



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

BANAJ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

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 with respect to Mr. S. (names anonymized for confidentiality), and with no further action with respect to Ms. K. (“contested decision”).

Facts and procedural history

2. On 1 January 2000, the Applicant joined UNODC in Tirana on a fixed-term appointment as a National Programme Officer at the NO-B level (National Professional Officers [NPOs] are normally locally recruited staff and perform functions at a professional level from A-E with E being the highest level). Since the Applicant’s appointment, her service is limited to UNODC, whereas her contract is administered by the United Nations Development Programme (“UNDP”).

3. Following various renewals of her fixed-term appointment, the Applicant’s position and grade were reclassified effective 1 July 2009, and she was promoted to the NO-C level. On 23 November 2012, the Applicant’s appointment was retroactively converted to a permanent appointment effective 30 June 2009.

4. According to the Applicant, with the appointment of Mr. S. in mid-2013 as Chief, Regional Section for Europe and West and Central Asia, and Regional Representative for South-eastern Europe at UNODC, she started to be marginalized and deprived of her core functions set forth in her terms of reference.

5. During Mr. S.’s management of the region, Ms. K. served as Programme Officer, Regional Section for Europe and West and Central Asia, Division for Operations, UNODC.

6. On 7 July 2018, the Applicant filed a complaint with the Office of Internal Oversight Services (“OIOS”) alleging, *inter alia*, that Mr. S. and Ms. K. committed misconduct in the form of abuse of authority, mismanagement, harassment and verbal abuse and retaliation against her. The Applicant subsequently asked OIOS to place her complaint “on hold”, which OIOS did until she requested that it be reactivated on 4 October 2018.

7. On 18 July 2018, Mr. S. reported a possible case of wrongdoing on the part of the Applicant to the Office of Audit and Investigations (“OAI”) of UNDP.

8. On the same day, Ms. K. met with an official of the U.S.A. Embassy in Albania, Mr. S. B. (anonymized). According to the Applicant, during this meeting, Ms. K. made negative comments about her by also informing the U.S. official that UNODC might open an investigation against the Applicant for her alleged lobbying, together with the U.S.A. Embassy in the country, against the posting of a UNODC Advisor on Organized Crime in Albania.

9. On 24 August 2018, Mr. S. B. requested a meeting with the Applicant to inform her about the meeting he had with Ms. K. and the comments she made about the Applicant.

10. On 27 August 2018, the Applicant sent a letter to the Director of Operations, UNODC, informing her of the meeting Ms. K. had at the U.S.A. Embassy in Tirana, and that, according to Mr. S. B., at the meeting Ms. K. informed officials of the U.S.A. Embassy that there was an investigation into the Applicant’s alleged disloyalty to the Organization.

11. On 4 October 2018, as part of the Applicant’s request to “re-activate” her complaint, she added a further report of defamation of character and breach of privacy implicating Ms. K.

12. On 16 October 2018, OIOS formally referred the Applicant’s complaint to UNODC for their attention and appropriate action under ST/SGB/2008/5.

13. On 29 October 2018, the Applicant was temporarily reassigned pending the investigation against her (cf. para. 7 above).

14. On 12 November 2018, the Director of the Division for Management (“D/DM”), UNODC, in his capacity as the responsible official, acknowledged receipt of the Applicant’s complaint and requested further details of the alleged conduct indicated therein in accordance with sec. 5.13 of ST/SGB/2008/5. The D/DM, UNODC, also inquired about the Applicant’s interest to attempt informal resolution of the matter.

15. On 21 November 2018, the Applicant filed a request for protection from retaliation with the UNDP Ethics Office (“UNDP-EO”).

16. On 28 November 2018, the UNDP-EO replied to the Applicant’s request. It concluded that the conduct she described, rather than relating to retaliation due to her having filed a complaint, related to conduct that could form the basis of general harassment allegations dating back to 2015. As such, the UNDP-EO advised the Applicant that this would not fall under the scope of the UNDP policy for protection from retaliation and was most appropriately addressed under ST/SGB/2008/5. Regarding the investigation for which she was the subject, the UNDP-EO requested the Applicant’s permission to follow up with OAI. Concerning the Applicant’s request for a temporary reassignment, the UNDP-EO advised her to contact the Office of Staff Legal Assistance (“OSLA”) for guidance on filing a request for a management evaluation with the Management Evaluation Unit.

17. On 3 December 2018, the Applicant responded to the D/DM, UNODC, indicating her preference to pursue a formal process in respect of her complaint under ST/SGB/2008/5, and provided the additional information that the D/DM requested in a document titled “Complaint related to the application of ST/SGB/2008/5, Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”. This document contained, *inter alia*, the names of eight witnesses and a detailed description of the incidents involving Ms. K. and Mr. S. occurring between 2015 and 2018.

