



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** Geneva

**Registrar:** René M. Vargas M.

BANAJ

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON  
CASE MANAGEMENT**

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**Counsel for Applicant:**

George G. Irving

**Counsel for Respondent:**

Esther Saabel, LPAS, UNOG

Jérôme Blanchard, LPAS, UNOG

## **Introduction**

1. By application filed on 8 January 2021, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), contests the decision to close her complaint of prohibited conduct under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) with managerial action pursuant to sec. 5.18(b) of ST/SGB/2008/5 with respect to Mr. S., and with no further action pursuant to sec. 5.18(a) with respect to Ms. K..
2. By Order No. 4 (GVA/2022) of 18 January 2022, the Tribunal ordered, *inter alia*, that the Investigation Report into the Applicant’s complaint be disclosed to the Applicant on an under-seal basis and invited the Applicant to file a rejoinder by 7 February 2022.
3. On 7 February 2022, the Applicant responded to Order No. 4 (GVA/2022) by filing a submission requesting, *inter alia*, that the Tribunal order the Respondent to submit all exhibits to the Investigation Report and allow the Applicant to amend her submission within 20 days of receipt of these documents.
4. By Order No. 18 (GVA/2022) of 10 February 2022, the Tribunal invited the Respondent to submit a response to the Applicant’s 7 February 2022 submission, which he did on 21 February 2022.
5. By Order No. 24 (GVA/2022) of 23 February 2022, the Tribunal ordered the Respondent to submit the exhibits to the Investigation Report by 28 February 2022 on an *ex parte* basis, which he did on 25 February 2022.
6. Further to the Tribunal’s instruction dated 1 March 2022 to complete his filings, the Respondent resubmitted all the exhibits to the Investigation Report on 2 March 2022.

## Consideration

7. Having reviewed the exhibits to the Investigation Report submitted by the Respondent on an *ex parte* basis, the Tribunal notes that the exhibits can be categorized in the following four categories:

- a. Internal document: “Interoffice Memorandum: Appointment of a Fact-Finding Panel, 18 April 2019” sent to the Panel members (exhibit 1);
- b. Exhibits containing information that is already in the possession of the Applicant: exhibit 2 (Record of questions and answers of complainant), exhibit 9 (Complaint related to application ST/SGB/2008/05), exhibit 10 (Email forwarding the Complaint to the Investigation Panel), exhibit 14 (Email of Mr S. to complainant), exhibit 15 (a “Note to the File” drafted by the Applicant and dated 21 May 2018), exhibit 18 (Letter sent by the Applicant to the UNODC Deputy Executive Director referred to in the Complaint dated 27 August 2018), exhibit 19 (Email exchange between the Applicant and OIOS, dated 7, 13, 16, 19 July and 4, 5, 7 October and 5 November 2018 concerning her allegations against the subjects of the investigation), exhibit 20 (WhatsApp communication of the complainant with proposed witness), exhibit 21 (Emails between the Applicant, Mr. S and the Director, Division for Operations, UNODC), exhibit 24 (Email from Mr. S. to the Applicant concerning reassignment of functions), exhibit 25 (Letter from the Under Secretary-General to the Applicant dated 15 February 2019, informing the Applicant that the Secretary-General decided to uphold the contested decision), exhibit 26 (Email exchange between the Applicant and the subjects of the investigation dated 26 September 2014), exhibit 27 (Email exchange between the Applicant and the subjects of the investigation dated 26 September 2014) and exhibit 29 (Email from one of the subjects of the investigation to the other subject and allegedly copying the Applicant “by accident” dated 13 July 2018);

c. Emails of the Investigation Panel to proposed witnesses: exhibits 4 and 5 (showing that the witnesses proposed by the Applicant were not available for interviews), exhibits 7 and 7 *bis* (showing that the witnesses proposed by the Applicant declined a request for interview), exhibits 6 and 6 *bis* (showing that the witnesses proposed by the Applicant stated not to have any relevant information to the allegations); and

d. Interview statements with the two subjects of the investigation (exhibits 3 and 8) and six witnesses (exhibits 11, 12, 13, 16, 17, and 28) as well as email communications provided by the witnesses to the Panel (exhibits 22, and 23).

8. The Tribunal finds that it is not necessary to disclose exhibit 1 (appointment of the Investigation Panel), because it is not relevant to the Applicant's case, and the exhibits listed in para. 7.b above, containing information that is already in the possession of the Applicant.

9. Regarding interview statements, the Tribunal considers that the Investigation Report adequately reflects the relevant parts of the interview statements considered when reaching a conclusion. It is also within the Investigation Panel's discretion to assess the relevance of the evidence and determine its weight. Moreover, art. 18.4 of the Tribunal's Rules of Procedure provides it with the power to "impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances". Considering that providing interview statements to a complainant in a non-disciplinary matter may cause prejudice to third parties, negatively affect existing working relationships, and jeopardize future investigations, the Tribunal finds it appropriate not to disclose these documents to the Applicant.

10. In relation to exhibits 4-7, the Tribunal finds that they may be relevant to the Applicant's case considering that she contends that the Investigation Panel failed to interview some witnesses proposed by her and that one core witness alleges that he does not think that he ever received any questions from the Investigation Panel,

whereas the Respondent argues that this witness refused to be interviewed during the investigation.

11. As these documents were not previously available to the Applicant, the Tribunal finds it appropriate, for the sake of fairness and transparency, to disclose exhibits 4, 5, 6, 6 *bis*, 7 and 7 *bis* to her. Since these exhibits do not contain sensitive information vis-à-vis the Applicant, they do not require redactions and can be released to the Applicant on an under-seal basis.

### **Conclusion**

12. In view of the foregoing, it is ORDERED THAT:

- a. The Registry shall make exhibits 4, 5, 6, 6 *bis*, 7 and 7 *bis* to the Investigation Report available to the Applicant on an under-seal basis by **Friday, 4 March 2022 (COB, GVA time)**;
- b. The Applicant shall not disclose, use, show, convey, disseminate, copy, reproduce or in any way communicate the said exhibits 4, 5, 6, 6 *bis*, 7 and 7 *bis* of the Investigation Report —except for the filing of an appeal with the United Nations Appeals Tribunal—without prior authorization by this Tribunal;
- c. The Applicant shall file further comments on said exhibits by **Monday, 14 March 2022**; and
- d. The Respondent may file his response to the Applicant’s further comments by **Monday, 21 March 2022**.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 4<sup>th</sup> day of March 2022

Entered in the Register on this 4<sup>th</sup> day of March 2022

Case No. UNDT/GVA/2021/002

Order No. 31 (GVA/2022)

*(Signed)*

René M. Vargas M., Registrar, Geneva