants. Although the applicants were subjected to disciplinary process, they were not informed of the allegations against them at any point during the investigation or that they were subjects of an investigation. Investigators establish facts and are required to inform, in writing, the subjects of investigation of the allegations against them. Whether or not it is a disciplinary offence is determined subsequently by the UNDP Administration, not the investigators. What the UNDP Administration should have done is instruct the investigators to interview the staff members, put the allegations to them and issue a new report. It is only then that the

UNDP Administration should have considered whether to charge the staff members with disciplinary offences.

13. By letters dated 19 February 2008, the applicants were charged with misconduct under staff regulations 1.1(b) and 1.2(i), staff rule 101.2(h) and chapter 1, sec. 3, paras. 23(a) and (p) of the UNDP Legal Framework. The first charge was formulated as follows:

You intentionally sought the intervention of the government of a Member State to influence the administration and management of the Country Office.

The great importance attached to preserving the international status of staff members independent of influence by national governments is such that the UN Charter itself, under Article 100, requires that:

“[i]n the performance of their duties the Secretary-General and the staff members shall not seek or receive instructions from any government or any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.”

Under the same Article of the UN Charter, Member States undertake a complimentary obligation not to seek to influence staff members in joining the UN. This obligation upon staff members not to seek or receive instruction from governments is further reflected in the Staff Regulations and Rules. Upon joining the UN, staff members sign a declaration mandated in Staff Regulation 1.1(b) not to seek or accept instructions from any government in the performance of their duties. This obligation is again reiterated in Staff Regulation 1.2(d). Staff Regulation 1.2(i) further obligates staff members to exercise the utmost discretion with regard to all matters of official business, and in particular, not to communicate to any government any information known to them by reason of their position that they know or ought to have known has not been made public. This restriction is amplified by Staff Rule 101.2(h), which provides mores specifically that:

“Staff members shall not seek to influence Member States, principal or subsidiary organs of the United Nations or expert groups in order to obtain a change from a position or decision taken by the Secretary-General, including decisions related to financing of Secretariat Programmes or units or in order to secure support for improving their personal situation or the personal situation of other staff members or for blocking or reversing an unfavourable decision regarding their status or their colleagues’ status.”

In this context, paragraph 23(a) of the UNDP Legal Framework defines misconduct to include “[a]cts or omissions in conflict with the general obligations of staff members set forth in Article I of the Staff Regulations and Rules and administrative issuances; failure to comply with the standards of conduct expected from international civil servants.” Paragraph 23(p) of the UNDP Legal Framework indicates that misconduct extends to include abetting, or conspiring in the above, or actions or omissions that bring the Organization into disrepute.

14. The charge letters explain why it is considered wholly inappropriate for staff members to seek the intervention of governments of Member States whenever they disagree with the actions of the decisions taken by senior management. The letter pointed out that the applicants had written to the DFA only three days after their written complaint to the Administration. In doing so they had denied the Organization the chance to respond to the complaint and to prevent further damage to its reputation.

15. Mr. Buendia was the most senior in rank of the complainants. The charge letter suggested that he had “allowed and perhaps encouraged, those whom [he] supervise[s] to undertake this action”.

16. The second charge against each of the applicants was that they “disclosed or participated in the disclosure of information to external sources”. It was said that this

information was obtained by the applicants in their role as staff members and that they should have known that the making of such information public would result in bringing the Organization into disrepute. Reference was made to staff regulations 1.1(b) and 1.2(i).

17. The applicants who approached Ms. Opal were not subjected to a separate charge because they were given the benefit of the doubt and management accepted that they went to see Ms. Opal for the purpose of obtaining advice. This was consistent with what Ms. Opal stated in her editorial column.