18. On the same day, in response to her request for protection from retaliation, the Applicant was informed by the UNDP-EO that as the report to OAI was made prior to her 27 August 2018 communication to the Director of Operations, UNODC, said request for protection predated either the letter to the Director of Operations or the referral of her complaint from OIOS to UNODC and, as such, the UNDP's Policy for Protection Against Retaliation did not apply to her situation.

19. On 11 March 2019, following a review of the Applicant's complaint under ST/SGB/2008/5 and the additional detailed information she provided, the D/DM, UNODC, informed the Applicant of his decision to initiate an investigation.

20. By Interoffice Memorandum dated 16 April 2019, the D/DM, UNODC, informed the Applicant of the appointment of a fact-finding panel of two investigators ("the Panel") to conduct a fact-finding investigation into her complaint.

21. On 21 May 2019, the Applicant filed an application before the Tribunal, which was registered under Case No. UNDT/GVA/2019/031, challenging the Respondent's decision to temporarily reassign her functions.

22. The Panel requested interviews with all witnesses proposed by the Applicant in her complaint dated 3 December 2018 except for the Director of OIOS who was deemed to have no independent knowledge of relevant facts because he was only the recipient of the Applicant's 7 July 2018 request for advice concerning her complaint.

23. On 17 June 2019, the Panel interviewed the Applicant in connection with her complaint. The Panel also conducted nine interviews and examined seven factual situations alleged by the Applicant.

24. On 28 August 2019, the Panel submitted its investigation report, together with all evidence collected, indicating that it had found “no clear and convincing information substantiating the allegations made against Ms. K.” and that the information it received showed Mr. S.’s “contribution to an offensive work environment” with respect to one of the seven factual situations relevant to the report.

25. Having reviewed the investigation report and supporting evidence, for the purpose of determining the appropriate course of action under sec. 5.18 of ST/SGB/2008/5, by email dated 2 December 2019, the D/DM, UNODC, sought clarifications from the Panel in relation to para. 118 of the investigation report, which addressed Mr. S.’s contribution to an offensive work environment and requested an additional interview.

26. On 18 December 2019, the Panel submitted additional information on its further interview, maintaining its conclusion in para. 118 of the investigation report that in its view the information therein demonstrated Mr. S.’s contribution to an offensive work environment.

27. By Interoffice Memorandum dated 29 April 2020, the D/DM, UNODC, informed the Applicant of the outcome of her complaint and the action taken pursuant to sec. 5.18 of ST/SGB/2008/5, namely, his decision to close the Applicant’s complaint 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. The Memorandum also contained a summary of factual findings of the Panel and related considerations.

28. On 29 April 2020, by Internal Office Memorandum concerning closure of the matter in accordance with sec. 5.18(b) of ST/SGB/2008/5, and sec. 7.5(b) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) and a request for comment for a reprimand, the D/DM, UNODC, informed Mr. S. of the outcome of the investigation pertaining to him and requested his comments on the facts and circumstances indicated therein.

29. On the same day, by Internal Office Memorandum concerning closure of the matter pursuant to sec. 5.18(a) of ST/SGB/2008/5 and sec. 7.4 of ST/AI/2017/1 with no further action, the D/DM, UNODC, also informed Ms. K. of the closure of the matter without action in her regard.

30. On 27 June 2020, the Applicant requested management evaluation of the contested decision.

31. By letter dated 12 October 2020, the Under-Secretary-General for Management Strategy, Policy and Compliance informed the Applicant of her decision to uphold the contested decision.

32. On 8 January 2021, the Applicant filed the subject application referred to herein, requesting the rescission of the contested decision, accountability for the violation of her right to a proper working environment, and compensation for harm. This application was registered under Case No. UNDT/GVA/2021/002.

33. Following the issuance of OAI's investigation report, the disciplinary measure of demotion was issued to the Applicant. On 18 January 2021, the Applicant filed an application before the Tribunal contesting the disciplinary measure, which is registered under Case No. UNDT/GVA/2021/006.

34. This application (Case No. UNDT/GVA/2021/002) was served on the Respondent who submitted his reply on 10 February 2021 with the following annexes filed on an *ex parte* basis:

- a. Annex 1: The referral by the Investigations Division of the Office of Internal Oversight Services to UNODC dated 16 October 2018;
- b. Annex 5: Investigation report dated 28 August 2019;
- c. Annex 6: Additional information from the investigation panel dated 18 December 2019;

d. Annex 8: Internal Office Memorandum dated 29 April 2020 from the responsible official to Mr. S concerning closure of the matter in accordance with sec. 5.18(b) of ST/SGB/2008/5, and sec. 7.5(b) of ST/AI/2017/1 and a request for comment for a reprimand; and

e. Annex 9: Internal Office Memorandum dated 29 April 2020 from the responsible official to Ms. K concerning closure of the matter pursuant to sec. 5.18(a) of ST/SGB/2008/5 and sec. 7.4 of ST/AI/2017/1 with no further action.

