UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/008
Judgment No.: UNDT/2025/034
Date: 25 June 2025
Original: English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

ELOBAID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Martine E. Lamothe, OSLA
Aly Ahmed, OSLA

Counsel for Respondent:
Albert Angeles, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Head of Office with the Office of the High Commissioner for Human Rights ("OHCHR"), contests the "Administration's finding of misconduct and imposition of a disciplinary sanction" of termination of his fixed-term appointment and the recovery of the amount of USD86,000 through deduction of his final entitlements.

2. The Respondent contends that the application is without merit.

3. On 24 January 2025, a hearing was held at which the Applicant and MA (name redacted for privacy reasons) gave testimony.

4. For reason set out below, the application is (a) rejected regarding the imposition of the disciplinary sanction, but (b) granted concerning the rescission of the financial recovery of USD86,000.

Facts

5. The Appeals Tribunal has held that if the parties have agreed to certain facts "it is not open to [the Dispute Tribunal] to conduct its own evaluation and then to substitute its view for that of the parties" (see *Ogorodnikov* 2015-UNAT-549, para. 28). In the present case, the parties agreed on the following facts (emphasis and footnotes in original omitted):

> A. Background—the Applicant's employment with the Organization
>
> … Between October 2016 and June 2020, the Applicant was appointed as Head of [OHCHR's] Yemen Country Office ["the Yemen CO"].
>
> B. Background—[the Yemen CO]
>
> … In August 2003, in line with the Financial Regulations and Rules of the United Nations ("FRR"), the Organization engaged the United Nations Development Programme ["UNDP"] to undertake all procurement activities for OHCHR's Field Presences, including the Yemen CO, in accordance with UNDP's regulations and rules.

The FRR requires that procurement actions should be formalized through written contracts setting out, among other things: (i) the contract or unit price; (ii) the conditions to be fulfilled; and (iii) the terms of payment.

… On 12 September 2017, in light of UNDP's engagement, [EP, name redacted for privacy reasons], Chief, Finance and Budget Section, OHCHR, issued a memorandum instructing OHCHR's Heads of Field Presences (*e.g.*, a Head of a Country Office): (i) not to request from UNDP any exception from its procurement rules unless otherwise necessary; (ii) to submit any request for exception to OHCHR's Programme Support and Management Services ("PSMS") for review; and (iii) to refer any planned procurement of fixed assets (*e.g.*, a building) to PSMS for review and approval to ensure "best value for money." In the memorandum, [EP] also stated that: (i) only the High Commissioner, the Deputy High Commissioner and the Chief of PSMS of OHCHR have the delegated authority to sign on OHCHR's behalf, written contracts formalizing procurement actions; and (ii) Heads of Field Presences entering into any such contracts will be personally responsible for any resulting financial obligation for the Organization.

… In 2018 and 2019, the Organization continued to engage UNDP to handle all OHCHR's Field Presences' procurement activities, including the advertisement of the call for bid, receipt and evaluation of the bids, selection of the winning bid, issuance of the purchase order, and signing of a written contract. In addition, the Organization engaged UNDP to process payments in connection with any property or service that a Field Presence had procured. UNDP would process payments upon a Head of Field Presence's request and in accordance with OHCHR's "financial authorization," which would indicate the amount that UNDP may pay on behalf of a Field Presence for a stated purpose and within a particular period.

C. Yemen CO's procurement in 2018

… From 1 August 2017 to 31 July 2020, the Yemen CO operated in a rented office building in Sana'a, Yemen. At the material time, the rental agreement between the landlord, [SMB, name redacted for privacy reasons] and OHCHR set the monthly rent at US$ 3,500.00.

… On 28 March 2018, the Applicant requested from [KW, name redacted for privacy reasons], Chief, PSMS, OHCHR, the redeployment of US$ 49,200.00 originally allocated for the Yemen CO's staff costs, to "*minor alterations to premises to upgrade guard room to meet basic and minimum security standards*."

… On 13 April 2018, [EP] authorized the requested redeployment, and as a result, the redeployed US$ 49,200.00 was added to a US$ 30,000.00 fund allocation for the Yemen CO for "minor alteration premises." On the same day, [EP] issued to UNDP financial authorization numbered 31-3100016288-035 indicating that UNDP may pay, upon the Applicant's request and/or authorization, expenses for "minor alteration premises" totaling US$ 79,200.00.

… In May 2018, following the redeployment of funds, the Applicant authorized the procurement of services for the construction of a new building within the Yemen CO's rented premises, and authorized [NO, name redacted for privacy reasons], former Administrative and Finance Associate at the G-6 level, OHCHR, to run the procurement process on 13 June 2018.

… On 15 and 16 May 2018, [NO] sent an email to [SAB, name redacted for privacy reasons], a UNDP staff member, to request [SAB] to initiate the procurement process for the construction of the new building. In his request, [NO] provided [SAB]: (i) the architectural drawings, dated 13 March 2018, for a three-floor building complete with a guard room, kitchen and dining rooms, prayer rooms and training rooms; and (ii) a Bill of Quantities ("BOQ") itemizing the works for the construction of a building with a total estimated cost of US$ 136,745.00.

… On 10 June 2018, [NO] submitted to [AM, name redacted for privacy reasons], Procurement Assistant, UNDP, also by email, revised architectural drawings for the building in further support of his request. The Applicant was copied in [NO's] email submissions to [SAB] and [AM].

… On 13 June 2018, in [AM's] absence, [WK, name redacted for privacy reasons], Procurement Associate, UNDP, informed [NO], by email, that a UNDP-contracted engineer would still have to review the revised architectural drawings. [WK] further informed [NO] that the requested procurement process would be initiated after the *Eid* holiday (*i.e.*, 15 June 2018).

… On the same day (13 June 2018), [NO] replied to [WK], without providing any explanation, that by initiating the process after the *Eid* holiday, "we will lose the money" allocated for the construction. [NO] further replied that for this reason, "our office decide [sic] to go and handle this bid through our office." In response, [WK] explained to [NO] that the review was necessary to ensure that the proposed construction would meet the Organization's safety and security standards. The Applicant was copied in the email exchange between [NO] and [WK].

… Between around the second week of June 2018 and 15 July 2018, [NO] proceeded to run the procurement process, by among other things: (i) publishing the Request for Quotation ["RFQ"] for the "Construction of OHCHR New Building Extension" on "www.yemenhr.com," an online platform for procurement tendering; and (ii) engaging a local company, [DAA, name redacted for privacy reasons] to receive and evaluate the "bids" submitted in response to the RFQ. The Applicant acknowledged that: (i) UNDP was to handle all procurement activities for OHCHR Field Presences, including the Yemen CO; and (ii) he knew that the procurement of goods or services valued more than US$ 2,500.00 "must go through UNDP."