18. The applicants were given the opportunity to respond to the charges and they did so. They all responded through their legal representative denying misconduct and asserting that the evidence that was gathered against them was inadmissible because it had been obtained in violation of their rights to due process in that they were not warned in advance in any way that they were being treated as suspects or subjects and not merely as persons participating in an investigation into a complaint of harassment against the Resident Representative. Alternatively, the applicants argued that in any event any act which they had been engaged in fell within the scope of permissible disclosure of misconduct to entities external to UNDP. They asserted that they acted in good faith in reporting the harassment and abuse of authority in order to avoid the substantive damage to UNDP's operations in the Philippines. They added that at the time of any such disclosure internal mechanisms for resolving grievances within UNDP were wholly ineffective.

19. The Disciplinary Committee (DC) Panel found that the applicants' due process rights had been violated and that the Administration did not meet its burden of showing that it had afforded due process to the staff members at the investigation stage. The DC Panel nevertheless found that the outcome of the case did not depend

on questions relating to the admissibility of any admissions made by them given the fact that there existed the letter of complaint to the DFA.

20. The DC Panel concluded that “the procedural irregularity was retroactively cured”. As to the outcome, they said that it would have been the same given the facts which in the opinion of the DC Panel were undisputed.

21. By letter dated 8 July 2009, the Associate Administrator of UNDP wrote to the applicants informing them that, following consideration of the DC Panel’s report, it was decided that disciplinary measures would be administered in relation to each applicant for having sought intervention of a Member State and for disclosing information that they knew or should have known was not public, thereby bringing the Organization into disrepute. The disciplinary measures were as follows:

- a. for Mr. Buendia, Mr. Francisco, Ms. Montebon (who resigned on 10 October 2008) and Ms. Navarro, this comprised imposition of a written censure and a loss of two steps in-grade;
- b. for Ms. Manal and Ms. Supetran, who did not attend the meeting with Ms. Opal, the respondent imposed a written censure and loss of one step in-grade; and
- c. for Ms. Arida, who resigned on 15 April 2008, the respondent decided that a copy of the letter of 8 July 2009 would be placed in her official status file “for reference purposes”, since she was no longer a staff member and could not be subject to disciplinary measures.

22. Following an Order of the Tribunal for an explanation of the apparent difference in treatment between Ms. Montebon and Ms. Arida, both of whom were no longer employed by the UN when the charge letters were sent, the respondent stated:

With respect to the apparent difference in treatment, the Respondent notes that Ms. Arida was not charged with the disclosure of confidential information to an external source, namely Ms. Opel; the Respondent did not have evidence that she participated in this activity. The Respondent notes, however, that such evidence did exist as regards Ms. Montebon. As a consequence the misconduct of Ms. Arida was not as extensive, and the measure imposed less severe.

That having been said, at the time the decision was sent to Ms. Montebon, the Respondent at headquarters was unaware that Ms. Montebon had already resigned. Records of employment status were kept locally at the Country Office. Had it been known that she resigned, she would have received a letter in the same form that Ms. Arida received indicating the measure that would have been imposed had she remained a staff member.

23. The Tribunal was informed on 22 September 2010 that a letter was sent from the Associate Administrator of UNDP to Ms. Montebon which stated:

It has been brought to our attention that, at the time of imposing the above-mentioned measure, you were no longer a staff member of the Organization, since you had resigned from your position effective 10 October 2008, a fact we were not made aware of at the time. Consequently, no disciplinary measure could be imposed on you on 8 July 2009. Accordingly, a decision has been made to immediately withdraw the letter of 8 July 2009 from your official status file and substitute it with the attached letter, which provides that, had you remained a staff member, the Organization would have imposed on you the disciplinary measure of written censure and loss of two steps in grade, as recommended by the DC Panel. We apologize for the inconvenience this oversight may have caused. A copy of this letter will also be placed in your official status file, for the record.