35. By Judgment *Banaj* UNDT/2021/030 dated 26 March 2021, the Tribunal rejected the Applicant's application, registered under Case No. UNDT/GVA/2019/031, contesting the Respondent's decision to temporarily reassign her functions (see para. 21 above).

36. On 10 January 2022, the present case was assigned to the undersigned Judge.

37. Having reviewed the parties' submissions, and for the sake of fairness and transparency, by Order No. 4 (GVA/2022) of 18 January 2022, the Tribunal ordered, *inter alia*, that the *ex parte* annexes filed by the Respondent including 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.

38. 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.

39. On 21 February 2022, the Respondent submitted a response to the Applicant's 7 February 2022 submission pursuant to Order No. 18 (GVA/2022) of 10 February 2022.

40. 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.

41. 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.

42. Having reviewed the exhibits to the investigation report submitted by the Respondent on an *ex parte* basis, for the sake of fairness and transparency, by Order No. 31 (GVA/2022) of 4 March 2022, the Tribunal ordered, *inter alia*, that:

- a. The Registry make emails of the Panel to proposed witnesses available to the Applicant on an under-seal basis by 4 March 2022 (COB, GVA time):
 - i. exhibits 4 and 5 (showing that the witnesses proposed by the Applicant were not available for interviews);
 - ii. exhibits 6 and 6 *bis* (showing that the witnesses proposed by the Applicant stated not to have any relevant information to the allegations); and
 - iii. exhibits 7 and 7 *bis* (showing Witness Mr. S. B.'s response to the Panel's request for interview).
- b. The Applicant file further comments on said exhibits by 14 March 2022; and
- c. The Respondent file his response, if any, to the Applicant's further comments by 21 March 2021.

43. Pursuant to Order No. 31 (GVA/2022), the Applicant filed her further comments on said exhibits on 14 March 2022 and the Respondent filed his response to the Applicant's further comments on 21 March 2021.

44. By Order No. 43 (GVA/2022) of 22 March 2022, the Tribunal informed the parties that it is fully informed on the matter and that the case can be determined on papers without holding a hearing and instructed the parties to file their respective closing submission which they did on 31 March 2022.

45. By Judgment *Banaj* 2022-UNAT-1202 dated 25 April 2022, the Appeals Tribunal set aside Judgment *Banaj* UNDT/2021/030 and remanded that matter to the Tribunal for consideration in conjunction with its Judgment to be issued in relation to the Applicant's substantive appeal against the finding of misconduct against her (Case No. UNDT/GVA/2021/006).

Parties' submissions

46. The Applicant's principal contentions are:

- a. The failure of the Organization to respond in a proper manner to claims of harassment has been found actionable;
- b. The Panel ignored important evidence, failed to pursue relevant lines of enquiry, and did not produce a report providing a full, fair and clear picture of all the facts involving the alleged misconduct:
 - i. Contrary to the conclusion in the investigation report, Mr. S.B., was willing to provide evidence but the Panel failed to follow up with the correct protocols to obtain his testimony; and the failure to interview Mr. S. B. is detrimental to the findings of the investigation;
 - ii. The Panel failed to interview witnesses who might have had knowledge of circumstances where the Supervisors "repeatedly and regularly made faces and mocked the Applicant" or who were asked not to meet the Applicant;
 - iii. The Panel applied inconsistent standards in its assessment of the evidence by finding that a hostile work environment had been created while overlooking "similar hostile acts and words";
 - iv. The Panel failed to find that the evidence of Mr. O., Ms. M. and Mr. S. B. corroborated each other and lent credibility to the Applicant's allegations that her Supervisor was marginalizing the Applicant;

v. From the exhibits provided by the Respondent, the testimonies of three direct witnesses, Ms. M., Mr. O. and Ms. A., “appear to be absent”; and

vi. The Panel “paid little attention and made little effort to examine her complaint” that the subjects abused their authority by marginalizing her in the exercise of her functions.

c. The decision to treat the findings of the investigation administratively suggests a reluctance to hold a senior manager accountable for a finding of wrongdoing resulting from the procedures established to address such conduct;

d. The Organization attempted a revision of the investigation report insofar as it concluded that one of the subjects was guilty of contributing to a hostile work environment;

e. The Organization failed to provide the Applicant with a “properly reasoned decision” with regard to her complaint;

f. The Organization breached its duty to protect its employee from retaliation:

i. For the long duration of the investigation, the Administration did not take appropriate measures to address her concerns informally or to protect her from further abuse of authority; and

ii. The manner of handling the Applicant’s complaint is marred by a lack of transparency. No information has been forthcoming as to what, if any, action was taken by UNODC for interim measures to protect the complainant, or following the finding of the investigation, what administrative measures have actually been imposed on Mr. S.; and

g. The Applicant has suffered significant harm from the stress to which she has been subjected, warranting compensation for the on-going effects of harassment and retaliation.

