



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/051

Judgment No.: UNDT/2014/123

Date: 13 October 2014

Original: English

Before: Judge Coral Shaw

Registry: Geneva

Registrar: René M. Vargas M.

STAEDTLER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Saidou N'Dow, UN-Habitat

Introduction

1. The Applicant, a former staff member of the United Nations Human Settlements Programme (UN-Habitat), contests the “[d]ecision[s] of the [United Nations] Office [of] Internal [Oversight] Services (“OIOS”) not to launch an investigation of the reported misconduct and prohibited activities, not to provide [him] with the requisite information and to provide misleading information”.

Procedure

2. The application was filed on 17 February 2014 with the Nairobi Registry and assigned to Judge Shaw. The deadline for submitting the Respondent’s reply was extended until 4 April 2014.

3. Pursuant to Order No. 160 (NBI/2014), the case was transferred to the Geneva Registry on 18 June 2014.

4. Neither party sought an oral hearing of the case and the Tribunal considers that a hearing is not necessary for the fair disposal of the proceedings.

Facts

5. In addition to the facts and documentation submitted to the Tribunal by the parties in the instant case, the Tribunal also refers to some relevant facts set forth in judgment *Staedtler* UNDT/2014/057 issued in one of several cases filed by the Applicant which have already been disposed of by the Tribunal.¹

6. The Applicant joined UN-Habitat on 13 September 2011. He was recruited against a project post to serve as a Technical Officer at the P-4 level at the UN-Habitat Regional and Technical Cooperation Division Office in Tripoli, Libya, on the basis of a one-year fixed-term appointment (“FTA”) funded by the Libyan Government to support the Urban Planning Authority (“UPA”).

¹ *Staedtler* UNDT/2013/179, UNDT/2014/058, UNDT/2014/046 and UNDT/2014/057

7. Following the outbreak of the civil war in Libya, on 14 September 2011, the Applicant was temporarily assigned to the UN-Habitat Office in Cairo to serve as focal point for Libya. Following the cessation of hostilities in Libya, he was sent on mission to Libya from 3 to 29 December 2011.

8. On 8 January 2012, he took up his assignment at the Tripoli Office and resumed operations with the Libyan UPA.

9. Between 23 January and 31 January 2012, the Applicant wrote to the Director of the project office and others about certain practices within UN-Habitat that he believed needed to be changed. These communications were later relied on by the Applicant as reports of misconduct amounting to protected activities.

10. On 5 February 2012, the Chairman of the UPA and National Coordinator of the UN-Habitat Project in Tripoli (the Chairman), wrote to the UN-Habitat Acting Director (“AD”) of the Project Office, requesting UN-Habitat to immediately withdraw the Applicant from Libya and giving reasons for this request.

11. On 10 February 2012, the AD responded to the Chairman’s concerns stating, *inter alia*, that UN-Habitat would recall the Applicant but that the United Nations needed to abide by its rules and regulations in that the Applicant must be allowed to “continue his current position, even if outside Libya, until the end of his term”.

12. The AD added that “UN-Habitat has no legitimate reason to terminate [the Applicant’s] contract before the end of term” and that the dissatisfaction with him “was not through his professional or personal fault but rather because of a difference in understanding between UPA and UN-Habitat on what is the best interest for the people of Libya.”

13. The AD attempted to have the Applicant continue his service as Technical Manager of UN-Habitat in Libya independent of the UPA programme, but the Chairman strongly reiterated that UN-Habitat needed to withdraw the Applicant from Libya and not to continue paying him from the Libyan project post.

14. The Applicant was withdrawn from Libya and served at the headquarters of UN-Habitat from 12 to 31 March 2012. On 7 March 2012, the Executive Director (“ED”), UN-Habitat approved a decision to reassign the Applicant to the UN-Habitat Office in Amman, Jordan, effective 1 April 2012 for the remainder of his FTA, to serve as focal point for Syria tasked with preparing, planning and coordinating the re-entry mission into post-conflict Syria.

