



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/012

Order No.: 89 (GVA/2025)

Date: 18 July 2025

Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Sètonджи Roland Adjovi, Études Vihodé Ltée
Anthony Kreil Wilson, Études Vihodé Ltée

Counsel for Respondent:

Alister Cumming, UNICEF

Introduction

1. By an application filed on 29 April 2024, the Applicant contests the decision not to investigate his complaint of intentional leakage of his personal information from inside the Sudan Country Office (“SCO”) of the United Nations Children’s Fund (“UNICEF”).
2. By Order No. 69 (GVA/2025) of 19 June 2025, the Tribunal, *inter alia*, instructed the parties to file closing submissions that should “exclusively refer to the evidence already on file”.
3. On 3 July 2025 at 5:06 p.m. (Geneva time), the Applicant filed his closing submissions.
4. On 3 July 2025, at 5:41 p.m. (Geneva time), the Respondent filed his closing submissions.
5. Later that day, the Applicant filed a motion to strike the Respondent’s closing submission from the case record.
6. By Order No. 81 (GVA/2025) of 9 July 2025, the Tribunal recognized that the Respondent had failed to abide by its instructions when he made comments on the Applicant’s closing statements, as these should exclusively refer to the evidence already on the record. However, it did not find it necessary to strike the Respondent’s closing submissions from the case record, or to delay proceedings any further by reopening case management so that the Applicant could reciprocally comment on the Respondent’s closing submission.
7. On 11 July 2025, the Applicant filed a motion to award costs against the Respondent, and to refer Counsel for the Respondent for accountability. The Tribunal subsequently instructed the Respondent to comment on the Applicant’s motion, which he did on 16 July 2025.

Consideration

8. In Order No. 81 (GVA/2025), the Tribunal, *inter alia*, recalled that it had instructed the parties to file their respective closing submissions that should “exclusively refer to the evidence already on file”, and that the Applicant was correct in that the Respondent should not have commented on his closing submissions (Order No. 81 (GVA2025), paras. 10-11).

9. The Tribunal further recalled that it is not bound by the parties’ submissions, and that it will exercise its discretion when weighing the evidence and the totality of the submissions. In this connection, it concluded that it was not necessary to strike the Respondent’s closing submissions from the case record, as the Applicant sought.

10. The Applicant now submits that the Respondent has manifestly abused these proceedings by disobeying the Tribunal’s order, and that the Tribunal should award costs against the Respondent in accordance with art. 10.6 of its Statute, and the jurisprudence of the Appeals Tribunal (*Machanguana* 2014UNAT476, para. 13). The Applicant further submitted that Counsel for the Respondent should be referred for accountability under art. 10.8 of the Tribunal’s Statute.

11. In response, the Respondent contended that he indeed erred by commenting on the Applicant’s closing submissions without the Tribunal’s authorization, but that this error does not amount to a manifest abuse of proceedings, or to “serious flaws” requiring the matter to be referred for accountability.

12. The Tribunal agrees that the Respondent’s procedural mistake does not amount to a manifest abuse of proceedings warranting an award of costs. Indeed, the jurisprudence of the Appeals Tribunal requires a high threshold for awarding costs, which may be given in situations of manifest abuse of proceedings.

13. In this case, the Respondent commented on the Applicant’s closing submissions despite being instructed to “exclusively refer to the evidence already on file”. Said mistake did not cause any delays to these proceedings, did not cause prejudice to the Applicant as the Tribunal is not bound by the parties’ submissions,

and did not obstruct case management. It was also not a frivolous or insubordinate submission. Instead, the Tribunal considers it an unauthorized *brief* commentary with no material impact on these proceedings or on the Tribunal's ability to adjudicate the matter.

14. In other words, a single incident of including submissions that went beyond the scope of the Tribunal's order does not reach the high threshold of manifest abuse of proceedings.

15. Similarly, the Tribunal considers that the actions of Counsel for the Respondent do not amount to "serious flaws" warranting a referral for accountability. As stipulated by the Appeals Tribunal, the exercise of the power of referral for accountability must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws (*Cohen* 2017UNAT716, para. 46); which is not the case.

Conclusion

16. In view of the foregoing, it is ORDERED THAT the Applicant's motion to award costs against the Respondent, and to refer Counsel for the Respondent for accountability is rejected.

(Signed)

Judge Margaret Tibulya

Dated this 18th day of July 2025

Entered in the Register on this 18th day of July 2025

(Signed)

Liliana López Bello, Registrar, Geneva