47. The Respondent's principal contentions are:

- a. The application is not receivable *ratione materiae* in part as the contested decision has no direct impact on the terms of employment of the Applicant;
- b. The investigation was properly conducted:
 - i. The investigation was lawfully carried out in accordance with the provisions of ST/SGB/2008/5; and
 - ii. The Applicant failed to provide any evidence suggesting that the investigation was affected by any shortcomings or irregularity;
- c. The contested decision is lawful:
 - i. It was made based on the evaluation of the conclusions of the investigation report; and
 - ii. It constitutes a lawful exercise of discretion by the Administration;
- d. The Organization complied with its obligation to protect the Applicant from retaliation by duly examining her claim made for that purpose, thereby discharging its obligations pursuant to ST/SGB/2008/5; and
- e. The Applicant is not entitled to any form of compensation because she has provided no evidence indicating that her health and reputation have been adversely impacted by the contested decision.

Consideration

Scope and standard of judicial review

48. Art. 2.1(a) of the Tribunal's Statute confers jurisdiction on the Tribunal to examine the lawfulness of administrative decisions. The administrative decision presently under scrutiny is the decision to close the Applicant's complaint of

prohibited conduct under ST/SGB/2008/5 with managerial action with respect to Mr. S., and with no further action with respect to Ms. K.

49. In determining the lawfulness of an administration decision concerning an investigation of a complaint, the Tribunal may “enter into an examination of the propriety of the procedural steps that preceded and informed the decision eventually made, inasmuch as they may have impacted the final outcome” (see *Kostomarova* UNDT/2016/009, para. 44). In this connection, the Tribunal recalls that sec. 5.20 of ST/SGB/2008/5 provides as follows:

Where an aggrieved individual or alleged offender has grounds to believe that the procedure followed in respect of the allegations of prohibited conduct was improper, he or she may appeal pursuant to chapter XI of the Staff Rules.

50. Accordingly, in assessing the legality of the decision to close the Applicant’s complaint with managerial action with respect to Mr. S. and with no further action with respect to Ms. K., “the Tribunal must examine whether the Administration breached its obligations pertaining to the review of the complaint and the investigation process that ensued, as set out primarily in ST/SGB/2008/5” (see, e.g., *Duparc et al.* UNDT/2021/077, para. 34; *Belkhabbaz* UNDT/2018/016/Corr.1, para. 82).

51. Before commencing this exercise, however, the Tribunal must recall that, in cases of harassment and abuse of authority, it is not vested with the authority to conduct a fresh investigation into the initial complaint (see *Messinger* 2011-UNAT-123, para. 27). As for any discretionary decision of the Organization, it is not the Tribunal’s role to substitute its own decision for that of the Administration (see, e.g., *Sanwidi* 2010-UNAT-084, para. 40). Indeed, as the Appeals Tribunal held in *Sanwidi*:

42. In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a

merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.

52. However, the Tribunal may “consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse” (see *Samwidi*, para. 40). If the Administration acts irrationally or unreasonably in reaching its decision, the Tribunal is obliged to strike it down (see *Belkhabbaz* 2018-UNAT-873, para. 80). “When it does that, it does not illegitimately substitute its decision for the decision of the Administration; it merely pronounces on the rationality of the contested decision” (see *Belkhabbaz*, para. 80).

53. In light of the foregoing, and having reviewed the parties' submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the application is receivable in its entirety;
- b. Whether the investigation was properly conducted;
- c. Whether the Administration committed any errors in making the contested decision itself;
- d. Whether the Organization breached its obligation to protect the Applicant from retaliation; and
- e. Whether the Applicant is entitled to any remedies.

Whether the application is receivable in its entirety

54. The Respondent argues that the application is not receivable *ratione materiae* in part because the contested decision has no direct impact on the terms of employment of the Applicant. He specifically argues that the mere fact that the Applicant disagrees with the conduct of an investigation, its conclusions, and the decision taken does not mean that either the investigation or the decision is unlawful, nor that the decision has a direct impact on her terms of employment.