Note on applicability of UNDP Legal Framework of 6 November 2007

24. The Tribunal notes that the UNDP Legal Framework is dated 6 November 2007 and was not in force at the time that the investigation was carried out and the applicants were interviewed. The UNDP Legal Framework is relevant as far as the disciplinary process which was initiated in 2008, but was incorrectly relied upon by the respondent for the purposes of defining due process at the interview stage. The issue of the applicability of the UNDP Legal Framework was not raised by the applicant. The procedural requirements in force at the time of the investigation were contained in UNDP/ADM/97/17 entitled “Accountability, Disciplinary Measures and Procedures” which were similar to those in the UNDP Legal Framework which superseded UNDP/ADM/97/17.

Issues

25. The applicants raised the following issues:
- a. whether the administrative decisions violated the applicants’ rights to due process in that the exclusionary rule requires that confessions or admissions obtained in violation of due process are inadmissible in evidence and taint the legality of the whole proceedings;
 - b. whether the OAPR investigative team could not have confirmed the existence and authenticity of the letter to the DFA without the statements of the applicants as the newspaper article does not establish the authorship of the letter;
 - c. why the applicants were not informed at the earliest possible time of the allegations against them; and

d. whether the disclosure of the allegations against the Resident Representative to external sources was justified in the circumstances.

26. The respondent raised the following three issues:

a. whether the applicants' due process rights were respected in the investigation process;

b. whether the applicants' actions constituted a permissible disclosure to parties outside UNDP's internal grievance system; and

c. whether the imposition of disciplinary measures on the applicants was appropriate and proportionate.

Applicable rules

27. Article 100.1 of the UN Charter provides (emphasis added):

In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. *They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.*

28. Former staff regulation 1.2(d) provides:

In the performance of their duties staff members shall neither seek nor accept instructions from any Government or from any other source external to the Organization;

29. Former staff regulation 1.2(i) provides (emphasis added):

Staff members shall exercise the utmost discretion with regard to all matters of official business. *They shall not communicate to any Government, entity, person or any other source any information*

known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. These obligations do not cease upon separation from service.

30. Former staff rule 101.2(h) provides (emphasis added):

Staff members shall not seek to influence Member States, principal or subsidiary organs of the United Nations or expert groups in order to obtain a change from a position or decision taken by the Secretary-General, including decisions relating to the financing of Secretariat programmes or units, or in order to secure support for improving their personal situation or the personal situation of other staff members or for blocking or reversing unfavourable decisions regarding their status or their colleagues' status.

31. Former staff rule 110.1 defines misconduct as follows:

Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct.

32. Paragraph 2.2 of UNDP/ADM/97/17 provides (emphasis added):

All procedures and actions relating to investigation must respect the rights and interests of the Organization and potential victims, as well as of any staff member subject to or implicated by an allegation of misconduct If an allegation of misconduct is made, an affected staff member shall be notified in writing of all allegations/and of his her right to respond, provided with copies of all documentary evidence of the misconduct and advised of his/her right to the advice of another staff member or retired staff member as consul to assist in preparing his or her responses.

33. The Administrative Tribunal said in its Judgment No. 1058, *Ch'ng* (2002):

The Tribunal does not agree with the position ... that the lack of due process during the period leading to the decision of summary dismissal was “cured” by the “full due process” the Applicant received in the [Joint Disciplinary Committee] proceedings. This is one of those cases where the lack of due process at an early stage has an inevitable direct impact on the decisions in the following stages.

34. Mr. Nadelson for the respondent made it clear that the respondent is not submitting that any defects were cured, as suggested by the DC Panel, but that there was in fact no failure to accord to the applicants their due process rights.

35. In Judgment No. 1246, *Sokoloff* (2005), the Administrative Tribunal underlined the importance to be placed on respecting due process rights, adding that protection under the provisions of UNDP/ADM/97/17 begins as soon as a person is identified as a possible wrongdoer, he is to be accorded due process which includes being notified of the allegations in writing. The Administrative Tribunal endorsed the judgment in *Ch’ng* that, in some cases, where procedural irregularities occurred at an early stage they have a direct impact on the decisions in the following stages and may not be retroactively cured.