… Around June or July 2018, [DAA] reviewed the technical and financial aspects of the bids, and recommended the selection of a local company, [LA, name redacted for privacy reasons] with the lowest bid of US$ 166,441.90.27 In its bid, [LA] undertook to construct the entire building for US$ 166,441.

… On or around 15 July 2018, the Applicant selected [NO], [YO, name redacted for privacy reasons], Human Rights Officer, OHCHR, and [MH, name redacted for privacy reasons], Human Rights Officer, OHCHR, to act as panel members to review [DAA's] recommendation and make a final decision on the selection of the winning bidder.

… On 16 and 17 July 2018, [NO, YO, and MH] approved [DAA's] recommendation and agreed to select [LA].

… On 17 July 2018, [NO] notified the Applicant of the selection decision, and then informed the Applicant, "we will proceed accordingly." The Applicant then approved [LA's] selection. The Applicant also authorized [LA's] engagement to construct the building without a written contract and/or a purchase order following the procurement process. The Applicant acknowledged: (i) having committed a "mistake" in engaging [LA] without a written contract and/or a purchase order; and (ii) the risks and "legal ramifications" for the Organization associated with engaging [LA] without these documents.

… On 23 July 2018, even though there were no contractual documents setting out the terms and conditions of [LA's] engagement, the Applicant signed and submitted to UNDP a "Request for Direct Payment" with instructions to make an advance payment of US$ 86,000.00 to [LA]. In his request:

> a. The Applicant stated that the payment was "for remodeling OHCHR Building."

b. The Applicant also certified that the requested payment was "covered by funds available in [OHCHR's] financial authorization," by referring to financial authorizations numbered 31-3100016288-006 and 31-3100016288-035. Financial authorization numbered 31-3100016288-006 in the amount of US$ 6,800.00 pertained to "other contractual services." Financial authorization numbered 31-3100016288-035 in the amount of US$ 79,200.00 pertained to "minor alteration premises."

… As of July 2018, there had been no financial authorization issued to UNDP "for remodeling OHCHR Building."

… On 5 August 2018, UNDP paid [LA] US$ 86,000.00 based on the Applicant's signed "Request for Direct Payment."

… In October 2018, [LA] started the construction of the building.

… On 15 November 2018, [DM, name redacted for privacy reasons], Finance Officer, OHCHR, by email, requested the Applicant to provide information regarding the approval of the construction. [DM] also requested the Applicant to provide the justification for constructing a building within OHCHR's rented premises given that the Yemen CO's mandate was limited in time.

... Between 23 November 2018 and 11 January 2019, [KW] followed up with the Applicant about his response to [DM].

… On 16 January 2019, the Applicant responded to [DM's] request. In his response, the Applicant stated that constructing the building was necessary to: (i) bring OHCHR's rented premises into compliance with the Organization's Minimum Operating Security Standards for Staff Safety; and (ii) have a bigger space for project activities and staff members' dining and prayer rooms.

… By January 2019:

a. [LA] had stopped the construction of the building.

b. [LA] completed the ground floor works. The further relevant works for the construction of the second and third floors of the building were cancelled.

c. [LA's] representatives agreed in writing that the Organization had no further financial obligation to [LA] for the remaining works on the building.

… On or around 28 January 2019, the Applicant negotiated with [SMB] the extension of the Yemen CO's lease for one year and five months, until 31 December 2021, without any increase in rent.

6. From the evidence on file, in particular some aerial photographs inserted in a "facility safety and security survey" of 12 August 2014 of the OHCHR premises conducted by an OHCHR Security Adviser/Officer ("the 12 August 2014 survey"), it follows that the OHCHR premises in Yemen consisted of a building with a courtyard, which was surrounded by an exterior wall.

Consideration

The issues of the present case

7. The Appeals Tribunal has consistently held that "the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review". When defining the issues of a case, the Appeals Tribunal further held that "the Dispute Tribunal may consider the application as a whole". See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

8. Accordingly, the basic issues of the present case can be defined as follows:

a. Did the Under-Secretary-General for Management Strategy, Policy and Compliance lawfully exercise her discretion when (a) imposing the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii), against the Applicant and (b) requiring the recovery of the amount of USD86,000 in accordance with staff rule 10.1(b) through deduction of his final entitlements?

b. If not, to what remedies, if any, is the Applicant entitled?

The Tribunal's limited scope of review of disciplinary cases

9. Under art. 9.4 of the Dispute Tribunal's Statute, in conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine: (a) whether the facts on which the disciplinary measure is based have been

established; (b) whether the established facts amount to misconduct; (c) whether the sanction is proportionate to the offence; and (d) whether the staff member's due process rights were respected. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. (In line herewith, see the Appeals Tribunal in para. 51 of *Karkara* 2021-UNAT-1172, and similarly in, for instance, *Modey-Ebi* 2021-UNAT-1177, para. 34, *Khamis* 2021-UNAT-1178, para. 80, *Wakid* 2022-UNAT-1194, para. 58, *Nsabimana* 2022-UNAT-1254, para. 62, and *Bamba* 2022-UNAT-1259, para. 37). The Appeals Tribunal has further explained that clear and convincing proof "requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable" (see para. 30 of *Molari* 2011-UNAT-164). In this regard, "the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred" (see para. 32 of *Turkey* 2019-UNAT-955).

10. The Appeals Tribunal, however, underlined that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General" (see *Sanwidi* 2010-UNAT-084, para. 40). In this regard, "the Dispute Tribunal is not conducting a 'merit-based review, but a judicial review'" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (see *Sanwidi*, para. 42).

11. Among the circumstances to consider when assessing the Administration's exercise of its discretion, the Appeals Tribunal stated "[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion" (see *Sanwidi*, para. 38).