55. In this respect, the Tribunal recalls that art. 8.1(a) of its Statute provides that an application shall be receivable if “[t]he Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute”. Art. 2.1(a) of the Tribunal’s Statute provides in relevant part that:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

56. It follows that the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member’s terms and conditions of appointment; and the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member (see, e.g., *Lee* 2014-UNAT-481, para. 49).

57. In the present case, the Applicant contests the decision to close her complaint of prohibited conduct under ST/SGB/2008/5 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. There is no doubt that provisions of ST/SGB/2008/5 fall within the scope of the “terms of appointment” under art. 2.1(a)

of the Tribunal's Statute. Thus, the administrative decision to close a staff member's complaint with no disciplinary action indeed produces direct legal consequences affecting his/her terms and conditions of appointment.

58. Moreover, the Appeals Tribunal in *Nwuke* 2010-UNAT-099 (para. 6) found that:

when the claims regard issues covered by ST/SGB/2008/5, the staff member is entitled to certain administrative procedures. If he or she is dissatisfied with their outcome, he or she may request judicial review of the administrative decisions taken. The [Tribunal] has jurisdiction to examine the administrative activity (act or omission) followed by the Administration after a request for investigation, and to decide if it was taken in accordance with the applicable law. The [Tribunal] can also determine the legality of the conduct of the investigation.

59. Accordingly, the Tribunal finds that the application is receivable in its entirety.

Whether the investigation was properly conducted

60. In the present case, the Applicant alleged that Mr. S. and Ms. K. committed prohibited conduct such as harassment and abuse of authority by, *inter alia*, having marginalized her in the exercise of her functions and calling the Applicant "names". In addition, the Applicant alleged "defamation of character and privacy breach" implicating Ms. K. which, according to the Panel, could amount to harassment or abuse of authority under ST/SGB/2008/5, on grounds that in the meeting of 18 July 2018 with the U.S.A. Embassy staff in Tirana, Ms. K. stated that UNODC might begin an investigation of the Applicant because of disloyalty and insubordinate behaviour.

61. The terms "harassment" and "abuse of authority" constitute "prohibited conduct" within the meaning of sec. 1.5 of ST/SGB/2008/5. Their definitions can be found in sec. 1 of ST/SGB/2008/5. Sec. 1.2 provides that:

Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.

62. Sec. 1.4 of ST/SGB/2008/5 defines the term “abuse of authority” as follows:

Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

63. Secs. 5.15 to 5.17 of ST/SGB/2008/5 set forth the obligations of the Panel. In particular, sec. 5.16 provides as follows:

The fact-finding investigation shall include interviews with the aggrieved individual, the alleged offender and **any other individuals who may have relevant information** about the conduct alleged. (emphasis added)

64. Sec. 5.17 of the same bulletin provides that:

The officials appointed to conduct the fact-finding investigation shall prepare a detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence, such as written statements by witnesses or any other documents or records relevant to the alleged prohibited conduct. This report shall be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint or report.

65. Accordingly, the Panel is obliged to seek to interview any individuals who may have relevant information about the alleged harassment and abuse of authority and provide any relevant documents or records.

66. In determining whether the Panel fulfilled its obligations in investigating the complaint, the Tribunal considers the Panel's written record to be an appropriate basis.

Alleged failure to interview relevant witnesses

67. Turning to the alleged failure to interview relevant witnesses, the Tribunal recognizes that "the panel has a wide discretion in selecting witnesses" (see *Belkhabbaz* UNDT/2018/016, para. 129). However, this discretion is not unfettered, and the panel is directed to interview any individual who may have relevant information pursuant to sec. 5.16 of ST/SGB/2008/5. "The applicable criteria for determining if a potential witness should be heard is thus the relevance of the information he or she may provide" (see *Belkhabbaz* UNDT/2018/016, para. 129).

Witness Mr. S. B.

68. The Applicant takes issues with the Panel's failure to interview Mr. S. B. In this respect, she specifically argues that contrary to the conclusion in the investigation report, Mr. S. B. was willing to provide evidence, but the Panel failed to follow up with the correct protocols to obtain his testimony.

69. The Tribunal observes that as shown by the investigation report, noting that the Applicant referred to her communication with Mr. S. B. during her interview, the Panel asked the Applicant why Mr. S. B. was not included in the list of witnesses. Moreover, the Applicant provided excerpts of her WhatsApp communication with Mr. S. B. in redacted form to the Panel and stated that Mr. S. B. "stands ready to confirm what is in the [W]hats[A]pp communication". Therefore, the Tribunal considers Mr. S. B. to be an "[individual] who may have relevant information about the conduct alleged" within the meaning of sec. 5.16 of ST/SGB/2008/5. Consequently, the Panel was obliged to seek the testimony of Mr. S. B. pursuant to sec. 5.16 of ST/SGB/2008/5.

