UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/041
Judgment No.: UNDT/2025/047
Date: 16 July 2025
Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: Liliana López Bello

SAMARASINHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Elizabeth Gall, UNDP

Introduction

1. The Applicant, a staff member of the United Nations Development Programme ("UNDP"), filed an application contesting the decision of 20 August 2024 by UNDP to extend his placement on Administrative Leave Without Pay ("ALWOP") from 25 August 2024 to 24 November 2024.

Factual background

2. The Applicant joined UNDP on 6 March 2001. Effective 1 July 2009, the Applicant serves on a permanent appointment.

3. From 1 January 2019, UNDP seconded the Applicant to the United Nations Development Coordination Office ("UNDCO") as Resident Coordinator to Fiji, Solomon Islands, Tonga, Tuvalu and Vanuatu, at the D-1 level.

4. On 8 May 2023, [Dr. BJ], the British High Commissioner to Fiji, wrote a letter to [JF], Deputy Director, Investigations Division, Vienna Regional Office, Office of Internal Oversight Services ("OIOS"), to initiate an investigation into reports of prohibited conduct of the Applicant, at that time Resident Coordinator to the Pacific, based in Suva.

5. The complainant solicited an investigation on a safeguarding/sexual harassment incident on 19 April 2023 at the New Zealand Official Residence, Suva, where the Applicant allegedly insisted in offering a lift home, and in which he intervened to protect and support the victim; the same victim was allegedly further sexually harassed by the Applicant on trip to Solomon Islands on 3 May 2023, where she was insistently invited to his hotel. The complainant further solicited an investigation on other historical cases of sexual harassment (including, among others, sending of unwelcome message to a young consultant and inviting her to meet the Applicant), of which he wrote he had oral testimony although was not a direct witness, and an investigation on misuse of alcohol by the Applicant while in an official capacity. Finally, on the unprofessional close relationship of the Applicant with the former Attorney General of Fiji, [Mr. ASK], as the Applicant made representations on [Mr. ASK]'s behalf, at a point where [Mr. ASK] was

outside government and under police investigation for misuse of office (adding that "it also resulted, during Fiji's elections, of the Applicant losing political objectivity and regularly speaking out in favour of [ASK] and his Fiji First party").

6. Considering that alcohol consumption, harassment by the Applicant and his politically improper relationships in Fiji, were not commensurate with the significant authority invested in the Applicant in his role as Resident Coordinator, the letter concluded that the British High Commissioner, as his New Zealand colleague has done, "will no longer invite the Applicant to diplomatic functions to protect his guests", given that 'the Member States' diplomatic relationship with, and respect for the most senior UN representative in the Pacific has been irreparably damaged".

7. Two days later, on 10 May 2023, the Assistant Secretary-General for Development Coordination ("ASG/DCO") placed the Applicant on Administrative Leave with Pay ("ALWP") for three months. The letter placing the Applicant on ALWP partly indicates that the ASG/DCO had received a report from OIOS stating that the Applicant may have engaged in possible unsatisfactory conduct, which may rise to the level of misconduct if substantiated.

8. On 12 May 2023, OIOS informed the Applicant that it had initiated an investigation against him. OIOS stated:

> Specifically, it was reported that in the context of a recent official gathering at an official governmental residence, you made unwelcome advances towards a female guest and a United Nations staff member. Other allegations of prohibited conduct implicating you in violation of the provision(s) of the Secretary-General's Bulletin on 'Addressing discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2019/8)' have also been received. Please be advised that OIOS has initiated an investigation into the matter in accordance with its mandate described in ST/SGB/273 (7 September 1994) and with ST/SGB/2019/8 ("Addressing discrimination, harassment, including sexual harassment, and abuse of authority").

9. On 8 September 2023, the AS/DCO extended the Applicant's ALWP from 10 August 2023 to 24 November 2023.

10. On 24 November 2023, the Applicant's assignment as Resident Coordinator ended, and he returned from secondment to UNDP.

11. On the same day, the Assistant Secretary-General/Director, Bureau Management Services ("ASG/DBMS"), UNDP, placed the Applicant on ALWP from 25 November 2023 to 24 February 2024 pursuant to chapter 2, section 1.3 of the UNDP Legal Framework for Addressing Non-Compliance with United Nations Standards of Conduct ("UNDP Legal Framework").

12. The OIOS interviewed the Applicant on five separate days, from 20 to 24 November 2023.

13. On 1 December 2023, the ASG/DBMS converted the Applicant's ALWP to ALWOP until 24 February 2024. In his notice converting the Applicant ALWP to ALWOP, the ASG/DBMS stated:

> The present letter serves to inform you that, pursuant to Chapter 2, Section 1.3 of the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct, I consider it appropriate to convert your administrative leave with pay to administrative leave without pay from 1 December 2023 through 24 February 2024. The reasons for this decision are set out in my letter to you of 24 November 2023. In addition, OIOS has confirmed that there is preponderance of evidence that you engaged in the alleged conduct and the alleged misconduct is of such gravity that it would, if established, warrant separation or dismissal under Staff Rule 10.2 (a) (viii) or (ix). Please note that this decision to place you on administrative leave without pay does not constitute a disciplinary measure and is without prejudice to your rights as a staff member. As the investigation progresses, your administrative leave status will be reviewed and may be altered, extended or rescinded as circumstances warrant.

14. On 24 January 2024, the Applicant filed an application requesting suspension of action ("SOA") of the implementation of the decision converting his ALWP to ALWOP, pending management evaluation. By Order No. 9 (GVA/2024), the Dispute Tribunal rejected the SOA application.

15. On 9 May 2024, the Applicant filed an application on the merits challenging the decision to convert his ALWP to ALWOP. The case was registered as UNDT/GVA/2024/015, which the Applicant later withdrew from the Tribunal and was disposed of by Order No. 141 (GVA/2024).

16. The Applicant's placement on ALWOP was extended by ASG/DBMS on two other occasions, from 25 February to 24 May 2024 and from 25 May to 24 August 2024. The Respondent avers that the Applicant did not challenge these extensions of his ALWOP.

17. On 31 May 2024, OIOS provided the Applicant with a copy of its draft investigation report. The Applicant provided comments on the draft report to OIOS in June 2024.

18. The OIOS investigation found that:

> (i) From July to August 2011, Mr. Samarasinha engaged in unwelcome flirting and sexual innuendo towards V01, which made her feel uncomfortable. In early-August 2011, after attending a party at Mr. Samarasinha's house and falling asleep in his living room, V01 awoke in his bed, with him laying on top of her, hugging her and rubbing his genitals against her; (ii) In 2018, during an official meeting Mr. Samarasinha patted V02's knee. On a different occasion he touched her shoulder making her feel uncomfortable. In late-2022 or early-2023, during a function at Mr. Samarasinha's house, she noticed him staring at her breasts when her infant daughter accidently exposed her while she was breastfeeding; (iii) In April or May 2019, during an official trip to Nadi, Mr. Samarasinha repeatedly asked V03 to come over to his hotel for "drinks", making her feel uncomfortable; (iv) From 2019 to 2023, Mr. Samarasinha made comments and sent V04 a vast number of messages of a sexual nature. On two occasions, whilst masturbating, he placed videocalls to V04. He also invited her to take drugs with him; (v) In 2019, Mr. Samarasinha sent V05 messages referring to her as "fiery" and "hot" and asking about her boyfriend. He also asked her to send him photographs of herself. On a different occasion, during an official mission, he repeatedly put his hand on her waist and hips, making her feel uncomfortable; (vi) In late-2020, Mr. Samarasinha called V06 late at night asking to meet. On another occasion he asked her to send him photographs of herself. One night after a social event, Mr. Samarasinha forcefully kissed V06, touched her breasts, buttocks, hips, legs, and put his hand inside her pants; (vii) Mr. Samarasinha repeatedly instructed Mr. S to run personal

> errands for him, to drive his family and friends, to disobey traffic laws and to work unnecessarily late into the evening. Mr. Samarasinha also asked Mr. S to buy marijuana for him, after the latter told him that, in his youth, he had sold drugs; (viii) Mr. Samarasinha repeatedly instructed Ms. M to perform personal tasks for him and his family, including visa applications. Mr. Samarasinha also instructed Mr. M to prepare an official Note Verbale for the Fijian Immigration Department to facilitate the issuance of entry visas for his friends who were visiting Fiji on holidays; (ix) In 2020 and 2023, Mr. Samarasinha displayed inappropriate behaviour at official functions, including excessive consumption of alcoholic drinks and making female guests uncomfortable. (x) Mr. Samarasinha had a close personal relationship with Mr. [ASK] and, in February 2023, he publicly stated that Mr. [ASK] should leave Fiji and advocated for the grant to him of political asylum. Based on the evidence adduced, OIOS refers this case for appropriate action.

19. On 20 August 2024, the ASG/DBMS extended the Applicant's ALWOP until 24 November 2024 (contested decision).

20. Further, on the same day, OIOS submitted its final investigation report to UNDP. The Respondent indicated that UNDP was still reviewing the investigation report to take appropriate action under Chapter III of the UNDP Legal Framework.

21. The Applicant requested management evaluation of the contested decision on 8 October 2024.

22. On 17 October 2024, the Associate Director of UNDP issued his decision and decided to uphold the contested decision.

23. On 23 October 2024, the Applicant filed the present application.

24. The Respondent filed a reply on 22 November 2024.

25. After many issues between the parties, which will be referred to down here extensively and which required to be ruled on by many orders by the Tribunal, the parties filed their closing submissions on 30 June 2025.

Submissions

Applicant's submissions

26. The Applicant's position is that the original decision placing him on ALWOP was based on a single non-existent allegation of sexual harassment. A decision that was subsequently extended on the same basis, and not on any other considerations. In her letter of 1 December 2023, the ASG/DBMS makes clear that she had not considered either the evidence against the Applicant or the matters subject to investigation. She indicated that her decision was taken not pursuant to her own assessment of these but instead results from OIOS having told her that a preponderance of evidence existed, and that misconduct, if proven, would warrant separation or dismissal.