Whether the facts on which the disciplinary measure is based have been established

The basic factual allegations of the sanction letter

12. In a letter dated 27 November 2023 from the Assistant Secretary-General for Human Resources ("the ASG") to the Applicant (the "sanction letter"), the factual parts of the basic allegations against the Applicant, which the Under-Secretary-General for Management Strategy, Policy and Compliance ("the USG") found had been established with clear and convincing evidence, can be summarised as follows:

a. Between May 2018 and July 2018, the Applicant:

i. Authorized "the procurement of services for the construction of a new OHCHR building, without approval";

ii. Authorized NO to "run the procurement process for the construction of the building, including, among other things, the publication of the Request for Quotation ("RFQ"), receipt and evaluation of the bids by a non-UN engineering contractor, formation of a review panel to review the contractor's evaluation and recommendation, and selection of a local company, [LA] as the winning bidder, instead of engaging [UNDP] to run the procurement process for [the Yemen CO] as required";

iii. Authorized LA's "engagement to construct the building without observing the proper procurement process, and without a written contract and/or a purchase order expressly delineating the Organization's obligations, further exposing the Organization to risk of contractual breach and financial liability";

iv. "Despite having no authority and in the absence of proper contractual instruments, requesting and causing UNDP to make a

direct payment of US$ 86,000.00 to [LA] for the construction of the building";

b. Between March 2018 and August 2018, the Applicant:

i. On 28 March 2018, "falsely stated in [his] request for redeployment that the funds [he] had sought to be redeployed were to be used for "minor alterations to premises to upgrade guard room to meet basic and minimum security standards," when [he] had actually intended to use the funds for the construction of at least a portion of a new OHCHR building";

ii. On 23 July 2018, he "falsely stated in [his] request for direct payment of US$ 86,000.00 that the requested payment was 'for remodeling OHCHR building'", and also "certified that the requested payment was 'covered by funds available in [OHCHR's] financial authorization'"; and

iii. Between 23 July 2018 and 5 August 2018, he "utilized and/or caused the utilization of funds totaling US$ 86,000.00, allocated by OHCHR for other purposes, for the unauthorized purpose of constructing a new OHCHR building".

The parties' submissions

13. The Applicant's contentions may be summarised as follows:

a. The first part of the two main allegations has not been properly established. Firstly, it is "an agreed fact that the Applicant was appointed as Head of [the Yemen CO]". By "the nature of his job, even with the Respondent objection, the applicant occasionally served as [acting Resident Coordinator, "RC"] and was also appointed, by [the United Nations Department of Safety and Security], as the [acting] Designated Official" ("DO"). As the acting DO, he was "responsible for Security affairs in

Yemen" when the RC/DO was absent. This is important in order to "understand the Applicant's duties and his approach to meet the expected performance from all stakeholders, especially in an extremely volatile context, like Yemen". By the "nature of his role, he got aware of the OHCHR security survey [presumably the 12 August 2014 survey] which highlighted the importance of strengthening the Yemen office security with about 18 recommendations". The recommendations included an "urgent need to strengthen the office security by tackling identified weaknesses, as clarified in the Application and the testimony of the Applicant and [MA]".

b. "Separating the Applicant's actions from his motives constitutes unfairness in dealing with the Applicant". There is "no evidence at all that his actions were in bad faith or intended to defraud the organization". MA in his testimony "agreed that all the construction works were essential for the security of the building in Yemen, and that those construction works enhanced security as never before". This "security reason was never discussed nor denied by the organization". Furthermore, "the officials in OHCHR's [headquarters] seem to have neglected their duty to ensure that the [Minimum Operating Security Standard, "MOSS"] recommendations of 2014 were to be implemented without delay". And "for sure the mentioned incident of the control of the de facto authorities of Yemen on the building, after the separation of the applicant, is totally irrelevant and disconnected to the incidents of our case".

c. "Secondly, NO was "responsible for most of the process; however, his subsequent departure from the organization rendered it impossible to cross-examine him, the principal witness upon whom the investigation report relied". NO "followed and attempted to copy the process from UNDP, as usually practiced by … UNDP, in similar projects". NO "confirmed that he followed the UNDP protocol in selecting both companies along [with] the panel". It is "meaningless to rely on [NO's] testimony to condemn the Applicant, despite the total agreement between

[NO] and the [A]pplicant's position". Also, the "process resulted in selection of two vendors that are on the UNDP vendor list, as provided in the payment to [DAA], that it was listed on UNDP Atlas system under no. 7404, and [LA] was listed under vendor number 7425". This was "the understa[nd]ing of the Applicant, which was repeated as well by [NO] in his testimony in the interview, despite that the Respondent submitted that the provided information from UNDP that none of those companies is approved as UNDP contractor or vendor". This situation 'raise[s] a question about the credibility of the UNDP system that is listing vendor [identification] numbers and profiles on its system 'Atlas' with no UNDP approval at all, as alleged".

d. "Thirdly, the construction works, which were described by the respondent as unnecessary and uncompleted works that negated any potential advantage to the organization, seems very helpful to enhance the security of the building as confirmed by [MA] in his testimony". Also, "what was alleged that the Applicant authorized those works despite the mission will not benefit from the building, seems totally untrue". "According to the provided lease contract by the respondent, the Landlord kept his obligation, as requested by the Applicant not to raise the rent for three years, this rent increased by 2022 from 3500 to 4025 USD, […] contrary to the argument by the Respondent that the rent was fixed and never expected to increase". Also, "it was confirmed that the building [is] still under the possession of the organization, even with temporary halt to the operations based on the political arrangement with the *de facto* authorities in Sanaa".

e. Regarding the second part of the allegations, the "alleged false statement has never been a false one, but rather an honest and accurate reflection of the first phase of the construction works, which focused on enhancing the building to meet security concerns", referring to the MOSS report and MA's testimony.

f. Additionally, "there was an authorization for the redeployment of funds, as shown by the email from [KW] [authorizing] the redeployment of funds for the construction works, which served as the basis for the Applicant to authorize [NO] and the panel to initiate the procurement process".

g. "For the point number (iii) of the allegation, it is important to clarify two points". "First, there is no evidence that the funds were 'allocated for other purposes,' but rather it was an intent to reallocate them for another purpose". The Applicant "cannot be held accountable for a change in intent by the administration regarding the redeployed amounts". This "change of intent does not establish the *mens rea* for the Applicant". "Second, 'while the project itself may not have received proper authorization, the 'purpose' was indeed approved, as evidenced by [KW's] email and approval for redeployment to meet the security concerns".