70. In determining whether the Panel fulfilled its obligation under sec. 5.16 of ST/SGB/2008/5, the Tribunal notes that by email dated 1 July 2019, the Panel wrote to Mr. S. B. requesting an interview with him. However, it was not until 27 August 2019—one day before the issuance of the investigation report—when Mr. S. B. replied to the Panel as follows:

Sorry that this has taken so long but as a Criminal Division U.S. Justice Department employee I'm required to notify the Division of any request for official actions related to my position as Police Attaché with Embassy in Tirana. I have received the following guidance in reference to the UNOV/UNODC request for an interview. Specifically, their recommendation is that I deny the request for an interview and tell UNOV/UNODC that they may make a detailed request, in writing, to the Criminal Division, and the Division will determine whether it is appropriate to respond. It can either be directed to Greg Ducot in his capacity as Acting Director of [the International Criminal Investigative Training Assistance Program ("ICITAP")], or to the Assistant Attorney General. Unless UNOV/UNODC can point to some authority under which we are obligated to cooperate with their internal inquiry, I should not agree to be interviewed.

71. While the Tribunal recognizes the Panel's need to finalize the investigation report in a timely manner pursuant to sec. 5.17 of ST/SGB/2008/5, the Tribunal considers that, prior to concluding that Mr. S. B. declined the interview, the Panel should have explored the possibility of written interrogatories by making a detailed request in writing to the Criminal Division in accordance with the protocols suggested by Mr. S. B. in his email dated 27 August 2019.

72. Moreover, it was in the interest of justice for the Panel to interview Mr. S. B. who may have had relevant information about the alleged conduct, in particular considering that the Panel found that the excerpts of the Applicant's WhatsApp communication with Mr. S. B. was of extremely low reliability and probative value.

73. Accordingly, the Tribunal finds that the Panel did not comply with its duty to take the necessary steps to obtain the testimony of Mr. S. B. who was a relevant witness in terms of sec. 5.16 of ST/SGB/2008/5.

Witnesses who might have had knowledge of certain circumstances

74. The Applicant argues that the Panel failed to interview witnesses who might have had knowledge of circumstances where the Supervisors “repeatedly and regularly made faces and mocked the Applicant” and who were asked not to meet the Applicant when travelling to Tirana.

75. The Tribunal finds no merits in the Applicant’s submissions in this respect.

76. First, the Applicant failed to indicate in both her complaint and her application to the Tribunal the names of specific witnesses who might have had knowledge of circumstances where the Supervisors “repeatedly and regularly made faces and mocked the Applicant” or who were asked not to meet the Applicant. Indeed, the investigation report shows that the Panel requested interviews with all persons identified by the Applicant except for the Director of OIOS who was not considered as having any independent knowledge of the relevant facts because he was only the recipient of the Applicant’s 7 July 2018 request for advice concerning her complaint. Furthermore, the Panel explicitly asked the Applicant whether there was anyone else she would propose to be interviewed but she stated that she had already provided a list of people to be interviewed.

77. Moreover, the Applicant failed to demonstrate how failure to interview these witnesses would have had an impact on the outcome of the investigation. Without prejudice to the fact that the Applicant bears the burden of proof in this respect, the Tribunal notes that the investigation report shows that the Panel duly considered several witnesses’ statements on these specific circumstances and interviewing these individuals would not have changed the outcome of the investigation.

Alleged application of inconsistent standards in assessment of evidence

78. The Applicant argues that the Panel applied inconsistent standards in its assessment of the evidence by considering that certain proven offensive comments of Mr. S. contributed to a hostile work environment while overlooking “similar hostile acts and words”.

79. The Tribunal notes that apart from a general assertion, the Applicant did not point to any concrete example of similar hostile acts and words which the Panel failed to consider.

80. Moreover, contrary to the Applicant's assertion, the investigation report shows that the Panel thoroughly examined various allegations in relation to hostile acts and words, considering the statements of all witnesses and documentary evidence, and assessing them holistically for its conclusions. In this regard, the Panel carefully scrutinized Mr. S.'s statement by assessing it in light of the statements made by other witnesses. It also considered the statement of Ms. M., which tends to weigh in favour of the Applicant's claim. It further paid particular attention to the statements made by the Applicant during her own interview and the evidence offered by her and eventually concluded that Mr. S. contributed to a hostile working environment.

81. Consequently, the Applicant's argument that the Panel applied inconsistent standards reflects a mere disagreement with the Panel's assessment of evidence without demonstrating any error.