15. On 6 June 2012, the Applicant was verbally informed that the renewal of his contract was dependent on his ability to generate “serious donor commitments to fund new projects”.

16. On 31 August 2012, the Applicant was advised that his contract, due to expire on 12 September 2012, could be extended through 31 December 2012. A budgetary move had been made to assist in the materialisation of the project portfolio that the Applicant had initiated since April 2012. He was also advised that the extension was funded from a project post, thus with no expectation of renewal, and that any further extension of his appointment would be dependent on the availability of funds.

17. On 26 November 2012, the Applicant was advised by email to liaise with his supervisor concerning the necessary separation formalities that needed to be completed by 31 December 2012. When he requested reasons for the non-renewal of his appointment, it was explained to him that the decision was due to the “exhaustion of the funds which were exceptionally approved” only for the duration of his appointment’s extension.

18. On 27 December 2012, the Applicant filed a request for protection against retaliation with the Ethics Office pursuant to ST/SGB/2005/21 (Protection Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorised Audits of Investigations).

19. The Applicant was separated on 31 December 2012.

20. On 11 January 2013, the Applicant submitted a report to OIOS in which he requested

... [a]review of gross breaches of UN rules and regulations, as well as of the deriving accountability of and within UN-Habitat and, if needs be, of potential criminal aspects of the acting of the responsible senior management concerning the following topics:

- A. Gross breaches of UN project management and procurement rules and regulations [“Part A of the Applicant’s report”]
- B. Mal-intended recruitment [“Part B of the Applicant’s report”]
- C. Misconduct of supervisor [“Part C of the Applicant’s report”].

21. OIOS informed the Applicant on 14 January 2013 that his report would be reviewed carefully by the Investigation Division (“ID”)/OIOS, and a decision would be made as to the most appropriate method of addressing the information that he had provided. OIOS also advised the Applicant that it would determine whether its Office or another Office was more suitable to address the matters he had raised. The email further informed the Applicant that if ID/OIOS determined that his report was to be investigated by OIOS, it would not be obliged to inform him of updates on or the outcome of the investigation.

22. The Ethics Office reported on the Applicant’s request for protection on 2 February 2013. It found that out of 13 communications he flagged, seven did not constitute reports of misconduct pursuant to the requirements of ST/SGB/2005/21. As per the other six, which raised concerns about the management chain, the Ethics Office found that they did not contain evidence to support a reasonable belief that misconduct had been committed by a United Nations staff member. The Applicant subsequently requested management evaluation of this decision.

23. On 12 February 2013, the ID/OIOS, Kenya, sought the Applicant’s written consent for the possible disclosure of his identity as a complainant, which the Applicant provided by email of the next day.

24. On 15 February 2013, the Applicant's request for management evaluation of the 2 February 2013 decision of the Ethics Office was found not to be receivable. The Applicant filed an application with the Tribunal which challenged, *inter alia*, the decision of the Ethics Office (the "Ethics case").

25. The Director, ID/OIOS, informed the ED, UN-Habitat, by memorandum of 25 March 2013, that after reviewing the Applicant's complaint, OIOS had determined that "the matter would be best handled by UN-Habitat" and referred it to UN-Habitat for its attention and appropriate action.

26. On 30 April 2013, the ED, UN-Habitat, informed the Director, ID/OIOS that the matter would henceforth be dealt with by the Legal Office and Method and Oversight Office, UN-Habitat.

27. According to the Respondent, from then on UN-Habitat determined that rather than launching an investigation, it would request OIOS to conduct an audit of the programme and instructed OIOS to do so. The Applicant was not informed of this decision at that time. OIOS began the auditing exercise and the audit report is yet to be finalised.

28. By email of 11 July 2013, the Applicant requested OIOS to inform him whether and—in the affirmative, when—OIOS had launched an investigation into his report, and to be informed about the status and outcome of such an investigation. In the negative, he also asked to be informed about the reasons for OIOS not having launched an investigation.