14. The Respondent's contentions may be summarised as follows (references to footnotes omitted):

a. The Applicant "planned a construction of a three-floor building on the premises rented by the OHCHR [Yemen CO]". As "OHCHR wanted to cut down on expenses and did not want to fund the construction of the building, the Applicant attempted to secure financing (or financial authorization) through other means, including by requesting the redeployment of funds previously allocated by OHCHR for other purposes".

b. On 28 March 2018, the Applicant "requested the redeployment of US$ 49,200.00 originally allocated for the Yemen CO's staff costs to 'minor alterations to premises to upgrade guard room to meet basic and minimum security standards'". On 13 April 2018, the "request was approved and the US$ 49,200.00 was added to an existing US$ 30,000.00 fund allocation for 'minor alteration premises' for the Yemen CO". As a result, "OHCHR issued financial authorization numbered 31-3100016288-035, indicating

that [UNDP] may pay expenses for 'minor alteration premises' totaling US$ 79,200.00, upon the Applicant's request".

c. Around "June or July 2018, as Head of the Yemen CO, the Applicant authorized [NO], former Administrative and Finance Associate, OHCHR, to run a procurement process for the 'Construction of OHCHR New Building Extension,' with a total estimated cost of US$ 136,745.00. NO "ran the process without involving UNDP, responsible for handling the Yemen CO's procurement and payments, or informing OHCHR. On 15 July 2018, the Applicant "formed a review panel within the Yemen CO that approved the selection of [LA], a local vendor which undertook to construct the building for US$ 166,441.90 in its bid, as the winning vendor".

d. On 23 July 2018, "after approving [LA's] selection, the Applicant requested UNDP to make an advance payment of US$ 86,000.00 to [LA] without a purchase order or a written contract". The Applicant "intended to seek additional financial authorizations in 2019 and 2020 to fund the remainder of the construction cost". In his request, the Applicant "indicated that the payment was 'for remodeling OHCHR building' rather than for constructing a new one". The Applicant "certified that the payment was covered by financial authorization numbered 31-3100016288-035 for 'minor alterations premises' and another financial authorization numbered 31-3100016288-006 for other contractual services for US$ 6,800.00". On 5 August 2018, "UNDP paid [LA] as requested".

e. "In October 2018, the construction began, without OHCHR's knowledge". In November 2018, "upon becoming aware of the construction, OHCHR raised an objection and requested the Applicant to justify the construction: and "[i]n view of OHCHR's objection, the Applicant decided not to continue with the construction of the building, which was halted and ultimately left unfinished".

f. The Applicant "admitted that he did not follow the proper procurement process for the construction of the three-floor building". Further, the Applicant "admitted that despite being aware of the requirement that the Yemen CO's procurement of goods or services valued at more than US$ 2,500.00 'must go through UNDP,' he authorized [NO], instead of UNDP, to run the procurement process for the construction". The Applicant "also admitted that pursuant to such authorization, [NO] advertised a Request for Quotation for the construction and engaged a non-UN contractor, [DAA] to evaluate the submitted 'bids'". The Applicant "further admitted to forming the review panel and approving that panel's decision to select [LA]". This is "against OHCHR's prescribed rules for Field Offices' procurement activities".

g. Moreover, the Applicant "confirmed that he did not seek OHCHR's prior approval despite his knowledge that procurement of fixed assets (e.g., a building) should be referred to OHCHR Programme Support and Management Services for review and approval". The "review and approval processes were there to ensure 'best value for money'". The Applicant "deliberately violated OHCHR's procurement and approval processes in order to proceed with the construction". "Specifically, the Applicant did not disclose the true purpose of his request for redeployment of funds thereby deceiving OHCHR that the fund[s] would be used for 'minor alteration to premises,' and not for the construction of a new building". The Applicant "did this because he knew that OHCHR would not approve his construction plan".

h. In addition, the Applicant "conceded to his wrongdoing, i.e., exposing the Organization to risks by not issuing a written contract or a purchase order to [LA]". The Applicant "admittedly had no authority to request UNDP to directly pay [LA] US$ 86,000.00".

i. The Applicant "asserted that UNDP allowed the Yemen CO to proceed with the procurement on its own", and in support thereof, he referred to NO's "purported statement that he told the Applicant that UNDP had authorized the Yemen CO to conduct the procurement in the present case". However, "in this procurement, UNDP did not consent to the Yemen CO conducting the process on its own". The Applicant "does not dispute that he was notified of UNDP's disagreement to the Yemen CO undertaking the procurement and its insistence on following UNDP's process". The Applicant's assertion that NO's "evidence (i.e., procurement process not being conducted by UNDP) may not be used to establish his violation of procurement rules given lack of opportunity to cross-examine him is inapposite". The Applicant's "attempt to shift the blame to others should fail, as the agreed facts establish his conduct at issue". The Applicant's "contention that he only relied on his colleagues and UNDP for a proper execution of the procurement process finds no support in the record". "Regardless of [NO's] evidence, the Applicant's conduct is established by the consolidated list of agreed facts set out in the Joint Statement of Facts".

j. "Based on the undisputed facts, the Applicant falsely stated (a) in his request for redeployment of funds that the funds were to be used for 'minor alterations to premises to upgrade guard room to meet basic and minimum security standards'", and (b) certified in his request for direct payment of US$ 86,000.00 to [LA] that the payment was 'for remodeling OHCHR building' and was 'covered by funds available in [OHCHR's] financial authorization,' i.e., financial authorizations numbered 31-3100016288-035 for 'minor alterations premises' and 31-3100016288-006 for other contractual services". The Applicant "confirmed that the request for redeployment of funds was merely a pretext to secure funding for the new OHCHR building". During the investigation, the Applicant "stated that he requested the redeployment after realizing that he was 'not going to get the money' for the construction". On cross-examination, the Applicant

"testified that the request was made to finance the construction, which he knew would not be funded by OHCHR due to cost-saving measures".

k. Further, "there is no dispute that the architectural drawings and bill of quantities prepared for the planned procurement were for a large-scale construction of a three-floor building with a guard room, kitchen and dining rooms, prayer rooms and training rooms". "The work involved, for instance, excavation, earthworks and concreting works". The Applicant's assertion that LA's "work was limited to only the purported first phase of constructing the three-floor building, allegedly 'focused on enhancing the building to meet security concerns,' is unavailing". It is undisputed that LA "built an entirely new structure, which was by no means a minor remodel or an upgrade of an existing building" and "would have continued its work to completion had the Applicant's conduct not come to light".

l. Moreover, "contrary to the Applicant's assertion, the misuse of the redeployed funds is established by the undisputed facts". The Applicant "does not contest that the redeployed funds for 'minor alterations premises' were used for the unauthorized construction of the building". The Applicant also "does not contest that OHCHR approved the use of the redeployed funds for security expenses requiring 'minor alteration premises,' and not a major construction project".

Has the Respondent established the factual parts of the basic allegations of the sanction?

15. When comparing the factual parts of the basic allegations to the parties' agreed facts, the Tribunal agrees with the Respondent that all the factual allegations are properly covered and founded in the list of agreed facts. It could be argued that some of the descriptions stated in the factual allegations, in particular when stating that the Applicant's statements in his 28 March and 23 July 2018 requests were "false", were subjective assessments rather than facts. The reality is, however, that

these statements in the 28 March and 23 July 2018 requests were, at minimum, straightforwardly incorrect as the Applicant did intend to have a new three-floor building constructed at the OHCHR premises and not just have "minor alterations" or "remodeling" done to existing structures as per the relevant requests.