36. In *Sokoloff*, the Administrative Tribunal further stated at para. V that:

[T]he assurances of due process and fairness, as outlined by the General Assembly and further developed in the rules of the UNDP, mean that, as soon as a person is identified, as a possible wrongdoer in any investigation procedure, and at any stage he has the right to invoke due process with everything that this guarantees. Moreover, the Administrative Tribunal found that there is a general principle of law according to which, in modern times it is simply intolerable for a person to be asked to collaborate in procedures which are moving contrary to his interests ...

37. UNDP/ADM/97/17 contained the guidelines and procedures adopted by UNDP on the application of disciplinary measures and procedures including an

outline of the basic requirements of due process to be afforded to a staff member who is the subject of allegations of unsatisfactory conduct. The circular recognises the need to guarantee due process and balances this with the need of the Administration to keep itself informed on any matter of impropriety or unsatisfactory conduct and to gather information in this regard as needed.

38. Paragraph 2.2 of UNDP/ADM/97/17 provided:

Due Process

All procedures and actions relating to investigation must respect the rights and interest of the Organization and potential victims, as well as of any staff member subject to or implicated by an allegation of misconduct. Allegations, investigative activities and all documents relating to the action shall be handled in a confidential manner. If an allegation of misconduct is made, an affected staff member shall be notified in writing of all allegations and of his/her right to respond, provided with copies of all documentary evidence of the alleged misconduct and advised of his/her right to the advice of another staff member or retired staff member as counsel to assist in preparing his or her responses.

Considerations

39. Having regard to the foregoing provisions and legal principles, the Tribunal would respectfully agree with the findings of the DC Panel that the applicants' due process rights had been violated in that the Administration did not meet its burden of showing that it had afforded due process to the staff members at the investigation stage. In particular, the applicants had made admissions to the investigators at a time when they were not notified that they had become the subjects of the investigation.

40. The Tribunal would respectfully disagree with the DC Panel which accepted the submission of the Administration that their finding of misconduct did not depend

on the admissibility of the statements given by the applicants to the investigators. It was the respondent's case that there was independent existence of the letter sent to the DFA. The DC Panel concluded that whilst the staff members would have been more cautious in their statements to the investigators, they would not have escaped disciplinary proceedings given the documentary evidence. This is of course a central issue in this case. Where is the independent documentary evidence? The applicants' counsel challenged the respondent to produce the evidence rather than relying on hearsay that somebody had informed them that the letter sent to the DFA was signed by the applicants. The respondent accepts that they are unable to produce it.

41. The Tribunal finds that the disciplinary charges and findings were based on the admissions made by the applicants when they had no knowledge that they were the subjects of an investigation. The respondent's assertion that the applicants had an opportunity to correct any factual findings in response to the investigation report does not dispose of the principal criticism that there was a basic failure to inform the applicants that it was their conduct that was also being examined in addition to their complaints against the Resident Representative. The evidence is that prior to the commencement of the investigation, the investigators had undergone two days' briefing at headquarters when Ms. Opel's article had already appeared. Furthermore, on the day before the investigation commenced, the article in the *Business Mirror* appeared indicating that the applicants had been the source of a referral to the DFA. This information was in the possession of the mission investigators which leads to the inescapable inference that the applicants would have been identified as the source of the adverse press coverage. Therefore, they were entitled to invoke rights to due process from the very beginning of the investigation.

42. Due process safeguards which are enshrined in the rules are and must be regarded by all concerned within the United Nations as essential components of a fair

and just system of dealing with and resolving disputes. This Tribunal has been established to give effect to principles enshrined in the Charter of the United Nations, highlighted in various decisions and utterances of appropriate organs of the United Nations System and further emphasised and developed by the case law of the former Administrative Tribunal. In paragraph XIV of Judgment No. 815, *Calin* (1997), the Administrative Tribunal stated with regard to due process:

The Tribunal ... respects the Secretary-General's authority to exercise his discretion in defining serious misconduct and in determining appropriate penalties. However, the Tribunal will affirm the Respondent's exercise of discretionary authority only when satisfied that the underlying allegation of misconduct has been proven through a procedure that respects due process and that is not tainted by prejudice, arbitrariness, or other extraneous factors.