29. OIOS responded to the Applicant on the same day as follows: "[r]est assured that your report was reviewed and given the due attention it required. However, please note that ID/OIOS is not obliged to inform you of updates or the outcome of the investigation".

30. On 10 December 2013, in his reply to the Ethics case, the Respondent stated that OIOS "did not produce a report pertaining to the Applicant's complaint of misconduct and prohibited activities" and that "the only correspondence [that the ED, UN-Habitat] received from OIOS to that effect [was] a memorandum dated

25 March 2013 ... in [which] OIOS determined that the matter would be best handled by UN-Habitat.” Although the Reply stated that the memorandum was attached as Annex 1, it was not.

31. On 31 December 2013, the Applicant filed a request for management evaluation of the “Respondent’s decision not to launch an investigation of the reported misconduct and prohibited activities, not to provide the Applicant with the requisite information and to provide misleading information”. He noted that the decision had been taken on 25 March 2013 by OIOS, and that he was only aware of it on 10 December 2013 by way of the reference to it in the Respondent’s reply to the Ethics case.

32. On 30 January 2014, the Management Evaluation Unit (“MEU”) rejected the Applicant’s 31 December 2013 request for management evaluation on the grounds that it was not receivable.

33. The Applicant filed the present application on 17 February 2014. The Challenge to the Ethics office decision was dismissed in its entirety by Judgment No. UNDT/2014/057 dated 30 May 2014.

Parties’ submissions

34. The Applicant’s principal contentions are:

- a. The contested decision was substantively irregular and constitutes an abuse of authority, it violated his due process rights, including the duty of the Organization to act in good faith, to respect his dignity and to deal with him fairly;
- b. His career was damaged and he suffered severe emotional damage as a consequence of the procedural and substantive irregularities, for which he requests compensation;

c. The jurisprudence of the Appeals Tribunal sets the terms of an administrative decision and OIOS, as part of the Secretariat, is subject to the Internal Justice System; OIOS discretionary authority with respect to the decision of what matters to investigate is not unfettered and such decisions have to be made in accordance with its mandate and relevant regulatory framework; all the matters he reported to OIOS fell under category I, that is “serious” as opposed to “routine” matters under the OIOS Manual and as such had to be investigated by OIOS;

d. His report was receivable and its referral to UN-Habitat was done in breach of OIOS mandate “to enhance the oversight functions within the United Nations”;

e. In his report to OIOS, he informed the latter that “he had requested protection against retaliation ... as well as Management Evaluation concerning the non-renewal of his contract and the flawed performance evaluations of the cycles 2011-12 and 2012-13 on the grounds of retaliatory motives”; since the Ethics Office had not referred his case to OIOS, by referring it to UN-Habitat, OIOS knew that no independent fact finding investigation would be conducted into the reported misconduct and prohibited conduct and that his attempts to get redress via the United Nation’s Justice System would be hampered;

f. The fact that he was not informed that his report had been referred to UN-Habitat constitutes another violation of his due process rights. The email of 11 July 2013 was misleading in that it made him believe that a proper investigation had in fact been launched;

g. The decision was made with the aim to cover up UN-Habitat violations of the UN Rules and Regulations in the Libya programme and the subsequent illegal decision of the Applicant’s separation from service and his unfair, tainted performance evaluations;

h. The decision shows the pattern of institutional retaliation, which results also from the Ethics Office's rejection of his request for protection against retaliation and the close cooperation between OIOS and the Ethics Office and other New York based offices, such as the MEU, in this case;

i. The contested decisions prevented him from receiving protection against retaliation, as such damaging his reputation and career; in view of the lack of acknowledgement of the actual circumstances and background of his assignment and his separation from service, and the resulting negative impact in his attempts to seek redress via the internal justice system against various administrative decisions following his report of prohibited activities in the Libya programme, the decision caused him severe emotional damage; he requests adequate compensation for the procedural and substantive irregularities.