16. Accordingly, since the Tribunal is not to review agreed facts under *Ogorodnikov*, it concludes that the facts set out in the sanction letter are all lawfully established as set out in the sanction letter.

Whether the established facts amount to misconduct

The legal provisions that the Applicant was found to have violated

17. In the sanction letter, the Applicant was found to have committed "serious misconduct" in violation of the following legal provisions:

> [Staff regulation 1.2(b)]
>
> … Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status
>
> [Staff regulation 1.2(e)]
>
> … By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants
>
> [Staff regulation 1.2(q)]
>
> … Staff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets
>
> [Staff rule 1.2(a)]
>
> … Staff members shall follow the directions and instructions properly issued by the Secretary-General and by their supervisors
>
> [Staff rule 1.7]

> Staff members shall exercise reasonable care in any matter affecting the financial interests of the Organization, its physical and human resources, property and assets

The parties' submissions

18. The Applicant's contentions may be summarized as follows:

a. The "allegations against the Applicant lack substantial support, and the alleged facts do not amount to misconduct". The Applicant's "sole error was not seeking guidance from headquarters regarding his authority to independently conduct the procurement process, despite it was previously practiced in the same manner as mentioned by [NO]". The "procurement and final payments adhered to UNDP procedures and OHCHR's established practices". The Applicant "formed a fair committee which advertised the RFQ, received 41 bids, engaged an engineering firm for technical evaluation, and selected the lowest bidder, [LA], in accordance with the principle of 'best value for money'".

b. Among "the four final bidders", LA submitted "the lowest bid and was therefore recommended as the preferred choice, in alignment with the procurement principle of 'best value for money'". "These actions exemplify [the Applicant's] commitment to upholding the principles and regulations set forth by the United Nations". He "implemented all necessary measures to ensure a fair, impartial, and transparent procurement process, establishing a partially neutral panel to oversee the procedures independently of his authority". "The panel members did not contest his decisions, nor did they allege that he acted in bad faith or exhibited favouritism toward any individual or entity".

c. The Applicant "undertook all necessary measures to ensure a fair, impartial, and transparent procurement process, under the belief that he possessed the requisite authority as head of office". The "panel members did not allege any bad faith or favoritism on his part". "His primary concern

was the security enhancement of the office, prompting him to act swiftly due to the urgent security situation" and the "necessity of the situation should be considered a mitigating factor". The "imminent threat of bombardment necessitated the erection of a concrete roof to protect office vehicles, in line with security report recommendations". There is "no evidence of '*mens rea*' or intent to defraud". The Applicant was "not directly involved in most steps of the procurement process and relied on the panel, with UNDP processing the payments as per usual practice".

19. The Respondent's contentions may be summarized as follows:

a. The established facts "demonstrate that the Applicant engaged in serious misconduct". The Applicant's conduct is "manipulative and deceptive". The Applicant "falsely declared the purpose of redeploying funds and bypassed the established procurement rules to proceed with a construction project he knew OHCHR would not approve". "These actions reflected dishonesty and a serious lapse of integrity, irreparably damaging the trust relationship between the Applicant and the Organization, rendering his continued employment intolerable".

b. "Contrary to the Applicant's assertion, the Administration is not required to prove *mens rea* or intent to defraud the Organization". The Applicant's conduct "was not a mistake, but deliberate". "No specific intention or motive is necessary to establish his violation of the Staff Regulations and Rules'. Further, the Applicant's "dishonesty, as the Appeals Tribunal has consistently held, 'by definition implies an element of intent or some element of deception'", referring to *Rajan* 2017-UNAT-781, *Payenda* 2021-UNAT-1156, and *Amani*, 2022-UNAT-1301. "Whether there was a need to address urgent security concerns in the Yemen CO's rented premises does not change the facts that he knowingly disregarded the procurement rules and misled OHCHR into issuing financial authorization for 'minor alterations,' while he intended all along to use that financial

authorization for a brand new building". On "cross-examination, the Applicant acknowledged that his role was to report security concerns to OHCHR, not to decide how resources should be allocated and spent to address them". The Applicant's "professed belief that a new building was necessary for urgent 'security' concerns was not substantiated". During the hearing, MA "attested to the absence of any specific security threat to the Yemen CO".

c. The Applicant's assertion that "he mimicked UNDP's practices in conducting the procurement, and selected a vendor from UNDP's vendor list is irrelevant". "This does not justify the Applicant's deviation from the procurement rules he was required to strictly observe". The Applicant "agreed to the fact that UNDP was to handle all of the Yemen CO's procurement activities with no exception". The Applicant's contention that "he only made a mistake by failing to seek OHCHR's guidance in conducting the procurement process is untenable".

Did the Applicant commit misconduct based on the established facts?

20. As the Head of OHCHR's Yemen Co, and occasionally also serving as acting RC/DO, it is important that OHCHR could trust that the Applicant would follow proper instructions on matters as important as procurement.

21. The Financial Regulations and Rules and EP's 12 September 2017 memorandum, as summarized in the agreed facts, are very clear as to the division of labor between an OHCHR Country Office, the OHCHR Headquarters and UNDP in procurement. As per the instructions from EP's 12 September 2017 memorandum (a) "any planned procurement of fixed assets (*e.g.*, a building)" had to be referred from the OHCHR Country Office to "PSMS for review and approval to ensure 'best value for money'", and (b) "only the High Commissioner, the Deputy High Commissioner and the Chief of PSMS of OHCHR have the delegated authority to sign on OHCHR's behalf, written contracts formalizing procurement

actions". Also, it had been agreed that UNDP were to undertake all procurement activities for OHCHR in Yemen because, as stated in the sanction letter, "the OHCHR Yemen CO is not a large office".

22. The Tribunal agrees with the Respondent that based on the established facts, the Applicant's wrongdoing therefore consisted in more than just not seeking guidance concerning his authorization from OHCHR Headquarters. Rather, the Applicant entirely ignored the legal framework on procurement for OHCHR and instead went ahead to undertake his own self-instituted procurement process in order to construct the three-floor building on the OHCHR premises.