27. The Applicant submits that the circumstances had clearly changed by 20 August 2024, when OIOS had delivered its report to UNDP. At the time of the 20 August 2024 decision, the decision maker was in possession of the final OIOS investigation report and the Applicant's comprehensive 125-page response with attached material evidence provided in May and June 2024, which clearly debunked the rationale for the original decision. Yet, the decisionmaker failed to make an objective assessment of the evidence (or lack of) when her decision was made to extend the ALWOP despite having in her possession the Applicant's extensive exculpatory evidence and instead chose to base her decision solely on the incorrect assessment of OIOS, on which she based her 1 December 2023 decision.

28. The Applicant maintains that even if the 1 December 2023 decision was deemed lawful, as per the UNDP Legal Framework, the decision maker is required to consider all evidence before her at the time each subsequent decision is taken related to the same matter, and not on a selective and prejudicial review of the information available to her. A considered review of all the evidence, including documents and witnesses presented by the Applicant, which the Respondent was required to undertake, would not meet the threshold of evidence that would lead to his separation or dismissal.

29. In his closing remarks, the Applicant raises the issue of due process violations due to the long time the investigations have taken. He indicates that the number of working days between the time the allegations of wrongdoing were reported to OIOS on 5 May 2023 and the issuance of the Charge Letter on 4 February 2025 exceeded 446 working days. The number of days since the Respondent received the final investigation report on 20 August 2024 and the date until when the Applicant's ALWOP has been currently extended (24 August 2025) exceeds 252 working days or one year, thus violating the minimum guarantees of due process that he is entitled to.

30. The Applicant further contends that in this case, no extraordinary circumstances requiring such inordinate delays are stated. The seriousness of the allegations in and of themselves do not constitute extraordinary circumstances. Moreover, there is no justification for depriving him of income during this time. The Applicant states that in addition to not paying his salary, the Administration has withheld payment of health insurance and contributions to the United Nations Joint Staff Pension Fund and delayed payment of education grants for six months.

31. The Applicant also opines that the contested decision is inconsistent with the principle of presumption of innocence. Without providing proof, the Applicant argues that UNDP's refusal to authorize him to seek or engage in alternative employment during the prolonged period of administrative leave without pay has materially compounded the punitive and coercive effect of the extended measure. This denial, absent any formal disciplinary sanction, effectively deprived him of any means of livelihood and professional continuity, amounting to a disproportionate restriction inconsistent with the principle of presumption of innocence and contrary to the spirit and protections enshrined in staff rule 10.4 and relevant UNDP administrative practices.

32. As a way of remedies, as finally specified in para. 129 of his closing submissions, the Applicant requests:

a. The rescission of the decision dated 20 August 2024 extending his placement on ALWOP;

b. The rescission of his placement on ALWOP dated 1 December 2023;

c. His retroactive reinstatement to the status quo prior to 1 December 2023;

d. The award of USD10,000 in legal expenses for abuse of process by the Respondent;

e. Reimbursement of costs of obtaining independent forensic reports; and

f. Any other relief the Tribunal deems appropriate in the interests of justice and in view of the Respondent's egregious conduct.

Respondent's submissions

33. The Respondent's case is that the contested decision was lawful. Based on a rational review of the information available to the ASG/DBMS, the statutory criteria for extending the Applicant's ALWOP under staff rule 10.4 and paragraph 42(a) of the UNDP Legal Framework were met.

34. The Respondent argues that prior to the contested decision, OIOS updated UNDP on the status of the investigation and its findings. OIOS provided UNDP with the draft OIOS investigation report dated 31 May 2024, which had been shared with the Applicant, and confirmed that, following receipt of the Applicant's comments on the draft report, there were no significant changes to OIOS's findings. The draft OIOS report detailed the evidence supporting the factual findings, which included testimonial evidence from victims, complainants, and other witnesses, the corroborating evidence of allegations against the Applicant, and documentary evidence.

35. The draft report also detailed the Applicant's response to the allegations in his subject interviews and his submissions to OIOS from 29 November 2023 to 18 January 2024, which included over 200 documents. The draft report further contained a credibility assessment of the victims of sexual misconduct, as well as the Applicant's Driver, Executive Assistant, and reports from Government officials. OIOS concluded that the testimony from these individuals was credible and that the

Applicant's accounts to date were not persuasive, relevant, or supported by evidence.

36. The Respondent, therefore, opines that the evidence presented in the draft report was sufficient to demonstrate a preponderance of evidence that the Applicant engaged in sexual harassment, harassment, sexual assault, misuse of office, abuse of authority, and interference with an investigation. Such alleged misconduct by a senior official at the D-1 level was of such gravity that it would, if established, warrant separation or dismissal.

37. The Respondent also seeks to respond to other claims advanced by the Applicant. He maintains that the scope of the Application must be limited to the contested decision. The Applicant's allegations that earlier decisions relating to his administrative leave are unlawful are not relevant. It is well-established that a decision to place a staff member on administrative leave is distinct from any subsequent decision to convert or extend the administrative leave. Each such decision is a separate administrative decision.

38. Regarding the Applicant's claim that, in taking the contested decision, the ASG/DBMS relied solely on the information provided by OIOS before taking the 1 December 2023 ALWOP decision, the Respondent argues that such a claim has no merit. The information available to the ASG/DBMS at the time of the contested decision included updates from OIOS in June and August 2024 regarding the status of the investigation.

39. The Applicant's submissions that the ASG/DBMS failed to take account of the final OIOS investigation report similarly have no merit. Contrary to the Applicant's submission, the outcome of the management evaluation did not state otherwise. The evidence demonstrates that OIOS sent the final investigation report to the Administrator after the ASG/DBMS had already signed the 20 August 2024 letter extending the Applicant's ALWOP. At the time of the contested decision, the Office of Audit and Investigations ("OAI"), an independent office of the UNDP that holds the mandate for investigating UNDP staff members, was conducting its review of OIOS's final investigation report.

40. Further, contrary to his claims, evidence provided by the Applicant to OIOS during the investigation was duly taken into account by the ASG/DBMS. The information available to ASG/DBMS included the Applicant's responses to the allegations against him during his subject interview, and his submissions and evidence presented to OIOS from November 2023 to January 2024. In its draft investigation report, OIOS considered that the Applicant's defences to the allegations were not persuasive, relevant, or supported by the totality of the evidence.

41. In addition, OIOS confirmed that the Applicant's comments on the draft investigation report would not lead to significant changes to the findings in the report. It is not the role of the ASG/DBMS to usurp OIOS or OAI in conducting their assessment of whether the Applicant's comments warranted any changes to the findings in the final investigation report, having regard to the totality of evidence gathered during the investigation.

42. Contrary to the Applicant's assertion, the ASG/DBMS did not apply the wrong evidentiary standard. The evidentiary standard for taking an interim measure to place a staff member on ALWOP is not the same as the standard required to finally separate or dismiss a staff member at the end of a disciplinary process. The standard to be applied to extend the Applicant's ALWOP is "preponderance of evidence". The Applicant may only be separated or dismissed if the facts establishing misconduct are established according to the "clear and convincing" standard. Further, the ASG/DBMS, does not decide on the imposition of a disciplinary measure: this authority rests with either the Administrator or is delegated to the Associate Administrator.

43. Contrary to the Applicant's assertions, if one of the allegations against him in the initial reports of alleged misconduct to OIOS is not substantiated in the draft investigation report, such a circumstance would not render the contested decision unlawful. OIOS received reports of allegations of misconduct from multiple complainants and witnesses. Numerous witnesses provided accounts of the Applicant's inappropriate behaviour towards other women. Only six women agreed

to participate in the investigation, with others providing various reasons for their reluctance to cooperate, including fear of retaliation.

44. In relation to the Applicant's claim that the investigation breached his due process rights, the Respondent avers that such claims may be properly advanced by the Applicant during any disciplinary process following the conclusion of the investigation.

45. In view of the above, the Respondent requests the Tribunal to dismiss the application.

Consideration

Preliminary procedural issues.

46. The parties disputed many issues on a purely procedural ground, requesting this Judge to rule on them on different occasions. As the outcome is relevant to the present judgment, it is worth recalling the issues and the orders issued by the Tribunal on them.

Issues determined in Order No. 8 (GVA/2025)

47. On 23 December 2024, the Applicant, who was represented by Counsel, Mr. Manuel Calzada, in these proceedings, personally sent to the Registry a document titled "motion to withdraw the application and suspend proceedings" indicating his wish to "withdraw the … application on the merits" in the present case and noting that "the contested issue is being addressed through other mechanisms and does not require a remedy through the Tribunal at this time".

48. The motion was sent directly by the Applicant to the Registry from his personal email and, on the same day, the Respondent was informed of the said filing by an automatic notification from the e-filing system.

49. The motion was not included in the case record nor processed at the time due to an oversight, and it was not submitted to the judge, as no judge was assigned to the case at that time

50. On 1 February 2025, the case was assigned to the undersigned judge.

51. On 6 February 2025, this Tribunal issued Order No. 4 (GVA/2025), which was communicated to the parties, ordering, *inter alia*, a hearing in Geneva, with attendance in person, in the present case.

52. Having received Order No. 4 (GVA/2025), the Respondent submitted an inquiry on 6 February 2025 stating:

> I see from the procedural history outlined in the order that there was no reference to the Applicant's motion to withdraw his application in this case (UNDT/GVA/2024/041) filed on 23 December 2024. Would it be possible to update the parties on the status of the motion?

53. On the same day, following the Respondent's inquiry, the Applicant sent an email to the Registry and the Respondent indicating the following:

> In light of this order, the absence of no active legal representation at the time the request was made due to sudden ill health of counsel and no progress "through other mechanisms" as referred to in the communication, kindly allow me to confer with counsel and revert to you by tomorrow as to whether we still wish to proceed in this matter.