43. Transparency and the upholding of due process rights are fundamental core values to be respected by all concerned. However, there arises in this case a difficult question as to whether information obtained in breach of the applicants' due process rights could nevertheless still be used to find the disciplinary charges proven. The respondent does not rely on the questionable concept of any breach of due process being cured. It is the respondent's case that there was no such breach and even if there was such a breach there were in existence independent items of evidence distinct from any admissions obtained during the course of the investigation that were sufficient to find the disciplinary charges proven. The respondent also regards as an admission of misconduct the applicants' secondary argument that they were justified in approaching the Philippines' government.

44. However, this argument does not address the principal question that the applicants' due process rights were breached and that it was on the basis of the investigation report that disciplinary charges were preferred and the tainted evidence was subsequently accepted by the DC Panel. The report of the DC Panel does not

indicate that they had the physical evidence in the form of letters or any other documents proving that the applicants had written to the DFA. The affirmative evidence of guilt was in the form of admissions made by the applicants in breach of their rights to due process.

45. The respondent pointed out that the applicants allegedly wrote the letter to the Secretary of the DFA three days after making their formal complaint about Ms. Noble's conduct. They had clearly not given the UNDP Country Office sufficient time and opportunity to carry out a thorough investigation into the allegations. In the circumstances, the respondent did not accept that they are entitled to the very limited exception provided for under sec. 1.2 of the UNDP Legal Framework regarding the reporting of allegations of wrongdoing to entities external to the UNDP. As stated above, the UNDP Legal Framework being relied upon was, in any event, not in force at the time.

46. The applicants' alternative submission that, even it were proven that they sent the letter, they were entitled to disclose the allegations to external sources lacks merit in that they acted in undue haste by waiting barely three days from lodging their formal grievance and resorting to external measures.

47. It would be wrong in principle for the Tribunal to condone a breach of the right to due process on the basis that it made no difference in the end because there was sufficient evidence that the applicants had in fact committed the misconduct in question. Procedural propriety and the protection of fundamental rights is a central theme pervading not only the Charter of the United Nations, but various issuances of the Secretary-General and the General Assembly. Disciplinary findings and penalties imposed as a result or as a consequence of a breach of this fundamental principle

cannot be regarded as fair. A breach of the right to due process is both procedurally and substantively unfair.

Conclusion

48. The Tribunal cannot uphold the findings and conclusions of a disciplinary process that was fundamentally flawed in that it failed to uphold the applicants' rights to due process. In considering the implications and consequences of the Tribunal's finding on the assessment of remedy, the applicable principle is what would be in accordance with justice and equity, having regard to all the circumstances of the case.

49. Separate judgments on remedies will be issued in relation to each applicant to reflect their individual circumstances upon receipt of the submissions as ordered below.

50. It is ordered that:

- a. the decisions to impose disciplinary sanctions in relation to each of the applicants are rescinded;
- b. by close of business 29 October 2010, counsel for the applicants is to file and serve separate submissions for each applicant on a proposed remedy;
- c. by close of business 19 November 2010, the respondent is to file and serve a submission in response to the submissions of counsel for the applicants to include separate submissions for each applicant on a proposed remedy; and

d. by close of business 3 December 2010, counsel for the applicant is to file and serve submissions, if any, in response to the respondent's submissions.

51. Alternatively, if the parties consider that, in the circumstances of this particular case, they should discuss and agree the remedy, they are at liberty to do so and are ordered to inform the Tribunal by 22 October 2010, so that appropriate consent Orders may be issued.

(Signed)

Judge Goolam Meeran

Dated this 8th day of October 2010

Entered in the Register on this 8th day of October 2010

(Signed)

Morten Albert Michelsen, Officer-in-Charge, UNDT, New York Registry