23. The Applicant does not allege that he was unaware of this legal framework, but rather that for security and safety reasons, he decided to proceed with the procurement exercise and construction of the three-floor building. In his testimony to the Tribunal, he explained that:

> a. The security situation in Yemen was volatile due to a civil war. Security was a major issue and more than 60 percent of the OHCHR budget was allocated for this purpose. The special envoy of the Secretary-General had also moved to a building adjacent to the OHCHR building, and the additional traffic therefrom increased the security risk.
>
> b. Whereas the Special Envoy's building was up to standard in terms of security, the OHCHR building was not. A number of potential security threats had been identified concerning the OHCHR premises in a security assessment by the Department of Security and Safety in 2014. Most importantly, the security guards, who were provided by the *de facto* government in Sanaa, were housed outside the OHCHR building in a container, where they would stay during all seasons in indecent and "squalid conditions". Also, according to the MOSS, the OHCHR premises did not have a fortified car entrance or security reception screening area with an x-ray machine, and the exterior wall around the premises was substandard.

Due to bombardments, the threat of petrol barrels being stored in this courtyard was identified later. Also, a car shelter was to be built there.

c. Upon the Applicant's deployment in the Yemen CO, the then security officer had told him that the OHCHR building was not complaint with standards. The Applicant's main recommendation was to build the three-floor building to house the guards and hold reception rooms with an x-ray machine.

24. In the testimony of MA, the former Field Security Officer in the Yemen CO, he confirmed that Yemen was a very dangerous and hazardous place and the OHCHR premises was "an attractive soft target for a terrorist group". He further explained that there was not enough space to accommodate the private security that was being used, which was also inappropriate. Further, a luggage scanner was needed. The construction of a new building was therefore necessary.

25. In line herewith, among the 20 recommendations included in the 12 August 2014 survey, OHCHR Security Adviser/Officer proposed to: (a) "[i]nclude to the next year procurement plan an enlargement (building new one) of guards house", and (b) "[t]o bring ASAP to operational conditions the following equipment: XR machine …".

26. Furthermore, the Applicant submits that the process, which he essentially delegated to others to undertake, followed all relevant procurement principles. The Tribunal disagrees therewith. The purpose of the statutory procurement procedures is to exercise control over the expenditures of an OHCHR Country Office through an established system of checks and balances. By excluding OHCHR Headquarters and UNDP from the procurement process, the Applicant, as OHCHR's Head of Office, deliberately and unlawfully circumvented this system. At the same time, the Respondent does not argue that the Applicant committed any criminal act, such as fraud, for which reason the notion of *mens reas* is irrelevant.

27. The Tribunal also notes that OHCHR Headquarters evidently also disapproved of the Applicant's idea of constructing a three-floor building. This follows from:

a. In the agreed facts, the parties state that the building construction project was abandoned after only one of three planned floors was completed.

b. In the annex to the sanction letter, it is stated that, "There was also no justification for the construction. The Organization did not need or approve the construction of the building. Contrary to [the Applicant's] assertions, OHCHR refused to fund a building, which include[d] the initial phase of the construction of the building, as it 'could not be justified as part of OHCHR's work'", referring to an email of 1 November 2018 from the OHCHR Regional Desk Officer at Headquarters to the Deputy Head of the Yemen CO (KH and AK, respectively, names redacted for privacy reasons).

c. In a 15 November 2018 email, DM wrote to the Applicant that, "Here in PSMS we have no information on this subject. Usually OHCHR does not erect its own premises in field presences, including for the reason that our mandates are limited in time and especially in the Yemen context—buildings cannot even be ensured".

28. Also, it is noted in the annex to the sanction letter that the Applicant had a prior disciplinary sanction of loss of four steps in grade and a written censure. Further reference is made to various aggravating and mitigating factors. Most notably, the Applicant's "long service and effort to mitigate the Organization's financial risk" were "outweigh[ed]" by his "dishonesty, coupled by multiple aggravating factors".

29. Even if his objective was not self-enrichment or pursuing other personal goals but legitimately ensuring safety and security at the Yemen CO, it was therefore only reasonable for OHCHR to have entirely lost confidence in the

Applicant. Accordingly, the Tribunal finds that with reference to *Sanwidi*, the USG acted within her scope of authority when holding that the Applicant had committed serious misconduct under staff regulations 1.2(b), 1.2(e) and 1.2(q) and staff rules 1.2(a) and 1.7.

Whether the sanction is proportionate to the offence

The relevant jurisprudence on proportionality of a disciplinary sanction

30. The Appeals Tribunal enunciated the basic principle of proportionality in *Sanwidi* as follows (see para. 39):

> … In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective.

31. Since then, the Appeals Tribunal has, in many instances, had the opportunity to further elaborate on the proportionality principle in the context of disciplinary cases. For instance, in *Sheralov* 2024-UNAT-1494/Corr.1, it held that (see paras. 129 – 130, reference to footnotes omitted):

> ... When it comes to the proportionality of the disciplinary measure, Staff Rule 10.3(b) requires that "[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct".
>
> ... In deciding whether a specific sanction is proportionate to the nature and gravity of the staff member's misconduct, we have elaborated comprehensively in the case of *Portillo Moya* [2015-UNAT-523, paras. 19-21] as follows:
>
> > … (…) the matter of the degree of the sanction is usually reserved for the Administration, who has discretion to impose the measure that it considers adequate to the circumstances of the case and to the actions and behaviour of the staff member involved.

> … This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration which carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures: a sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance, etc. … That is why only if the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity, that the judicial review would conclude in its unlawfulness and change the consequence (i.e., by imposing a different one).

32. As for "[t]he most important factors to be taken into account in assessing the proportionality of a sanction", the Appeals Tribunal has held that this involves a "value-judgment and the consideration of a range of factors". These include "the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency" (see para. 48 of *Rajan*, as affirmed, for instance, in *Mihyar* 2024-UNAT-1462, para. 67).

33. At the same time, the Appeals Tribunal has held that "even though the sanctions ultimately imposed [in *Koutang* 2013-UNAT-374 and *Konaté* 2013-UNAT-334] could be considered severe or harsh, they were nevertheless not unreasonable, absurd or disproportionate, and therefore the Appeals Tribunal did not substitute its judgment for that of the Administration" (see *Egian* 2023-UNAT-1333, para. 104).

34. Specifically regarding dishonesty, the Appeals Tribunal has consistently held that "any form of dishonest conduct, deception or fraud compromises the necessary relationship of trust between the Organization and a staff member and will generally warrant termination of employment'" (see *Abdrabou* 2024-UNAT-

1460, para. 70, as well as *Saleh* 2022-UNAT-1239, para. 33). In *Fultang* 2023-UNAT-1403, the Appeals Tribunal added that "[d]ishonesty and impropriety of this kind, if established, may justify summary dismissal without any benefits" (see para. 123).