54. On the same day, the Registry, on its own, wrote to the parties acknowledging receipt of the parties' communications and apologized for "any inconvenience caused by the oversight regarding the Applicant's motion for withdrawal filed on 23 December 2024".

55. On 6 February 2025, the Applicant personally submitted, via the e-filing portal, a motion withdrawing his 23 December 2024 motion to withdraw his application upon consulting his Counsel. He stated that the motion of 23 December 2024 was made without the advice of his Counsel, who was ill, and was made by the Applicant "under great duress," which could be certified by his psychiatrist. He requested the Tribunal to proceed with the case as per Order No. 4 (GVA/2025).

56. On 7 February 2025, the matter for the first time was brought to the attention of the undersigned Judge, who instructed the Registry to include the motion for withdrawal filed on 23 December 2024 into the case record, reserving any assessment of its value. This Judge further instructed the Registry to order the Respondent to comment on the new motion.

57. On 10 February 2025, the Tribunal requested the Respondent to submit comments on the Applicant's latest motion to withdraw the motion that he had submitted on 23 December 2024.

58. On 10 February 2025, Counsel for the Applicant filed a response to Order No. 4 (GVA/2025), stressing that the situation the Applicant complained of is ongoing and asking for an examination of the case on the merits in the interest of justice and fairness. Among others, Counsel for the Applicant requests that the case proceed and be heard on its merits, stating that:

> As matter of the best interests of justice, it is respectfully submitted that the proceedings must be heard on the merits. The Applicant welcomes the opportunity for witnesses, and himself included to be examined truthfully and transparently.

59. On 11 February 2025, the Respondent submitted his comments and opposed the Applicant's motion to withdraw his 23 December 2024 motion to withdraw his application, stressing that:

> An applicant cannot approbate and reprobate in proceedings before the Dispute Tribunal, that is, adopt different positions with respect to pursuing his or her application. Such conduct is an improper use of the legal process and wastes judicial resources.

60. The Respondent, among others, argued that various grounds advanced by the Applicant in the motion and the submissions filed on 7 and 10 February 2025 for changing his position concerning the pursuit of his application are not supported by evidence. He asserted that:

> To allow the withdrawal puts at risk the proper conduct of appeals before the Tribunal as future applicants may adopt inconsistent positions depending on the case management or other order issued by the Tribunal during the course of the proceedings.

61. Accordingly, the Respondent requested the Tribunal to dismiss the motion and grant the motion to withdraw filed on 23 December 2024.

62. On 12 February 2025, while not requested by the Tribunal, the Applicant personally filed a rejoinder to the Respondent's comments. He recalled having already submitted that Applicant's legal counsel was unavailable due to illness in December 2024 and that he is prepared to provide a certification from the psychologist and medical doctor treating him during the period in question for depression and anxiety directly related to these proceedings. The Applicant continued to plead that the case proceed to the hearing on the merits as contained in Order No. 4 (GVA/2025).

63. In an annex to the rejoinder, the Applicant indicated that he had been notified on the same day that his ALWOP would be extended for a further three months from 24 February 2025 until 23 May 2025. He added that due to the effect of this long-lasting measure, he had remained without any income for a long time and was unable to support his young family. He insisted on hearing his witnesses, stating that a late justice is a denied justice.

64. The Tribunal, aware that there was a legal dispute between the parties about the effects of the motion for withdrawal filed personally by the Applicant on 23 December 2024 and about the legal possibility of withdrawing the motion (as made on 6 and 10 February 2025 by the Applicant personally and by his Counsel respectively), by said Order No. 8 (GVA/2025) invited the parties to answer six specific questions on the matter:

> a. First. In this case, does the withdrawal have a substantive impact or only a procedural effect? If the withdrawal has no substantive impact but only a procedural effect, who has the legal standing to submit the withdrawal, the Applicant or his/her legal counsel, or both? What is the legal means to convey the motion to the Tribunal? Is it lawful that an Applicant represented by counsel directly send a motion to the Registry?

> b. Second. Assuming a motion has been lawfully transmitted, when does the extinction of the proceedings come into play? When the motion is filed or when the judicial order ruling on the motion is issued? Can the Judge consider Case No. UNDT/GVA/2024/041 Order No. 8 (GVA/2025) Page 6 of 7 any event supervening the original motion that occurred before the ruling on the motion?
>
> c. Third. Is it possible to withdraw a motion for withdrawal before the Judge rules on it? If so, under which conditions?
>
> d. Fourth. Is the Applicant required to invoke vices of his will, saying, for instance, that there was an error or duress, or is it just his/her choice to continue or not continue the proceedings?
>
> e. Fifth. Could the order ruling on the withdrawal be directly appealed before the United Nations Appeals Tribunal, or could its content be appealed only by appealing the final judgment if the proceedings continue?
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> f. Sixth. Given that it results from the records that the ALWOP was prolonged and considering that in this situation, it could be foreseen that another application, similar to the present, be filed in the next future on the same matter of contentions (the same facts being the ground for the measure which is repeatedly extended and repeatedly challenged by the Applicant), would the parties find it useful or not to have a hearing on the merits in the present case to assess the matter once and for all? In the affirmative, and if the Tribunal would allow the Applicant to withdraw his motion to withdraw dated 23 December 2024, would the parties agree not to appeal the respective Order to allow these proceedings to continue?

Issues determined in Order No. 19 (GVA/2025)

65. On 28 February 2025, the parties expressed their views on the issues mentioned above, as requested.

66. In particular, the Applicant stressed that the Tribunal generally requires that, when an Applicant is represented by Counsel, motions be submitted through the designated legal counsel and that the leniency and flexibility in terms of format and procedure, at times extended by the Tribunals to self-represented litigants, is usually not extended to applicants represented by Counsel. It further highlighted that the United Nations Appeals Tribunal ("UNAT") and the International Labour Organization Administrative Tribunal ("ILOAT") have similarly emphasized that procedural integrity requires adherence to formal representation unless explicitly waived. The correct procedural means to deliver to the Tribunal in cases of

applicants represented by counsel is precisely through counsel, and in the proper format outlined in the Rules of Procedures. To allow represented applicants to submit *pro se* without dismissing counsel would lead to procedural anarchy and confusion and possibly interfere with counsel's strategy. According to the Applicant, in this instance, had the Registry timely identified the purported motion, it would be reasonable to assume that it would have reached out to his Counsel to ensure compliance with form and substance, which is clearly absent from the Applicant's own submission.

67. The Respondent filed his submission after the deadline assigned (so unduly benefiting from additional time to read and contrast the counterparty's submissions on the disputed issue), recalling the principles established in *Sheykhiyani* UNDT/2009/023 as a guidance to the Tribunal in considering motions to withdraw. Under those principles, the Tribunal considers whether the motion itself clearly and unequivocally demonstrates the Applicant's intention to withdraw the application and thereby it ends the proceedings. In any case, procedural law does not tolerate to turn back the clock, as reasons of security and reliability tie the parties to their statements unless there are exceptional circumstances to warrant the withdrawal of a motion for withdrawal (and the burden of proving these circumstances is on the Applicant). Accordingly, apart from these exceptional situations, a party cannot approbate and reprobate, and the Tribunal has an obligation to protect the processes of the Tribunal from abuse and to do justice to both parties. The unequivocal principle established under *Sheykhiyani* is that mere error or a change of mind would not be a proper basis for the Tribunal to grant the Applicant's request to withdraw the motion to withdraw.

68. On 1 March 2025, the Applicant filed a motion to dismiss the Respondent's late submission *ratione temporis* as it was filed at 11.35 p.m., beyond the prescribed deadline (COB Geneva on 28 February 2025) pursuant to Order No. 8 (GVA) 2025, in violation of article 19 of the United Nations Dispute Tribunal ("UNDT") Rules of Procedure.

69. On 3 March 2025, the Respondent filed a response on the issue of timeliness raised by the Applicant in his motion of 1 March 2025. The Respondent maintains that his submission filed on 28 February 2025 was timely filed.

70. On 4 March 2025, the Applicant filed further submissions insisting that the Respondent's submission filed electronically at 11:35 p.m. on 28 February 2025 was filed after COB UN Geneva and after the closure of the UNDT Geneva usual working hours, and as such should be deemed to have been filed at the start of the next working day, Monday 3 March 2025, and beyond the deadline clearly established by Order No. 8 (GVA/2025).

71. By Order No. 19 (GVA/2025), the Tribunal recalled the relevant rules applicable to the matter, as follows:

72. Article 12 of the UNDT Rules of Procedure states that:

> 1. A party may present his or her case to the Dispute Tribunal in person, or may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction.
>
> 2. A party may also be represented by a staff member or a former staff member of the United Nations or one of the specialized agencies.

73. The Tribunal's Practice Direction No. 2 on Legal Representation states as follows:

> 3. A party may present his or her case to the Tribunal in person, or may designate counsel as per art. 12 of Rules of Procedure of the Tribunal
>
> ….
>
> 5. A party may change counsel at any time during the proceedings. The Tribunal shall be notified immediately […]

74. Although the Tribunal's Rules of Procedure contain a provision for summary judgment, there are no specific provisions regarding discontinuance, abandonment, want of prosecution, postponement, or withdrawal of a case in the Tribunal's Statute or Rules of Procedure. However, abandonment of proceedings and

withdrawal of applications are not uncommon in courts and generally result in a dismissal of the case, generally by way of an order.

75. Article 36 of the Tribunal's Rules of Procedure provides that:

> All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its Statute.

76. In this regard, reference was made to art. 19 of the Tribunal's Rules of Procedure, which states that the Tribunal:

> May at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

77. In this legal framework, the Tribunal preliminarily noted in general terms that, by a motion to the judge for withdrawal, an applicant can express his/her will to withdraw the application. This is not an act with necessary substantive effects, as the applicant can renounce to the proceedings, but not to the substantive right (which can have a different legal protection by other means).