35. The Respondent's principal contentions are:

a. The application is not receivable, *ratione temporis*, since the Applicant was informed on 11 July 2013 about the contested decision, but did not request management evaluation until 31 December 2013;

b. The contested decision did not directly affect or violate the Applicant's rights as a staff member, as required under art. 2.1(a) of the Statute of the Tribunal; a staff member has no right to compel the Administration to conduct an investigation unless such right is granted under the Rules. In this case the requested investigation does not affect the Applicant's rights; particularly, the present claim was not submitted pursuant to ST/SGB/2008/5;

c. The matters reported by the Applicant, namely allegations of "gross breaches of UN project management and procurement rules and regulations and mal-intended recruitment" affect the implementation of the Libya Programme but not the Applicant's rights as a staff member; as a result of OIOS memorandum of 25 March 2013, UN-Habitat instructed OIOS to conduct an audit of the Libya Programme—not an investigation into the

allegations made by the Applicant—which is not yet finalized and, in any event, is not relevant for the consideration of the issues at stake in this case;

d. The contested decision was not substantively irregular; the complaint was duly reviewed and given the necessary attention by OIOS, that, under its Manual, was under no obligation to update the Applicant on or inform him of the outcome of the investigation; the decision was taken in accordance with the OIOS Manual which accords OIOS discretionary authority with respect to which matters to investigate;

e. The Applicant failed to provide any evidence to support his claims that the decision was biased or constitutes an abuse of authority on the part of OIOS or was the expression of institutional prejudice;

f. The decision of the Ethics Office of 1 February 2013 adequately addressed matters relating to the Applicant's claims of retaliation and misconduct by staff members of UN-Habitat and the Applicant cannot re-litigate issues that have already been adjudicated by the Dispute Tribunal;

g. The application and remedies should be rejected in their entirety.

Considerations

Receivability

36. The Respondent raised the question of receivability in his reply. In his application, the Applicant made anticipatory submissions on its receivability *ratione materiae*.

37. The principle question on receivability is whether the decision of OIOS not to launch an investigation of the reported misconduct and prohibited activities, and “not to provide the Applicant with the requisite information and to provide misleading information” were administrative decisions that affected his conditions of employment.

38. In *Wasserstrom* (2014-UNAT-457), the Appeals Tribunal considered the extent to which decisions of the Ethics Office are subject to review by the Tribunal. While in *Wasserstrom* there is a dissenting opinion on the issue of receivability of said decisions, the starting point for examining administrative decisions was nevertheless confirmed as follows:

The key characteristic of an administrative decision subject to judicial review is that the decision must “produce[] direct legal consequences” affecting a staff member’s terms or conditions of appointment. “What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision [footnote 6 omitted].

39. In *Koda* 2011-UNAT-130, the Appeals Tribunal held that an OIOS decision did not affect the employee’s conditions of employment. The application for review of the decision was held to be not receivable. The Appeals Tribunal stated that OIOS

[O]perates under the “authority” of the Secretary-General, but has “operational independence” [footnote 2 omitted]. As to the issues of budget and oversight functions in general, the General Assembly, in its resolution 48/218B, calls for the Secretary-General’s involvement. We hold that, insofar as the contents and procedures of an individual report are concerned, the Secretary-General has no power to influence or interfere with OIOS. Thus the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) also has no jurisdiction to do so, as it can only review the Secretary-General’s administrative decisions. But this is a minor distinction. Since OIOS is part of the Secretariat, it is of course subject to the Internal Justice System. To the extent that any OIOS decisions are used to affect an employee’s terms or contract of employment, the OIOS report may be impugned.

40. The conditions or terms of employment of any staff member include the relevant staff rules, some of which create rights of staff members to certain procedures such as investigations.