The parties' submissions

35. The Applicant's contentions may be summarised as follows:

a. The Appeals Tribunal "has repeatedly found that whether a sanction is proportionate to the offence is usually within the discretion of the Administration, as it is best placed to understand the circumstances of the case". This discretion, however, is "not unfettered, and there is a duty to act fairly and reasonably in terms of which the [Dispute Tribunal] is permitted to interfere where the sanction is lacking in proportionality", also referring to *Portillo Moya*, as quoted in the above.

b. The "disciplinary actions taken against [the Applicant]—the separation without termination indemnities and the recovery of $86,000 for construction costs—are arbitrary, excessively harsh, and grossly disproportionate".

c. Separation from service is "unduly severe, especially considering his intentions and the proper execution of the procurement process, albeit without [headquarters] authorization". His efforts to "adhere to [United Nations] directives in the procurement process, his commitment to staff safety, and the urgency of the situation, where lives were at risk, should be taken into account".

d. No "form of dishonest conduct, deception, or fraud" occurred, and the Applicant did not "purposefully [conceal] his actual intentions". "The administration failed to provide any evidence to substantiate that [the Applicant] unlawfully made any misappropriation of funds or had any intent

to defraud or deceive in his actions". Also, the Applicant was "not directly involved in the majority of the steps relating to the selection of the bids and contractors", but "relied on his staff and was comforted by the fact that UNDP processed the payment as per standard practice".

e. The "urgent security concerns in the Yemen CO rented premises propelled the Applicant to act promptly", which "constituted a 'state of necessity'". "Given the nature of these concerns, the Applicant was inclined to act promptly".

36. The Respondent contends that the Applicant's "separation from service [was] proportionate" as it concerns "dishonest conduct" (referring to *Saleh* 2022-UNAT-1239, para. 33 and other cases). The Applicant's reference to the "urgent security situation" in the Yemen CO "as a mitigating factor … does not restore the broken trust of the Organization necessary for the continuation of his employment".

Was the disciplinary sanction proportionate to the offence?

37. At the outset, the Tribunal notes that, unlike what is argued by the Applicant, when the Organization demands a financial recovery from a staff member under staff rule 10.2(b), this is, as a matter of law, not a disciplinary sanction but an "administrative measure", since it is not listed in the exhaustive list of "disciplinary measures" in staff rule 10.2(a). The onus of proof for the Administration is therefore not clear and convincing evidence but either the preponderance of evidence or presumption of regularity—it not clear from the Appeals Tribunal's jurisprudence, which evidentiary test to apply to a judicial review under staff rule 10.1(b).

38. Regarding the disciplinary sanction, the Tribunal finds that as Head of Office, the importance of following procurement rules and instructions should have been clear to the Applicant. He, nevertheless, deliberately decided to institute his own procurement process instead following the established system by which he should principally have sought PMSM's approval after which UNDP were to undertake the actual process. In the Applicant's testimony to the Tribunal he stated that he had simply delegated the entire process to NO, assuming that he would comply with all procurement standards. This is, however, not credible since, according to the agreed facts, NO kept the Applicant informed throughout the entire process by copying him in most of his emails. Also, the 28 March 2018 and 23 July 2018 requests came from the Applicant and not NO.

39. That the Applicant was also dishonest in his communications follows, for instance, from his statements in the 28 March and 23 July 2018 requests regarding "minor alterations" or "remodeling" done to existing structures. These statements were not just incorrect but also dishonest—the Applicant evidently wanted to undertake a much larger project and construct a new three-floor building, which he has also maintained through the entire case, including in the interview with OIOS.

40. Even if his objective was to improve the safety and security of OHCHR's rented premises, as he has also consistently argued throughout the case, including in his OIOS interview, this does not change the fact that he was explicitly dishonest in the 28 March and 23 July 2018 communications. The Tribunal can only speculate on his reasons, but the Respondent's suggestion seems plausible, namely that he only did so because he wanted to conceal his true intention, namely building a new three-floor building, as he thought that OHCHR might reject the plan if they knew of it.

41. Even if the Applicant was legitimately intending to enhance the safety and security of the OHCHR premises and did not pursue any personal objectives through his misconduct, the Tribunal finds that, in accordance with the Appeals Tribunal's jurisprudence in *Abdrabou, Fultang* and other cases on dishonesty, the USG acted within the scope of her discretion when deciding to separate him from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii). It further notes that, in the specific circumstances, the disciplinary sanction may seem harsh and/or severe but that, in and by itself, this does not render it unlawful as per the Appeals Tribunal in, for instance, *Egian*.

Financial recovery of USD86,000

The relevant legal framework

42. In the sanction letter, in accordance with reference to staff rule 10.1(b), the USG "authorized the recovery from [the Applicant] of US$ 86,000.00 through the deduction from [his] final entitlements as she concluded that [his] conduct was willful and resulted in a financial loss to the Organization".

43. Staff rule 10.1(b) provides that:

> … Where the Secretary-General determines that a staff member's conduct constituted misconduct, and that the staff member's conduct was wilful, reckless or grossly negligent, the staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's conduct.

44. In other words, for the USG to demand financial recovery from the Applicant as per staff rule 10.1(b), it must be proved that (a) his "conduct constituted misconduct", (b) his misconduct was "wilful, reckless or grossly negligent", and (c) the United Nations suffered a financial loss as a result of the misconduct.

45. Since a demand for financial recovery under staff rule 10.2(b) is an "administrative measure" pursuant staff rule 10.2(b), the onus of proof for the Administration is no longer clear and convincing evidence. Instead, it would be either the preponderance of evidence or the presumption of regularity, since the jurisprudence of the Appeals Tribunal does not set out with clarity, which of these evidentiary tests apply to a judicial review under staff rule 10.1(b).

The parties' submissions

46. The Applicant's contentions may be summarised as follows:

a. It is "unjust to demand reimbursement for the construction costs, as the work was done in the interest of [the United Nations] and its staff to ensure their safety". There is "no evidence that the Applicant misused [United Nations] funds for purposes other than the construction". "The construction was solely for the benefit of [the United Nations], and even if deemed 'unauthorized,' [the United Nations] continues to benefit from these facilities and upgrades". These "improvements cannot be classified as a financial loss for the organization, especially given the recommendation to upgrade office security", and the OHCHR has "occupied the MOSS-compliant premises since 2018".

b. The "work completed as a result of the Applicant enhances the safety of specifically [United Nations] staff and of [United Nations] premises". Moreover, there is "no substantiation to confirm that [the Applicant] utilized [United Nations] funds for any purpose other than the construction". The "construction was exclusively made for the benefit of the [United Nations],

and therefore the classification of the Applicant's actions as 'financial loss' is unfounded". Also, the "upgrades remain in place and up to today, the OHCHR continues to occupy the premises which have been MOSS compliant since 2018", and "a witness during the hearing stated that it was a recommendation to upgrade the security of the office".

c. "Repeating that the general principle that no individual should gain wealth at the expense of others is crucial in our case." The Organization's "request for a refund is inequitable, causing unnecessary financial hardship for the Applicant and representing a practice of unjust enrichment". "To prevent financial losses for the [O]rganization, the Applicant agreed with the property owner to keep the rent unchanged for three years, considering the improvements made, which was approved and reflected in the provided lease agreement".