78. It had to be added that, in a proceeding concerning employee's rights where the staff member challenges an administrative decision (and is required to do it within a strict timeframe), the interest in the dispute is only on the Applicant, and the Respondent has no specific interest in the judgment (because the interest of a final solution of the dispute is satisfied also by any decision which close the dispute even only for procedural reasons, as the staff member is foreclosed in any case to present his/her case again before the judge once the deadline for the application has elapsed; in addition, the Respondent is represented by his own counsel and has no legal expenses to claim). These are reasons why no acceptance by the Respondent of the Applicant's withdrawal is required in the system (different from what is provided in some national systems, especially in civil law countries).

79. Having so said, when the Applicant is represented by Counsel, the legal standing in the proceedings is only of the Counsel, and the Applicant can only express his/her views and will only do so through the appointed representative (unless for specific activities requiring a personal intervention, such as a testimony). In other terms, in the said situation there was no concurrent legal standing, as judicial activities can be performed only by the appointed Counsel.

80. In theory, a practical approach could have suggested a different interpretation allowing a concurrent legal standing of the Applicant in person and of his/her Counsel, particularly in relation to the statement that only the party in person can take and that the Counsel can only convey to the Tribunal.

81. However, contrary to this interpretation, it was the consideration of the prohibition, set generally in the lawyers' code of conduct, for the legal representative of each party to contact the counterparty, being necessary that any exchange occur through the mediation of the appointed counsel. In other terms, it is within the obligation of loyalty of the counsel to avoid any contact, even indirect (that is performed by third persons, other than the Applicant's representative), with the party who is represented by counsel.

82. The same is for the Registry, moreover when the Applicant and the Registry are part of the same Organization: their relation must be only formal, always through the appointed counsel, being incompatible with the impartiality of the Registry to have any contact with the parties directly, without the necessary intermediation of their counsel.

83. The Tribunal is of the view that any different practice is not consistent with the formal rules of the judicial proceedings and with the impartial role of the Registry.

84. The same principle applies to the exchanges between the parties, which have no legal procedural value till the moment they are conveyed in the records of the proceedings.

85. In accordance with article 12 of the Tribunal's Rules of Procedure and paragraphs 3 and 5 of Practice Direction No. 2, the Applicant may decide to represent himself at any time in the proceedings, but his/her determination on his/her representation must be formally expressed and conveyed to the Tribunal in a formal way, by a withdrawal of the power of attorney already conferred to the Applicant's Counsel.

86. This led to the conclusion that - when the applicant is represented by counsel- any document directly filed (notably, through informal channels, like a private email) by an applicant in person - to the Registry or to the counterparty- is not lawfully filed in the proceedings, and therefore does not produce any effect. As such, the Registry shall not (and can even refuse to) put it in the records.

87. It follows that the same occurs for documents filed by the Administration (or its organs) without the intervention of the Respondent's Counsel.

88. The said principle applies also to the power of attorney conferred to the counsel, as an applicant is represented by his/her counsel till the moment he/she withdraws the legal power of attorney in a statement filed with the Tribunal, being instead irrelevant (for the representation in the legal proceedings) any statement expressed elsewhere by the applicant (for instance, by an email directly sent to the counterparty's counsel and not transmitted at the same time to the Tribunal).

89. A legal dispute is a formally regulated activity where the general practice emphasizes the importance of clear and consistent communication through appointed counsel. This approach ensures that the Tribunal can efficiently manage the proceedings and that the applicant's case is presented coherently, while accepting personal submissions by an applicant represented by counsel would create procedural confusion or disrupt the orderly administration of the case.

90. While applicants retain the right to self-representation, once counsel is appointed, all submissions are to be made through that counsel, unless the applicant formally changes his/her representation status.

91. In the Tribunal's case law, the person who generally conveys the Applicant's decision on withdrawal to the Tribunal is the Applicant's Counsel.

92. In *Adundo* UNDT/2014/009, it was Counsel for the applicants who stated that one of the Applicants wished to withdraw his case; the Tribunal advised Counsel for the Applicants that, in this event, a notice of final and full withdrawal, including on the merits, should be filed by the said Applicant.

93. Hence, all exchanges were between the Tribunal and the Counsel, even if the substantive decision on withdrawal was to be made by the Applicant personally.

94. In *Giles* UNDT/2012/194, the Applicant informed the Tribunal that "having recently been advised concerning the receivability issues in the case by new Counsel", she wished to withdraw her application. The Tribunal, in light of what it construed to be an equivocal withdrawal, held a case status discussion to ascertain the precise nature of the Applicant's withdrawal; there, the Applicant's new Counsel intervened and confirmed the withdrawal and its content and extension; the Applicant's Counsel confirmed that the Applicant understood that this was not a withdrawal without prejudice or with a reservation of the Applicant's right to reinstate any issues or claims.

95. In *De Graaf*, Order No. 186 (NY/2015), where the Applicant was legally represented, "Counsel for the Applicant acted sensibly, following guidance given at the case management discussion, by requesting time to have discussions with the Applicant".

96. In addition, the Tribunal notes that, in presence of a motion filed by the legitimate person, a judicial order accepting the motion is essential for the extinction of the proceedings to come into play, that is for the effects of the withdrawal to be produced; indeed, the effects on the proceedings, although caused by the motion, are produced only at the moment of the order, when the judge accepts the motion and acknowledges the will of the Applicant, the legal standing of the withdrawer, the lack of any apparent vices, and the exhaustiveness of the withdrawal.

97. This process ensures that the withdrawal is formally recognized and that the case is appropriately closed; the Tribunal retains the discretion to deny a withdrawal request if it deems that proceedings with the case are necessary to address significant issues or to prevent potential abuses of the judicial process. In practice, while the UNDT generally respects an applicant's wish to withdraw, it maintains the capacity to decline such requests in circumstances where the interests of justice require continued adjudication.

98. Between the moment the applicant files the motion and the judge rules on it, the Respondent is not without protection, as he can solicit the judge to rule on the motion and close the case.

99. In the Tribunal's view, a motion for withdrawal -lawfully filed- can be revoked. This interpretation is suggested by the need to keep offering protection to the person claiming a right, in accordance with the consideration that the closure of the proceedings depends exclusively on the expression of will of the Applicant (through his/her legal representative) and has no other reason, so that no competing interests require protection, as above recalled.

100. The power to invoke judicial protection of a staff member's right is his/her only business and the decision to proceed or not with the judicial proceedings rests upon his/her will only.

101. Moreover, allowing the Applicant's case to proceed does not place the Respondent at a disadvantage, as the case remains at the same procedural stage it would have been in, before the filing of the motion for withdrawal.

102. Therefore, the Tribunal disagrees with the statement in *Sheykhiyani*, which found that:

> once sent to the court a withdrawal of action cannot be made undone. In general procedural law does not tolerate to turn back the clock, as reasons of security and reliability tie the parties to their statements unless they were in error about their meaning.

103. It is important to stress, also, that -in contrast with the recalled precedent- no specific reason for withdrawing the motion for withdrawal must be offered, as no reason is required for withdrawal as well, being the effect based on the simple expression of will by the applicant. In other terms, even with a will to withdraw freely and lawfully expressed, the Applicant can revoke the motion (before the judge has ruled on it, of course) without giving a specific reason; he/she has not the burden to show any cogent and consistent arguments to establish that there are exceptional circumstances that would warrant the Tribunal to allow him to withdraw the motion to withdraw.

104. Moreover, like withdrawal does not require acceptance by the counterparty, also its revocation does not require any acceptance.

105. In its practice, the Tribunal issues an order to close a case following the applicant's motion to withdraw his/her application. The "extinction of the proceedings" is achieved by the issuance of an order to close the case.

106. Of course, there is a limit to the faculty of withdrawal, as established by the Appeals Tribunal in *Charles* 2014-UNAT-437, paras. 23 - 27, once the Tribunal has issued an order closing the case upon the applicant's motion for withdrawal, the Tribunal does not have competence to reinstate the application under its Statute.

107. This Tribunal follows this conclusion, which it finds applicable whatever could have been the reasoning by the Tribunal, and even if it did not assess properly the regularity of the withdrawal. Once closed, the case cannot be reopened anymore and an order on withdrawal has the substantive final effects of a judgment on the proceedings and it cannot be revoked; the only remedy to any error is an appeal. This is true to the point that the Respondent also noted that some Judges of the Tribunal have issued judgments, and not orders, upon such motions (such as in *Kamali* UNDT/2019/075).

108. Therefore, also the Respondent's objection - that there is no basis on which to distinguish the Tribunal's consideration of the Applicant's motion to withdraw his application in Case No. UNDT/GVA/2024/015 and his motion to withdraw in this case - fails, being the events different in the recalled cases (whatever was the

cause of that difference) and being only Case No. UNDT/GVA/2024/015 already closed.

109. Applying the said principles to the case at hand, the Tribunal noted in the mentioned order, and here confirms, that the Applicant in a statement personally filed on 23 December 2024 explicitly wrote that that "the contested issue is being addressed through other mechanisms and does not require a remedy through the Tribunal at this time"; his withdrawal was therefore intended to produce only procedural effects.

110. In the case, the motion for withdrawal was not properly filed through the Applicant's Counsel, who was the only person having legal standing for conveying the motion to the Tribunal, as mentioned above. Therefore, the Tribunal has to disregard it absent proper form and procedure. After that motion, the case remained active, at the same procedural stage; withdrawal was then revoked before it produced any effect.

111. The Tribunal considers that granting the Applicant's request does not reset the case but merely ensures that the substantive claims are heard as initially intended.

112. This Tribunal is well aware that, being the Applicant represented by Counsel, the same requirements of legal standing are required for the revocation of the motion for withdrawal. The Tribunal notes, however, that in the present case the revocation made by the Applicant personally was followed by a motion by his Counsel asking to proceed in the dispute.