Alleged failure to properly assess the evidence of Mr. O., Ms. M. and Mr. S. B.

82. The Applicant submits that the Panel failed to find that the evidence of Mr. O., Ms. M. and Mr. S. B. corroborated each other and lent credibility to the Applicant's allegations that her Supervisor had been marginalizing her.

83. The Tribunal notes that the investigation report shows that the Panel duly assessed the evidence of Mr. O., Ms. M. and Mr. S. B. holistically in light of the totality of the evidence on record. Moreover, the assessment of the evidence and determining the weight to be attached to it falls within the Panel's inherent discretion.

84. Accordingly, the Tribunal finds that the mere assertion that the Panel failed to give sufficient weight to certain evidence or that it should have interpreted the evidence in a particular manner is summarily dismissed.

Alleged failure to consider the testimonies of three direct witnesses

85. The Applicant appears to suggest that the Panel failed to consider the testimonies of three direct witnesses Ms. M., Mr. O. and Ms. A. by arguing that their testimonies “appear to be absent” from the exhibits provided by the Respondent.

86. The Tribunal finds that the Applicant’s submission in this respect is not supported by the fact. Indeed, the relevant testimonies have been considered by the Panel and reflected in the investigation report (see, e.g., paragraphs 22, 29, 37, 45, 47, 51, 52, 66, 78, 81, 82, 109, and 118 of the investigation report).

Alleged failure to adequately examine the Applicant’s complaint in relation to marginalizing her in the exercise of her functions

87. The Applicant claims that the Panel paid little attention and made little effort to examine her complaint that the subjects abused their authority by marginalizing her in the exercise of her functions.

88. To support her claim, the Applicant specifically argues that it appears that the Panel accepted all of Mr. S.’s statements without questioning their truthfulness and that the investigators paid no attention to the evidence as regards:

- a. The request by the Applicant’s first reporting officer (“FRO”) to reduce her employment period into a part-time assignment in December 2015;
- b. The reduction in the Applicant’s functions and the decision by her FRO with agreement from Mr. S. to reassign these functions to colleagues working in offices outside of Albania in 2014/2015;
- c. Illegally interrupting her access to UNODC internal automated systems such as Lotus Notes and UMOJA;
- d. Failure to timely submit the Applicant’s performance evaluation;
- e. The retroactive change of Applicant’s reporting lines through the addition of a P-3 staff member as her FRO;

- f. Removal of the Applicant as the focal point for several thematic areas; and
- g. Consistent belittling of the Applicant by Mr. S.

89. In this respect, the Tribunal first recalls that the Organization has a degree of discretion as to how to conduct a review of a complaint filed under ST/SGB/2008/5 and may decide whether an investigation into all or some of the allegations is warranted (see, e.g., *Benfield-Laporte* 2015-UNAT-505, para. 38). Moreover, contrary to the Applicant's assertion, the Tribunal notes that the Panel engaged in a detailed analysis of the Applicant's allegation that the subjects abused their authority by marginalizing her in the exercise of her functions, based on concrete examples provided by various witnesses, including the Applicant.

90. Second, the Tribunal considers that the Panel has inherent discretion to examine the credibility of a witness and assess the relevance of the evidence and determine its weight. Furthermore, contrary to the Applicant's assertion, the Panel critically assessed Mr S.'s statements in light of the statements made by other witnesses and accepted his testimony mostly when it was corroborated by other evidence. Also, the Applicant's assertion that the Panel paid no attention to the evidence listed in para. 88 is not supported by facts. Indeed, the investigation report contained a detailed analysis of evidence on the specific aspects identified by the Applicant.

91. Accordingly, the Tribunal finds that the Applicant's specific arguments in relation to the Panel's alleged failure to adequately examine her claims of marginalization in the exercise of her functions reflect mere disagreement with the Panel's assessment of the evidence without demonstrating error.

92. In light of the foregoing, the Tribunal finds that the Panel properly conducted the investigation except for its failure to interview Witness Mr. S. B.

Whether the Administration committed any errors in making the contested decision itself

93. The Applicant appears to suggest that the Administration committed errors in making the contested decision itself. In this respect, she specifically argues that the decision to treat the findings of the investigation administratively suggests a reluctance to hold a senior manager accountable for a finding of wrongdoing resulting from the procedures established to address such conduct; and that the Organization attempted a revision of the investigation report insofar as it concluded that one of the subjects was guilty of contributing to a hostile work environment. Moreover, the Applicant appears to suggest that the Organization failed to provide her with a “properly reasoned decision” with regard to her complaint by referring to para. 42 of *Rehman* UNDT/2018/039 in her application, stating as follows:

It is [unequivocally] incumbent upon the Organization to provide anyone who files a complaint with a properly reasoned decision, especially when the complaint is being rejected. This also enables the staff member to promptly exercise other available options including a challenge to that decision.