41. In *Nwuke* 2010-UNAT-099, the Appeals Tribunal stated that the provisions of ST/SGB/2008/5 create rights to an investigation of claims of prohibited conduct and to certain administrative procedures. It further held that if a claim for investigation falls under issues covered by ST/SGB/2008/5, “the Tribunal has jurisdiction to examine the administrative activity (act or omission) followed by the Administration after a request for investigation.”

42. However, in *Nwuke* UNAT also noted that “[i]n the majority of cases, not undertaking a requested investigation into alleged misconduct will not affect directly the rights of the claimant, because a possible disciplinary procedure would concern the rights of the accused staff member” and that “a staff member has no right to compel the Administration to conduct an investigation unless such right is granted by the Regulations and Rules”.

43. The receivability of an application against an OIOS decision depends ultimately on what is presented to OIOS for investigation and what the Applicant seeks to challenge before the Tribunal.

44. In the present case, the starting point is the content of the Applicant’s report to OIOS, which he filed after his separation.

45. Part A of the Applicant’s report relates to what the Applicant described as alleged “[g]ross breaches of UN project management and procurement rules and regulations”.

46. The OIOS decision not to investigate that part concerns the interests of the Organisation and potentially the rights of any accused staff members; it does not and cannot affect the rights of the Applicant. Any impact of the investigation requested by the Applicant would have been on a third party, not on him.

47. The Tribunal finds that whatever the outcome of the decision of OIOS on part A of the Applicant’s report, it would not have affected his terms or contract of employment. Therefore, the section of the application challenging OIOS decision not to investigate part A of the Applicant’s report is not receivable, *ratione materiae*.

48. Parts B and C of the Applicant's report to OIOS were labelled as "[m]al-intended recruitment" and "[m]isconduct of supervisor". In these, the Applicant referred to treatment he allegedly received during his employment with UN-Habitat. He alleged, *inter alia*, that he had been "set up for failure", and referred to his "constructive dismissal", withdrawal, separation/non-renewal, "fabricated negative performance evaluation" and to "patently unfounded accusations against [him]".

49. The Tribunal finds that a decision by OIOS in relation to these issues could have affected the Applicant's terms of appointment resulting from his prior employment with UN-Habitat, and constitutes an administrative decision subject to judicial review.

50. The Respondent alleged that these parts of the application were not receivable as they were made outside the mandatory time limits for requesting management evaluation. The Respondent calculates the running of time for the Applicant to request management evaluation from when OIOS advised the latter on 11 July 2013 that his report had been reviewed and given due attention, and that it was not obliged to inform him of updates on or the outcome of the investigation.

51. However, the Tribunal finds that the contested decision not to investigate the Applicant's report but to refer it to UN-Habitat only came to the attention of the Applicant on 10 December 2013 in the Respondent's reply to Case No. UNDT/NBI/2013/21.

52. The Applicant requested management evaluation of OIOS decision not to launch an investigation of the reported misconduct and prohibited activities on 31 December 2013, which was within sixty calendar days from the date on which he received notification of the contested decision.

53. The Tribunal finds that the application against OIOS decision not to investigate parts B and C of the Applicant's report is was made within time and is receivable.

Preliminary Issues

54. In a submission to the Tribunal dated 21 August 2014, the Applicant raised three preliminary issues. First, he requested permission to produce to the Tribunal the 2009 OIOS Auditing Report into UN-Habitat Regional Office for Africa and the Arab States on the grounds that it would provide “crucial information” in support of his claim.

55. The Tribunal holds that the OIOS Auditing Report is not relevant for the adjudication of the present application which challenges OIOS decision not to launch an investigation following the Applicant’s report. Said Auditing Report could only relate to OIOS assessment of the type of misconduct that the Applicant reported; however, as ruled above, this part of his application is not receivable. The Applicants request for production of document is refused.

56. Second, the Applicant sought disclosure of the OIOS memorandum of 25 March 2013 to UN-Habitat and the latter’s response of 30 April 2013.

57. The Tribunal notes that the Respondent filed with the Tribunal the memorandums requested by the Applicant at the latest on 28 August 2014. It follows that the Applicant’s request is moot.