113. The Applicant was (at that time) still represented in these judicial proceedings by his legal Counsel Manuel Calzada, as confirmed in the preliminary statement in the Applicant's response to Order No. 8 (GVA/2025), that stressed that "Legal Counsel …(was) duly appointed" and that "the Applicant at no stage having withdrawn the appointment".

114. In the Tribunal's view, Annex 2 of the Respondent's latest submission, which was filed late and whose content could be related to any ALWOP prolongation,

does not contain any specific reference to these proceedings and is not relevant to the present case for the reason already expressed above.

115. Therefore, the proceedings are not over. Accordingly, the matter can proceed to be examined on the merits in the interest of justice and fairness and can continue with the judicial activities planned as contained in Order No. 4 (GVA/2025).

116. The Tribunal consequently determined that the Applicant's motion dated 23 December 2024 to withdraw his application in Case No. UNDT/GVA/2024/41 was without any effect.

117. While the Registry -by an email on 6 March 2025- excluded the possibility to have an in person hearing for the present case, "due to the liquidity situation" of the Organization, which prevented any travel request for the Judge of the present case, the Tribunal issued Order No. 19 (GVA/2025) confirming the invitation to the parties to make their requests on evidence.

118. By Order No. 19 (GVA/2025), the Tribunal instructed by 11 March 2025:

> a. The Respondent to file the investigation report [issued by the Office of Internal Oversight Services ("OIOS")] in its final version including all annexes;
>
> b. The parties [to] provide the information required under paras. 25 and 32 of Order No. 4 (GVA/2025), and with their requests and observations on evidence, if any[…];
>
> c. The parties [to] submit all documents they find relevant for the disposition of the case, with the warning that any other production of documents after 11 March 2025 would be barred, except if a late production could be exceptionally justified.

119. By the same order, the Tribunal further instructed the parties to file their comments on the counter parties' requests and observations on evidence, if any, by Friday, 14 March 2025.

Issues determined by Order No. 27 (GVA/2025)

120. On 16 March 2025, the Applicant filed a second motion for leave to call additional witnesses and introduce witnesses' statements.

121. On 19 March 2025, the Respondent filed his response to the Applicant's submissions and motions filed on 14 and 16 March 2025.

122. On 23 March 2025, the Applicant filed his comments on the Respondent's submissions.

123. The Tribunal noted that the Respondent complied with Order No. 19 (GVA/2025) and submitted, on 11 March 2025, the investigation report together with an extensive number of attachments. The Respondent also indicated that he will not be calling witnesses as suggested by the Tribunal. The Applicant did not file any request for evidence by 11 March 2025, as instructed.

124. The Tribunal further noted that three days after the deadline, on Friday, 14 March 2025, the Applicant filed a request to call witnesses V04, V06 and Ms. A.M.C., Assistant Secretary-General, Assistant Administrator and Director, Bureau for Management Services, "to be examined and cross-examined on her decision of 20 August 2024".

125. The Applicant claimed that the Respondent did not include in his submissions in this matter interviews of a number of witnesses and other documents which may be exculpatory and requested the Tribunal to direct the Respondent to submit the totality of evidence acquired or collated in respect of the OIOS investigation report, and irrespective of whether it was relied upon by the investigators in its draft or final reports.

126. The Applicant also asked for leave to submit statements of exculpatory witnesses that the investigators declined or refused to approach.

127. The Tribunal observed in the mentioned Order, and here confirms, that the Applicant's requests submitted on 14 March 2025 (i.e., for oral evidence and for production of additional evidence) were time-barred, as they were filed after the deadline for requests on evidence. As such, they were inadmissible.

128. The Tribunal recalls that in *Abu-Hawaila* (2011-UNAT-118, para. 29), the United Nations Appeals Tribunal ("UNAT"), partly held that "exceptions to time limits and deadlines must be interpreted strictly and are not subject to extension by analogy".

129. The Applicant was well aware of the possibility of requesting the collection of said evidence (and in particular from the persons in question) before the deadline set for his evidentiary requests. Thus, the Applicant's requests for examination in chief of witnesses were time-barred as they had not been timely requested.

130. In addition, the cross-examination by the Applicant was not allowed because the Respondent did not ask for any examination.

131. In this regard, the Tribunal noted that, while it may allow some flexibility and tolerance when dealing with an Applicant who is self-represented, the same attitude cannot be expressed when the staff member is represented by a lawyer, well aware of the importance of legal action in the judicial proceedings in compliance with deadlines clearly set to the parties.

132. As to the request to order the Respondent to produce "the totality of the evidence collated" even if not considered in the final report, the Tribunal noted that, while such request may be in theory considered needed from the adversary filing, the request is generic and unsubstantiated, given that it does not show specific facts or source of evidence and aims in substance to a fishing expedition (see *Abdellaoui* 2019-UNAT-929, paras. 30 and 31).

133. Moreover, the lack of consideration of said evidence by the Respondent did not prevent the Applicant from directly and timely asking to summon the related witnesses.

134. The Tribunal finally noted that its task is not to investigate the facts relevant for the disciplinary profiles of the case, but only to assess if, in the factual situation at the time of the Administrative Leave Without Pay ("ALWOP") measure, the interim measure and its prolongation were justified in light of the facts as known by the Organization.

135. Given that the Tribunal carries out judicial review of an administrative decision, not an investigation of alleged misconduct, and considering that the parties filed lots of documents relevant to make this assessment properly, the Tribunal was of the view that the case is fully briefed, and that there was no need for a hearing to be ordered *ex officio*.

136. In light of the above and having reviewed the evidence on record and the parties' submissions to date, the Tribunal considered itself sufficiently informed to render its judgment without the need for additional disclosure of evidence or the holding of a hearing on the merits.

137. Pursuant to art. 19 of the Tribunal's Rules of Procedure, and for the fair disposal of the case, the parties were instructed to file their respective closing submission.

Issues determined in Order No. 59 (GVA/2025)

138. On 11 April 2025, the Applicant filed a notification indicating that he had terminated the services of Mr. Manuel Calzada, who had been his Legal Counsel in the proceedings since the case was filed. The Applicant further informed the Tribunal that he would be representing himself in the case, effective immediately.

139. On 14 April 2025, the Applicant filed a motion to rescind or vary Order No. 27 (GVA/2025). The Applicant submitted that his former Counsel failed to comply with his instructions and the Tribunal's Order due to gross negligence, including explicitly misleading the Applicant that Order No. 19 (GVA/2025) did not require him to file anything, failing to accurately understand and communicate the deadline, abandonment, and disappearance. The Applicant maintained that he was not aware of the procedural lapse contained in Order No. 19 (GVA/2025) until 28 March 2025 when Order No. 27 (GVA/2025) was issued.

140. In view of the above, the Applicant requested:

> a. Rescission or variation of Order No. 27 (GVA/2025) and allow him to [file further documentary evidence and submit a request for the examination of witnesses].

> b. The Tribunal to set new deadlines for him to file the closing submissions.
>
> c. The Tribunal to grant him such further or alternative relief as the Tribunal may deem just and proper.

141. On 22 April 2025, the Respondent filed his response to the Applicant's motion to rescind or vary Order No. 27 (GVA/2025). The Respondent opposed the motion on the ground that the Tribunal's judicial review of the contested decision is limited to whether the extension of the Applicant's Administrative Leave Without Pay was lawful, considering the information available to the Organization at that time. These proceedings are not a dress rehearsal for any potential future disciplinary proceedings, nor an investigation of alleged misconduct.

142. On 29 April 2025, the Tribunal issued Order No. 42 (GVA/2025), suspending the deadlines contained in Order No. 27 (GVA/2025).

143. Having examined the reasons stated by the Applicant for not complying with Order No. 27 (GVA/2025), especially as it relates to his former Counsel, the Tribunal notes that professional relationship issues between counsel and client are not under the Tribunal's jurisdiction. The United Nations Appeals Tribunal held that any error by counsel "is only relevant to the relationship between the client and his counsel, and does not affect the case before the UNDT" (See, *McCluskey* 2013-UNAT-384, para 20, *Kamal Karki* 2023-UNAT-1406, para. 54).

144. Accordingly, the Applicant remains responsible for and bound by his Counsel's acts. Therefore, the Applicant's request to vary Order No. 27 (GVA/2025) regarding his former Counsel's actions was rejected.

145. Regarding the motion for new evidence, the Tribunal noted that the Applicant had made a strong case for submitting new documentary evidence, as it supplements the existing evidence on record. Accordingly, the Tribunal allowed the requested new evidence on forensics reports as supervening and necessary to assess the veracity of evidence already in the records. At the same time, the Tribunal allowed the Respondent to file submissions on the Applicant's new evidence in his closing submissions.

146. On 28 April 2025, the Applicant filed a motion on what he termed as "motion on interim measures pending proceedings, request for anonymity, confidentiality and suspension of procedural deadlines".

147. Having reviewed the Applicant's submissions, the Tribunal found that the motion was about the issue of anonymity and the suspension of deadlines contained in Order No. 27 (GVA/2025).

148. Regarding the issue of anonymity, the Applicant requested that his case be anonymized, given his own personal circumstances, his family, and the nature of the allegations.

149. In his response filed on 6 May 2025, the Respondent opposed the motion. The Respondent argued, *inter alia*, that, on 10 December 2024, the Tribunal had already rejected the Applicant's request for anonymity by Order No. 140 (GVA/2024). The current motion did not raise any exceptional circumstances that warrant reconsidering the matter.

150. The Tribunal recalled that art. 11.6 of its Statute provides:

> The judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

151. In this respect, the United Nations Appeals Tribunal held in *AAE* 2023-UNAT-1332, at para. 155, that:

> There continues to be concerns raised regarding the privacy of individuals contained in judgments which are increasingly published and accessible online. In our digital age, such publication ensures that individuals' personal details are available online, worldwide, and in perpetuity. There are increasing calls for the privacy of individuals and parties to be protected in judgments.