47. The Respondent's contention may be summarised as follows:

a. The USG's decision to "recover US$ 86,000.00 from the Applicant is lawful", and "[a]ll the requirements for financial recovery under Staff Rule 10.1(b) were met". The Applicant's "conduct constituted misconduct, was willful, or at least reckless or grossly negligent, and resulted in a financial loss to the Organization equal to the amount spent on the unauthorized construction". In addition, the Applicant "does not dispute his personal liability for any financial obligation resulting from any unauthorized procurement in line with the memorandum on the financial and administrative aspects of OHCHR field operations, dated 12 September 2017".

b. The Applicant's "claim of unjust enrichment is without merit". Firstly, "there is no evidence that the construction financially benefited the Organization". The Applicant's "general assertion that the construction enhanced the Yemen CO's security remains unsubstantiated". MA

"admitted that he had no personal knowledge of whether the construction improved the Yemen CO's security as he left the duty station when the construction had just begun". The "required procurement process which would have determined whether the construction would benefit or be in the best interest of the Organization was also not conducted". Secondly, "the Applicant acted in bad faith and denied OHCHR the opportunity to object or prevent the construction". MA's "testimony, through which the Applicant sought to establish the purported security enhancements in the Yemen CO, is not probative". The Applicant "bypassed the procurement rules in place to protect the financial interest of the Organization and deprived the Organization of any opportunity to assess and decide whether the project would be to its benefit".

c. The Applicant's "assertion that the construction of the new building led to the renewal of OHCHR's lease without any increase in rent is irrelevant". "This does not excuse the Applicant's conduct or the misuse of funds resulting in financial loss to the Organization".

Did the Applicant cause the Organization to suffer a financial loss?

48. It follows from the Tribunal's above findings that the Applicant's actions amounted to misconduct and that he was deliberate in undertaking these actions. The outstanding question is therefore whether the Organization suffered a financial loss from the Applicant's misconduct.

49. The Applicant explained in his testimony to the Tribunal that the first out of three phases of the building construction project was completed successfully. In his estimation, this may have prevented "an awful lot of security incidents", and after the construction was made in 2018, no such incidents have occurred. OHCHR therefore still continues to benefit from the first phase on the construction, and had

the improvement been done later, especially after the COVID-19 pandemic, the costs could have quadrupled. Also, since the landlord (SMB) saw the first phase of the construction as an improvement, he decided not to raise the rent with the regular 5-10 percent increase.

50. In MA's testimony to the Tribunal, when asked how effective the completed works of the construction project have been, he answered, "100 percent … They have given the office a maximum protection for staff and [United Nations] property in [the OHCHR] office premise[s] … It is very effective. I can assure that". Later, MA described the completed works as a "100 percent enhancement".

51. The 12 August 2014 survey also recommended the building of a new "guards house" and installing an x-ray machine to inspect luggage. From the architectural drawings of the new three-floor building, as appended to the investigation report, it follows that the first phase of the project consisted of constructing a ground floor consisting of a reception area with a security room, and some covered parking spaces.

52. On the other hand, in the annex to the sanction letter, it is explained that:

> … [The Applicant] used and/or caused to be used the Organization's funds towards the construction on rented premises of an unfinished building that it could not own in the long run. Nothing on the record indicates that the owner of the rented premises, [SMB], whose prior consent to the construction was not obtained, agreed to reimburse the Organization for the cost. At most, [SMB] only agreed to extend the lease without any increase in rent (*i.e.*, until 31 December 2021)".
>
> … In addition, the structure did not offer the Organization the "best value for money." [The Applicant's] assertion that it was built "up to standards," enhanced the security of OHCHR's leased premises, or was "of fair market value" is without support. Nothing in [DAA's] documentation of [LA's] work indicates that an analysis was made on the quality or value of the structure. In fact, given [LA's] failure to complete the construction, such an assessment

> could not have been made. Moreover, given that the construction did not proceed as [the Applicant] had planned and authorized, the Organization was left with an unfinished structure that it either had to demolish or continue building. Both choices would place unnecessary and additional financial strain on the Organization. Further, as a result of [the Applicant's] actions, by November 2018, OHCHR was left with no budget for the installation of underground fuel storage tanks necessary to address the urgent security and/or safety concerns in the CO that [AK] had raised to [KH]. [The Applicant] acknowledged that this installation was "the first step towards addressing the security concerns" in the CO.

53. The Tribunal notes that both the Applicant and MA testified that the first phase of the construction, for which LA was paid USD86,000, significantly improved the security of the OHCHR premises. The Respondent does not rebut these testimonies with other evidence, for instance, to show that the first phase of the construction had no or insignificant value and/or the construction costs of USD86,000 were unreasonably excessive, but rather submits that the testimonies of the Applicant and MA have no evidentiary value without explaining the reason(s) and that the Applicant breached procurement procedures. Also, in the sanction letter, it is not argued that the first phase of the construction was not an improvement but rather that the monies spent thereon could not be recuperated.

54. In the absence of any other evidence, the Tribunal finds that the Applicant has established that the first phase of the construction indeed improved the security of the OHCHR premises. Without further evidence, it is also not possible to quantify in a monetary value how much this improvement is worth. Given, in particular MA's unequivocal testimony on the effectiveness of the improvement, the Tribunal, however, finds that it cannot be held to be worth less than USD86,000, also considering that the first phase of the construction has been in use since 2018 and is apparently still functioning.

55. Consequently, since the Respondent has failed to establish that the Organization incurred a financial loss of USD86,000 under either of the relevant evidentiary standards (the preponderance of evidence or the presumption of

regularity), the Tribunal grants the application in this regard and rescinds the decision to seek a financial recovery of USD86,000 from the Applicant.

Conclusion

56. It is ORDERED that:

a. The disciplinary sanction is upheld;

b. The financial recovery of USD86,000 under staff rule 10.1(b) is rescinded.

(Signed)

Judge Francis Belle
Dated this 25th day of June 2025

Entered in the Register on this 25th day of June 2025
(Signed)
Isaac Endeley, Registrar, New York