58. Third, the Applicant sought disclosure from OIOS and/or UN-Habitat on whether or not either of them undertook an investigation into the issues raised in his report to OIOS, and the related findings or reasons for not carrying out such an investigation. The Respondent did not object to this filing but questioned its relevance.

59. The Tribunal finds that OIOS memorandum of 25 March 2013 clearly shows that after a first analysis, OIOS decided to refer the matter to UN-Habitat; the Tribunal therefore accepts the Respondent’s submission that there was nothing further to disclose. Any actions taken by UN-Habitat in relation to the Applicant’s report are not the subject of the present application and therefore information in relation to that issue is not relevant to the present proceedings.

Merits

60. OIOS has discretion to decide what issues it will investigate. This is not unfettered and the Tribunal may review operational decisions of OIOS to verify the regularity of the procedure followed, to determine whether in exercising its discretion OIOS made a manifest error, or to establish whether the decision was tainted by ulterior motives.

61. General Assembly resolution 48/218 B dated 29 July 1994 mandates OIOS to “investigate reports of violations of United Nations regulations, rules and pertinent administrative issuances and transmit to the Secretary-General the results of such investigations together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken” (para. 5(c)(iv)).

62. This resolution was implemented by ST/SGB/273 (Establishment of [OIOS]) of 7 September 1994 providing in its relevant parts that:

16. The Office shall investigate reports of violations of United Nations regulations, rules and pertinent administrative issuances and transmit to the Secretary-General the results of such investigations together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken.

...

18. The Office may receive and investigate reports from staff and other persons engaged in activities under the authority of the Organization ... reporting perceived cases of possible violations of rules or regulations, mismanagement, misconduct, waste of resources or abuse of authority.

63. Sec. 1.2.1 of the OIOS Manual deals with the investigation intake stage of the investigation process. It states that “OIOS has discretionary authority to decide which matters to investigate. All reports received by OIOS will be assessed by an Intake Committee. In deciding whether to investigate a report, the Intake Committee will consider if such matters should more appropriately be dealt with by another entity”.

64. The *Report of the Office of Internal Oversight Services on strengthening the investigation functions in the United Nations (A/58/708)* of 10 February 2004 provides, for OIOS categorisation of matters, on the one hand, into “high risk, complex matters and serious criminal cases” (category I) and, on the other hand, into “cases of lower risk to the Organization” (category II). This categorisation is reflected in sec. 1.3.1 of the OIOS Manual distinguishing between category I and II matters to guide the decision of which should remain with OIOS and which should be sent to another agency.

65. Category I matters are listed as

serious/complex fraud or criminal activity; sexual exploitation and abuse; prohibited conduct by senior staff members; conflict of interest; gross mismanagement; waste of substantial resources; risk of loss of life to staff or to others; complex proactive investigations aimed at studying and reducing risk to life and/or United Nations property; entitlement fraud; procurement violations; substantial violations of United Nations regulations rules or administrative issuances.

66. Category II matters are described as routine. They include “personnel matters; traffic related inquiries; simple thefts; contract disputes; office management disputes; basic misuse of equipment or staff; prohibited conduct by staff; basic mismanagement issues.”

67. When OIOS receives a complaint, it must first assess whether the case is category I, thus to be investigated by it, or whether it falls under category II, thus suitable to be referred to a different agency.

68. In summary, the responsibilities of OIOS include receiving reports of violations of rules and regulations, properly exercising its discretion within its administrative guidelines to determine whether the subject matter of the request falls within its mandate, and, if the request relates to misconduct, how that misconduct is to be classified. If the request does not relate to misconduct, OIOS may refer the case to another agency.

69. Concerning OIOS response to parts B and C of the Applicant's report, the memorandum of 25 March 2013 demonstrates that OIOS, on the basis of the available documentation, determined that the matter would be best handled by UN-Habitat and referred the Applicant's report to that agency.