152. It is well-settled case law that "the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and personal embarrassment and discomfort are

not sufficient grounds to grant confidentiality" (see *Buff* 2016-UNAT-639, para. 21).

153. The Tribunal also recalls that in its resolutions 76/242 and 77/260, adopted on 24 December 2021 and 30 December 2022 respectively, the General Assembly reaffirmed the principle of transparency to ensure a strong culture of accountability throughout the Secretariat

154. It follows that the internal justice system is governed by the principles of transparency and accountability. A deviation from these principles by means of anonymization requires that an applicant meet a high threshold for such a request to be granted.

155. In view of the above, the Tribunal agreed with the Respondent that the issue of anonymity was already settled by Order No. 140 (GVA/2024). In the latest motion, the Applicant did not raise any exceptional circumstances that warrant reconsidering the matter. The motion was thus rejected.

156. The Tribunal set 30 June 2025 as the new date for the parties to file their closing submissions. The Applicant's motion to rescind or vary Order No. 27 (GVA/2025), as it related to his former Counsel, was rejected. The Applicant's request to file further documentary evidence was granted.

157. In his request of 9 May 2025, the Applicant requested leave to admit as evidence a digital image (Annex 4) and the two independent forensic reports by KLDiscovery, UK and Epiq, Switzerland (Annexes 1-3). The Order granted this request.

158. On 9 June 2025, the Applicant submitted additional evidence.

159. In particular, the Applicant submitted for the Tribunal's consideration independent forensic analysis of his personal phone and iCloud account conducted by three internationally recognized expert firms. This was allowed, as mentioned by the Tribunal, which found that the new documentary evidence would supplement

the evidence already on record, and it was supervening and necessary to assess the veracity of the evidence already in the records.

160. The Applicant requested leave to admit new documents created or produced by him, notably the Applicant's response to the OIOS report, the charge letter, and the statements of supporting witnesses as corroborating evidence necessary to test the veracity of prior testimonial and investigative records.

161. On 16 June 2025, the Respondent replied to the Applicant's request, objecting that the submission of additional evidence did not comply with Order No. 059 (GVA/2025).

162. The Tribunal finds that, while the production of documents related to the forensic analysis was allowed under Order 59 (GVA/2025), the other documents were not allowed and cannot be allowed, as they aim to circumvent the deadline for admitting new witnesses' evidence set in Order 27 (GVA/2025).

Merits

Applicable law

163. Staff rule 10.4 (a) provides that:

> A staff member may be placed on administrative leave, under conditions established by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.

164. Staff rule 10.4 (c) states:

> Administrative leave shall be with full pay except (i) in cases where there are reasonable grounds to believe that a staff member engaged in sexual exploitation and/or sexual abuse, in which case the placement of the staff member on administrative leave shall be without pay, or (ii) when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.

165. Paragraph 40 of the UNDP Legal Framework for Addressing Non-compliance with UN Standards of Conduct provides that:

> Pursuant to Staff Rule 10.4, a staff member may be placed on administrative leave by the Assistant Administrator and ASG/DBMS, at any time from the moment allegations of wrongdoing are reported or detected, pending or during an investigation and until the completion of the disciplinary process. Placement of a staff member on administrative leave is normally with pay, unless exceptional circumstances warrant administrative leave without pay or with partial pay. In either case, the administrative leave is without prejudice to the staff member's rights and it does not constitute a disciplinary measure.

166. Paragraph 42 of the same Legal Framework provides that ALWOP may be contemplated in cases where:

> (a) On the basis of the information before him or her, there is preponderance of evidence that the staff member engaged in the alleged conduct and the alleged misconduct is of such gravity that it would, if established, warrant separation or dismissal under Staff Rule 10.2 (a) (viii) or (ix);
>
> (b) There is prima facie evidence of allegations of sexual exploitation and abuse.

Standard of review

167. In determining the Applicant's case, the Tribunal bears in mind that in considering this case, it does not seek to replace the decision-maker's role in coming to a determination. Rather, the Tribunal's role is limited to a judicial review of the process by which the decision-maker arrived at the decision being challenged (*Sanwidi* 2010-UNAT-084, para. 40).

168. Under the applicable legislative framework, the Administration is bestowed with the discretionary authority to impose a disciplinary or an administrative measure and the Dispute Tribunal is to determine if the decision is legal, rational, procedurally correct, and proportionate (considering whether relevant matters have been ignored and irrelevant matters considered, and also examining whether the decision is absurd or perverse). It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various

courses of action open to it, nor is it the role of the Tribunal to substitute its own decision for that of the Administration.

169. The standard of review is based on the presumption of innocence of the staff member, and not on the presumption of lawfulness of the administrative action, which rule in general the matter. It follows that the burden of prove of the facts the staff member is blamed of is on the Administration (*Islam* 2011-UNAT-115, para. 29).

170. The Tribunal also adds that the subject of this judgment is only the challenged decision, that is, the decision of 20 August 2024 by UNDP to extend the Applicant's placement on ALWOP from 25 August 2024 to 24 November 2024.

171. Instead, it is not at stake the further extension of the administrative measure, nor the disciplinary proceedings for the same facts. It is well-established that a decision to place a staff member on administrative leave is distinct from any subsequent decision to convert or extend the administrative leave. Each such decision is a separate administrative decision, even if the decision that simply extends the previous measure shares the same features.

172. In assessing the lawfulness of the ALWOP measure, it is relevant to consider the situation existing at the time the measure was taken and the information available at that time.

173. This does not exclude, however, taking into account supervening facts that can undermine the grounds for the measure to be justified or evidence collected during the judicial proceedings that can be relevant to assess the facts.

174. The standard to be applied to extend the Applicant's ALWOP is preponderance of evidence. In *Elobaid* 2018-UNAT-822, para. 35, UNAT confirmed that the standard of proof in matters resulting in the imposition of administrative measure(s), such as the case at hand, is that of "preponderance of evidence".

175. In *Gharagozloo Pakkala* UNDT/2021/076, this Tribunal distinguished between disciplinary and administrative measures and relevantly held that the measures at stake are different in nature, conditions, scope and consequences. In particular, disciplinary measures are intended to punish the infringement by the staff member of his/her duty inherent in the working relationship and presuppose a fact of misconduct, specifically provided in the rules as such and punished. On the contrary, administrative measures can be taken in cases where a staff member's conduct does not rise to the level of misconduct, but a managerial action is nevertheless required; their function is preventive, corrective and cautionary in nature. A record of the imposition of a disciplinary measure is maintained permanently in a staff member's Official Status File. On the contrary, an administrative measure is issued for a specific period of time and is removed from the Official Status File at the conclusion of that time.

176. However, considering the impact that both measures have on the professional life of the staff member, the burden of proving the reasons for issuing these measures lies with the Administration.

177. According to the rules above, apart from the situation of sexual exploitation or abuse, ALWOP requires exceptional circumstances that could justify the measure, that is, that the alleged misconduct is of such gravity that it would, if established, warrant separation or dismissal.

178. The OIOS's draft investigation report dated 31 May 2024 (the draft Report) contained evidence indicating, according to the preponderance of evidence standard, that the Applicant had engaged in multiple forms of misconduct impacting eight United Nations personnel, in particular sexual assault, sexual harassment, harassment, and abuse of authority. In addition, the evidence indicated that the Applicant failed to act in accordance with the standards expected of an international civil servant (by making partial statements in public, engaging in inappropriate conduct at official events, and exhibiting drunkenness) and interfered with the OIOS investigation by requesting an individual to delete evidence.

179. OIOS's findings were based on the evidence collected during the investigation, which included interviews of over 30 victims and witnesses, the Applicant's subject interview, and his submissions.

180. The OIOS's findings in the draft report included the following actions taken by the Applicant:

a. With respect to six anonymous individuals in two duty stations, one or more of the following acts: unwelcome actions that made the victim(s) feel belittled or uncomfortable, communications of a sexual nature, and sexual acts inflicted without consent;

b. Instructing his Driver and Executive Assistant to carry out personal errands, and asking his Driver to buy marijuana and disobey traffic laws;

c. Inappropriate behaviour at official functions. Inappropriately advocating political positions; and

d. Instructing one victim to delete communications with him shortly after OIOS informed him he was the subject of an investigation.

181. The Respondent argued that, given such accusations, the Administration was compelled to issue the contested administrative measure.

182. The Respondent argues that, contrary to the Applicant's submissions, it is not the ASG/DBMS's role to analyse and assess the Applicant's comments on the draft Report; that OIOS confirmed that the Applicant's comments did not lead to significant changes to the findings in the draft Report; that the ASG/DBMS does not have investigative functions and that such functions are assigned to offices within the Secretariat (OIOS) and UNDP (OAI), which have operational independence; that OIOS conducted the investigation (with a delegation of authority from OAI with respect to the allegations of conduct pre-dating the Applicant's secondment to UNDCO). Accordingly, OIOS, not the ASG/DBMS, had the mandate to assess the Applicant's comments in response to the draft Report,

including the authenticity, reliability, and probity of his claims based on the totality of evidence.

183. The Tribunal stresses that the power to place a staff member on ALWOP lies with the Administration, which has the final say on the matter and therefore has the duty to assess the outcome of the OIOS report, as well as to evaluate the defence presented by the staff member.

184. In this case, the Administration simply endorsed the outcome of the investigation (with its flaws, as detailed below) and drew its conclusion regarding the measure to apply to the staff member.

185. The Administration found that the Applicant's misconduct (as described in the draft Report) was of such gravity that it would, if established in a disciplinary process, warrant separation or dismissal. The misconduct was particularly serious as the Applicant, as Resident Coordinator at the D-1 level, was the United Nations' highest-level official and the Secretary-General's representative, in Fiji, Solomon Islands, Tonga, Tuvalu and Vanuatu.

Examination of the charges

186. The main accusations contained in the OIOS investigation report are those related to V04 and V06.

Issues related to V04

187. As to V04 (who is the alleged victim to whom the letter mentioned in para. 4 -which triggered the investigation- mainly referred to), the report shows that V04 explained that during the year and a half that she worked for the Applicant, he repeatedly sent her messages of a sexual nature, made inappropriate innuendos, made videocalls while masturbating, and stalked her at her house.

188. In particular, V04 explained to OIOS that since she joined RCO Fiji in 2019 until approximately May 2023, when the allegations of sexual harassment implicating the Applicant were published in the press, she received numerous messages of a sexual nature from him. Most of these messages were sent to her via

Viber, and automatically self-destructed a few seconds after being read. As examples of the type of messages the Applicant sent her, V04 said that he repeatedly wrote to her words to the effect of: "What sort of man are you after?" "If we went out together, you could choose who you would want for us to have a threesome with." "Have you ever had a threesome?" "What sort of a person would you want to have a threesome with?" (OIOS draft report, line 251).

189. V04 further stated that the Applicant's behavior towards her did not stop when she resigned from RCO Fiji; on the contrary, he continued to send her sexual messages until 2023, called her again on video while masturbating, and attempted to jeopardize her employment with the Fijian government. In particular, the Report (line 422) recalled that the Applicant, after one year of her resignation, during a videocall with V04 showed himself masturbating, that she hung up immediately, and that he sent other messages of an explicit nature to her.

190. The Applicant noted that V04 acknowledged having sent 4,000 to 6,000 messages to the Applicant, although she produced none of these (and OIOS did not request them) and provided only screenshots of some missed calls. The Applicant also observed that V04 sent him photos of herself with some very explicit language, and that one picture was like a selfie in the mirror in underwear or a nightdress. He added (line 363 of the draft report and line 792, as well) that V04 sent him this picture with the message "I'm thinking about giving someone a blowjob", that he didn't reply, and that she wrote to him "are you ignoring me?".

191. These facts, although very relevant as they could alter the assessment of the relationship (a long-lasting one and of a sexual nature) between the Applicant and V04, were not investigated at all, at that time, by OIOS.

192. OIOS acknowledged (line 793 of the Report) that, in two recording conversations provided by the Applicant, V04 denied having been harassed by the Applicant. OIOS did not believe her (without any specific reason except the fact that one of those messages happened while V04 was in the United Nations system and therefore under a presumed but undemonstrated influence of the Applicant), nor did it investigate the situation properly and thoroughly.

193. OIOS acknowledges (line 809 of the conclusion of the Report) that the Applicant provided OIOS with four screenshots of a mobile phone containing a message of a sexual nature he claimed was sent by V04. OIOS was unable to verify the authenticity of these pictures, but OIOS did not even show them to V04 to request an explanation.

Issues related to V06

194. As to V06, the report shows that [Mr. BJ] reported to OIOS that V06 had shared with him that the Applicant had sexually harassed her while she was a consultant with RCO-Fiji, by contacting her late in the evening, asking to meet her. The Report also refers to some incidents where the Applicant made physical *advances* toward V06. Among the other charges, the OIOS report indicates that on 15 May 2023, four days after the Applicant was placed on ALWP, [Mr. BJ] sent an e-mail to OIOS reporting that the Applicant had contacted V06, instructing her to delete all communications between them.

195. The Applicant stated to the investigators that it was V06 who wanted to have a romantic relationship with him, that she had sent him a message of a sexual nature and several nude photographs of herself, complete naked (line 802 of the draft report). The Applicant also questioned V06's credibility, alleging that she only filed a report against him after developing a friendship with [Mr. BJ], and further suggested that OIOS investigate their relationship.

196. The OIOS report indicates that (lines 587 and 588) the Applicant explained to OIOS that when V06 finished her contract with RCO Fiji she began to message him, and he generally responded to her messages. The Applicant said that, at one point, V06 "started to be suggestive in her messages and on at least one, possibly two occasions, she sent [him] nude photos of herself on Viber". Asked to describe V06' nude photos, the Applicant explained that she had sent him three photos. One was taken in front of a mirror and did not show V06's face, another showed V06 lying on a bed and did show her face, and a third one was of V06's genital area, showing that she had scars and a piercing in her belly.

197. OIOS stated that it was unable to analyse the evidence referred to by the Applicant because the official iPhone had been removed from the official iCloud account and subsequently stolen from his office before OIOS arrived in Fiji to conduct the investigation. In the report, the investigators merely referred to the evidence recalled by the Applicant in passing and dismissed the Applicant's testimony on the basis that he did not provide any of the said photos.

198. It is worth recalling that soon after being investigated, the Applicant, knowing that he had exculpatory evidence, handed the phone and other equipment to the United Nations in good faith, with the expectation that electronic evidence would be preserved throughout the investigation and reviewed fairly and without bias. The Applicant's iPhone, however, was stolen. OIOS did not investigate its whereabouts and determine who would have the motivation and opportunity to commit such an act. Apart from this flaw in the investigation, the Tribunal finds that the Administration failed to demonstrate due diligence in preserving the source of evidence, which seriously undermined the Applicant's ability to defend himself against false and malicious accusations.

199. Only after a period of time, and following intensive forensic work, the Applicant was able to obtain some pictures (in particular, the same ones he had referred to the investigators), which were soon submitted to the investigators.

200. OIOS acknowledged (line 819 of the conclusion of the Report) that the Applicant provided it with photographs showing V06 naked that were in his possession and were given to investigators. These pictures are in the record.

201. In sum, key evidence - including photos of graphic sexual content and highly sexually suggestive messages sent by the two main alleged victims - was offered to OIOS, who failed to unearth the same from the alleged victims or from the Applicant's official phone, despite the Applicant mentioning all of this in detail to the investigators.

202. Notwithstanding having seen the above-mentioned pictures, OIOS found the Applicant's recollection of the events not credible. However, OIOS was unable to determine how, when, and to whom the photographs were sent, or how the Applicant obtained them.

203. Although OIOS was unable to establish the veracity of these pictures, the Tribunal notes that OIOS did not even show them to the alleged victims, asking for some explanation.

204. These facts, although very relevant as they could alter the assessment of the relationship between the Applicant and the alleged victims, were not investigated by the OIOS. OIOS did not even confront V04 or V06 with the said information, nor did it ask them if it was true or not. When OIOS later tried to do that, confronting the alleged victims with the pictures mentioned above, the alleged victims refused to cooperate further.

205. The screenshots in the record provide irrefutable evidence, at the very least, of consensual conduct with the alleged victims and repudiate sexual harassment by the Applicant. Indeed, it is very difficult to determine that a person is a victim of sexual harassment when that person voluntarily and for an extended period was in contact with the alleged harasser. Specially so when the relationship between the parties has clear romantic or, anyway, sexual connotations. Furthermore, the screenshots clearly indicate aggressive, voluntary sexual approaches by these alleged victims towards the Applicant.

206. The Applicant provided the Tribunal with a forensic examination of the screenshots, in particular, submitting independent forensic analyses of the Applicant's personal iPhone 11 and iCloud account conducted by three internationally recognized expert firms: KLDiscovery (UK), Epiq (Switzerland), and Eurodetec (Portugal). These materials, while not available at the time of the contested decision, have since been admitted by judicial order, as mentioned above in the procedural background, as they supplement the evidence already on record and are supervening and necessary to assess the veracity of evidence already in the records.

207. The first report issued by KLDiscovery authenticates metadata showing that the sexually explicit images and messages from V04 and V06 stored in the Photo Vault application on the iPhone 11 were created well before the complainants made any allegations. This confirms the Applicant's assertion that the communications predate any alleged misconduct.

208. KLDiscovery further certifies the extraction methodology, the secure chain of custody, and the retrieval of files from the Photo Vault application, which is an application no longer in use worldwide, using industry-standard forensic protocols.

209. A supplementary KLDiscovery annex documents the extraction of six additional images and their attendant metadata, unrelated to V04 and V06, which were also obtained from the Photo Vault and supplied directly to Epiq, thereby supporting the integrity and internal consistency of the data environment.

210. Epiq's forensic image analysis verifies that the images of the iPhone X in the said six images are of the same device as those involving V04, with no signs of tampering, providing further corroboration of authenticity.

211. Following an objective assessment of the pictures and their context, it follows that the main charges against the Applicant are undemonstrated.

212. The Tribunal further notes that the OIOS draft report explicitly indicates (line 816) that the Applicant claimed that the reports of sexual harassment made by V04 and V06 were part of a smear campaign to discredit him and that the reports made by the government officials were racist and politically motivated.

213. The letter which triggered the investigation on the case has already been recalled in para. 4. It has also been already referred the timing of the quick action taken by the Administration.

214. The Applicant alleged that the Representatives of Great Britain and New Zealand had several personal and deep-rooted issues with the Applicant, none of which had been addressed by the OIOS report, notwithstanding the Applicant immediately recalled them in writing at the beginning of the investigation:

> They objected to me being appointed as the Dean of the Diplomatic Corp in Fiji by the Foreign Ministry, which established the UN RC higher than them in the government's protocol hierarchy. They were unhappy that I did not afford them preferential engagement with, and recognition by, the UN through exclusive field visits and privileged influence through the UN-NZ Pacific Partnership. They were unhappy that I had established a strong relationship with both the previous and current governments of Fiji, which they could not achieve. They objected to my neutral approach to several policies such as with respect to establishing a Pacific Judicial Training Centre. Instead, they advocated for the immediate replacement of Sri Lankan judges with judges from New Zealand and Australia. They were against my constructive relationships with the Chinese ambassadors in the Pacific and the Prime Minister of the Solomon Islands. Finally, both BJ and CD were unhappy with my continuing close contact with their predecessors with whom I had worked extremely well. I have provided evidence and highly credible witnesses to support these claims").

215. The Applicant also added to the investigators that the charges were "a well-coordinated and well-orchestrated attempt to remove him from [his] post forthwith, and that this started as soon as the government changed", leading to a predetermined (unfair) outcome of the investigation.