70. The question for the Tribunal is whether OIOS committed a manifest error in the exercise of its discretion.

71. The OIOS Manual states in sec. 3.2.2 that "referrals commonly occur for matters related to performance and disagreement over administrative decisions".

72. Parts B (Mal-intended recruitment) and C (Misconduct of supervisor) of the Applicant's report was comprised of allegations that concerned performance evaluation and management, separation/non-renewal and allegations of constructive dismissal. Each of these can be properly categorised as "matters related to performance and disagreement over administrative decisions".

73. The Tribunal concludes that the OIOS decision not to investigate the Applicant's complaint but to refer it to UN-Habitat was in accordance with its administrative guidelines and was a legitimate exercise of its discretion.

74. The Tribunal finds that there is no evidence to support the Applicant's allegation that the decision made by OIOS—after his separation from service—was arbitrary and capricious, that it was an attempt to cover up wrongdoing within the Organisation, or that it did or could amount to retaliation against him.

75. In his application to the Tribunal, the Applicant also claimed that OIOS did not provide him with the requisite information and provided misleading information. The Tribunal finds that these claims do not constitute separate administrative decisions which can be considered by the Tribunal independently of the substantive claim; however, they can be raised incidentally to assess the procedural regularity of the contested administrative decision not to investigate his report into parts B and C.

76. The alleged misleading information referred to by the Applicant was the OIOS email of 11 July 2013 advising him that it had reviewed his report, had given it due attention, and that it was not obliged to inform him of updates on or of the outcome of the investigation.

77. Under sec. 3.1.4 of the OIOS Manual, “Complaints and Victims”

[a]ny source reporting possible misconduct and claiming to be a victim should be informed that the OIOS mandate does not provide for assistance to victims or for conflict resolution, and that their personal concerns may be addressed through other means, including administrative appeal mechanisms or by consulting the Office of the Ombudsman or the Ethics Office. Further, a source reporting “prohibited conduct” will be duly advised of alternative reporting arrangements pursuant to ST/SGB/2008/5 if OIOS does not intend to investigate the report.

78. When the Applicant reported to OIOS, he expressly stated that he had filed a request for protection against retaliation with the Ethics Office on 27 December 2012, and that he had filed a request for management evaluation on 9 January 2013 against various decisions, namely the non-renewal of his FTA and “constructive dismissal”, the “biased performance appraisal” and “mid-point review”; both documents were attached to the Applicant’s report to OIOS.

79. As the matters raised in parts B and C of the Applicant’s report mainly relate to issues covered by his request for management evaluation and his request for protection to the Ethics Office, the fact that OIOS did not direct the Applicant to ST/SGB/2008/5 or to other avenues was reasonable. There was, therefore, no reason for OIOS to advise the Applicant about these other avenues.

80. The Tribunal finds that the content of the 11 July 2013 email was not misleading. It was a standard response informing the Applicant that due attention was given to his complaint, and a reiteration of the relevant provisions of the OIOS Manual—under which OIOS is not obliged to inform a complainant about updates on or the outcome of an investigation. While some additional transparency about what was happening could have allayed the Applicant’s suspicion that OIOS was acting in an underhand manner towards him and his complaint, OIOS was under no legal obligation to inform the Applicant about the

referral to UN-Habitat. There was no breach of the rules or administrative issuances.

Conclusion

81. In view of the foregoing, the Tribunal DECIDES:

- a. The application with respect to OIOS decision not to investigate part A of the Applicant's report is not receivable *ratione materiae*;
- b. The application with respect to OIOS decision not to investigate parts B and C of the Applicant's report, while receivable, is rejected on the merits since the decision constitutes a legal exercise of discretion on the part of OIOS; OIOS, in its dealing with the Applicant, did not commit any procedural breach.

(Signed)

Judge Coral Shaw

Dated this 13th day of October 2014

Entered in the Register on this 13th day of October 2014

(Signed)

René M. Vargas M., Registrar, Geneva