216. The Applicant stresses that actions taken by the UN/UNDP are motivated by implicit and explicit threats to the UN/UNDP that substantial regional funding by New Zealand and the United Kingdom would be withheld from the Organization unless the Applicant was removed from functions as Resident Coordinator and dispatched from the region. He highlights that the United Nations immediately complied with these improper demands.

217. Although aware that the alleged victims have never filed any claim of sexual harassment and that the Applicant affirm that the genesis of the case can be found instead in the political situation in Fiji and his relationship with representative of two States that led to the fabrication of unsubstantiated accusations and their leakage to the press, the Tribunal refrains from assessing the claim of political bias towards the Applicant and simply notes that none of the above mentioned claims have been approached by OIOS, and in particular (in theory) possible political origin of the matter (related to the relationship with the old and the new government

of the country) has not been investigated by OIOS as well. The Applicant on this point observes that the failure to interview a single Pacific Government official with whom he had worked with over five years, including those who would be able to refute specific allegations against him, only fuels the charge that in the case there was a *mala fide* orchestration by two "donor" government representatives abusing their office to pursue a personal agenda.

218. In this respect, the Tribunal notes that OIOS interviewed various witnesses to seek only inculpatory evidence, while it did not seek exculpatory evidence. The Applicant identified multiple factual witnesses after his interview, each accompanied by detailed justifications as to their material relevance. However, OIOS declined to interview any of them, summarily and without proper justification, disregarding exculpatory lines of inquiry; in particular, not even one of the 96 exculpatory witnesses proposed by the Applicant was interviewed. The Tribunal already mentioned the OIOS omission to investigate the theft of the Applicant's official phone, which could have contained exculpatory evidence. On the contrary, no personal device has been shared with OIOS by any of the witnesses or complainants.

219. Nor did the Administration give a remedy to that, being satisfied with the solution envisaged by OIOS, which would have solved any issue on the diplomatic stage.

220. Deprived of the main counts (related to V04 and V06), the other grounds for the ALWOP become very weak.

221. As to sexual assault of V01 (in Pristina, 2011), the count refers to the fact that, in early August 2011, while V01 was asleep in his bed, the Applicant sexually assaulted V01 (however, soon stopping after her resistance), while lying on top of her.

222. OIOS found a flirtatious behaviour and sexual innuendo in exchanges of messages (without a refusal or an interruption by the alleged victim) and a behaviour with physical connotation (but in the Applicant's bed, hosting V01, who was drunk, and voluntarily slept in the Applicant's house).

223. The Tribunal finds that a recollection of an event occurred to a person under huge effects of alcohol more than 12 year ago and in a context of flirtatious behaviour (she admitted that was not the first time she slept in the Applicant's house and drunken and she continued to communicate with the Applicant after the said incident) cannot substantiate an accusation of sexual assault, notably where the recollection of the events are not detailed and not lived by a sober person. The events also occurred about a decade ago.

224. The Tribunal also finds irrelevant the alleged Applicant's threats over the phone to V01, as they were related not to the refusal of sex but to the lack of answering the phone, and as such, they were only an expression of disappointment and had no effective consequence.

225. Even if the Appeals Tribunal has recognized that the testimony of a single witness may be sufficient to establish sexual misconduct, in this case, the testimony of V01 was very weak and she did not report the alleged facts. Furthermore, the testimony of Ms. LF confirmed only a sexual attitude and intention of the Applicant and not any assault.

226. Similarly, the alleged facts concerning V02 do not entail sexual harassment. The Report indicates that on three different occasions, the Applicant patted V02's knee twice in a meeting, placed his hand on her shoulder ("in an odd way"), stared at her breast, which had become exposed while she was breastfeeding her infant. The Tribunal notes that said facts were not reported at that time, probably for their insignificance, that in any case the sexual connotation of these facts has not been proved, and that the facts remain not that relevant.

227. The facts concerning V03 are related to repeated and insistent invitations to meet for a drink while the Applicant and the woman were in Nadi on separate missions. The Applicant telephoned and asked her to meet him for a drink at his hotel.

228. As to the facts concerning V05, the Applicant is blamed for having sent a message referring to her as a "hot and fiery one", for having put, while inebriated by alcohol on two occasions, his hands around her waist and hips in his house and at a bar.

229. The above-mentioned facts lack relevance and are almost meaningless, and, even considered altogether, they are in any case unable to substantiate an accusation of sexual harassment or a behaviour of a gravity able to justify a measure like ALWOP.

230. As to the facts related to the Applicant's driver, the report refers to facts for which the Applicant's driver filed a report of misconduct alleging harassment, abuse of authority, and misuse of office resources. In particular, they were the following: use of the official vehicle for personal reasons, request to drive non UN persons without authorization, or request to drive above the speed limit or disobeying traffic control lights while driving to the airport (the Respondent wrote that the Applicant wanted to arrive at the airport only 30 minutes before his flight's departure), the refusal to sign the vehicle logbooks (which prevented his driver to claim overtime), the threat of termination of the employment while the diver complains for his working conditions.

231. Applicant admits that [Mr. S], a junior staff member under his supervision, did personal errands on the basis of purported 'volunteering', as well as his failure to address or report contemporaneously alleged performance or conduct issues. OIOS didn't investigate these facts at all.

232. The accusations mentioned remain generic (they are made without reference to a specific date and place of occurrence) and unproven in these proceedings. In any case, the mentioned misconduct, if any, would warrant no separation or dismissal, as these sanctions would be disproportionate.

233. With respect to [Ms. M], the Applicant Executive Assistant, the evidence indicates that the Applicant instructed her to perform personal tasks for him and his family, such as preparation of note to facilitate the issuance of visa for personal trip,

the booking of accommodation or flights, prepare claims to Cigna for reimbursement of medical expenses incurred by him and his family.

234. The Tribunal notes that the said Applicant's request did not create adverse working conditions for [Ms. M] (there is no trace of any complaint by her with anyone).

235. The said facts, even combined with some or all of the other instances of misconduct, would warrant no separation or dismissal as these sanctions would be disproportionate.

236. Finally, the Respondent recalls other evidence indicating other possible forms of misconduct:

a. Three witnesses, diplomats of New Zealand and the UK, told OIOS that they had witnessed the Applicant's inappropriate behaviour toward women at diplomatic functions, such that two of them intervened on separate occasions.

b. Diplomats and other witnesses considered that the Applicant's close relationship with the Attorney-General of Fiji, [Mr. SK], compromised the Applicant's impartiality. Two diplomats recalled that the Applicant lobbied them in public to secure the Attorney-General's safe passage from Fiji after his Government lost the 2022 election.

c. Multiple witnesses told OIOS that the Applicant was visibly inebriated at public events in Suva and other locations, and his alcohol consumption gave rise to a reputational risk.

237. These accusations are generic and remain unsubstantiated in the proceedings. The Respondent even submitted no evidence on these issues.

238. It appears that the Administration did not specifically identify these facts to substantiate the measure against the Applicant, but rather, they were recalled as part of a generic background of the Applicant's person and attitude. This Tribunal, however, is called to judge facts, in their practical manifestation, and not generic attitudes or behaviors.

239. In conclusion, the decision to place the Applicant on leave (initially with pay, later without pay) and the draft OIOS Report cited ST/SGB/2019/8, which addresses discrimination, harassment, including sexual harassment, and abuse of authority. According to the evidence in the records, this is not the case. In particular, the records discredit the OIOS finding and sustain the serious doubt that any preponderance of evidence about Applicant's misconduct existed. It seems that the Respondent has elicited and assembled different, non-decisive facts to corroborate each other to suggest a pattern of behavior. However, the accusation of misconduct is entirely inconsistent with the evidence on record.

240. Even considering all the counts raised by the Administration, there are no exceptional circumstances that could justify the measure, and the alleged misconduct is not of such gravity that it would, if established, warrant separation or dismissal. Therefore, the conditions under which ALWOP is allowed by the rules are not met in this case.

241. The Respondent may argue that a preponderance of the evidence existed at the time the contested decision was made with respect to even one of the allegations of sexual misconduct, and that such would suffice to render the decision lawful. However, while the investigation process showed many flows above recalled (simply endorsed by the Administration without corrective interventions), the Applicant has demonstrated that, had the decision-maker undertaken an impartial assessment of the full evidentiary record, including exculpatory material and credible proof of procedural irregularities, the requisite standard of a preponderance of the evidence could not reasonably have been satisfied.

Remedies

242. In light of the above, the Tribunal finds that the application is well-founded and the challenged decision (that is, the decision dated 20 August 2024 extending the Applicant's placement on ALWOP) must be rescinded.

243. The Applicant is entitled to a retroactive reinstatement to the status quo prior to 20 August 2024, with all economic consequences (including full pay and entitlements) retroactive to the date of issuance of the challenged decision.

244. However, it is not possible to award retroactive payment in relation to the 1 December 2023 decision, as that decision is not related to the challenged decision in this case but to a previous one.

245. On the contrary, subsequent ALWOP measures, which are a mere prolongation of the measure here challenged, become deprived of reasons, with all economic consequences. The Tribunal can ascertain the Applicant's right, but cannot, however, order any compensation in that respect, in the absence of a specific request by the Applicant.

246. Other claims, related to legal expenses for abuse of process by the Respondent and reimbursement of costs of obtaining independent forensic reports, cannot be awarded, for the first claim because there was no abuse of the process and, for the second claim, because the Applicant did not provide evidence to show the costs sustained to support his claim.

Conclusion

247. In view of the foregoing, the Tribunal DECIDES as follows:

a. The challenged decision is rescinded.

b. The Applicant is entitled to a retroactive reinstatement to the status quo prior to 20 August 2024, with all the economic consequences.

c. The sum due to the Applicant shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable.

(Signed)
Judge Francesco Buffa
Dated this 16th day of July 2025

Entered in the Register on this 16th day of July 2025
(Signed)
Liliana López Bello, Registrar, Geneva