94. The Tribunal finds no merit in the Applicant’s submissions in this respect.

95. First, the Tribunal notes that in making the final decision on the Applicant’s complaint, the D/DM, UNODC, as the responsible official for her case, was bound by sec. 5.18 of ST/SGB/2008/5, which provides in its relevant part that:

On the basis of the report, the responsible official shall take one of the following courses of action:

(a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation;

(b) If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may

include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken.

96. The Tribunal notes that the Panel concluded that:

- a. It found no clear and convincing information substantiating the Applicant's allegations against Ms. K.; and
- b. The information it received clearly and convincingly showed Mr. S.'s contribution to an offensive work environment with respect to one factual situation in which Mr. S. allegedly called the Applicant "names". However, it found no other clear and convincing information substantiating the allegations made against Mr. S. in that case.

97. Based on the Panel's findings and conclusions, the Administration considers that Mr. S. engaged in unsatisfactory conduct in contributing to an offensive work environment and that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action and that the evidence collected by the Panel did not establish a factual basis for the Applicant's allegations of harassment and abuse of authority on the part of Ms. K.

98. Therefore, the consequent decision to close the matter with managerial action with respect to Mr. S. and without any further action in relation to Ms. K. was nothing more than regular compliance with the provisions of sec. 5.18(a) and (b) of ST/SGB/2008/5.

99. The Tribunal further recalls that the instigation of disciplinary charges against a staff member is the privilege of the Organization itself, and it is not legally possible to compel the administration to take disciplinary action (see, e.g., *Abboud* 2010-UNAT-100, para. 34; *Benfield-Laporte* 2015-UNAT-505, para. 37; *Oummih* 2015-UNAT-518, para. 31).

100. Accordingly, the Applicant's argument that the decision to treat the findings of the investigation administratively suggests a reluctance to hold a senior manager accountable is a mere speculation and disagreement without demonstrating error.

101. Second, the Applicant's assertion that the Organization attempted a revision of the investigation report insofar as it concluded that one of the subjects was guilty of contributing to a hostile work environment is unfounded. The evidence on record shows that, for the purpose of determining the appropriate course of action under sec. 5.18 of ST/SGB/2008/5, the Administration requested the Panel to confront Mr. S. with the evidence received during the investigation which it did and subsequently endorsed the Panel's finding on this aspect.

102. Finally, the evidence on record shows that pursuant to sec. 5.18(a) and (b) of ST/SGB/2008/5, the Applicant was informed of the outcome of the investigation by Memorandum of 29 April 2020, i.e., the contested decision, which indeed contained an accurate summary of the Panel's findings addressing all allegations made by the Applicant. Therefore, contrary to what the Applicant appears to suggest, the Administration provided her with a properly reasoned decision with regard to her complaint.

103. Accordingly, the Tribunal finds that the Administration did not commit any errors in making the contested decision itself.

Whether the Organization breached its obligation to protect the Applicant from retaliation

104. The Applicant argues that the Organization breached its duty to protect its employee from retaliation. To support her claim, she specifically argues that:

- a. For the long duration of the investigation, the Administration did not take appropriate measures to address her concerns informally or to protect her from further abuse of authority; and

b. The manner of handling her complaint was marred by a lack of transparency. No information had been forthcoming as to what action, if any, was taken by UNODC as interim measures to protect the complainant, or following the finding of the investigation, what administrative measures had actually been imposed on Mr. S.

105. In this respect, the Tribunal recalls that sec. 6.4 of ST/SGB/2008/5, titled “Monitoring during the investigation”, provides that:

Where a fact-finding investigation is initiated following receipt of a formal complaint of prohibited conduct, appropriate measures shall be taken by the head of department, office or mission to monitor the status of the aggrieved party, the alleged offender and the work unit(s) concerned until such time as the fact-finding investigation report has been submitted. The purpose of such monitoring shall be to ensure that all parties comply with their duty to cooperate with the fact-finding investigation and that no party is subjected to retaliation as a result of the complaint or the fact-finding investigation.

106. The purpose of monitoring during investigation is to ensure that all parties comply with their duty to cooperate with the fact-finding investigation and that no party is subjected to retaliation. The obligation to protect the complainants with contracts administered by the UNDP from retaliation is further provided in ST/SGB/2017/2/Rev. 1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) and the UNDP’s Policy for Protection against Retaliation implementing ST/SGB/2017/2/Rev. 1.

107. ST/SGB/2017/2/Rev. 1 provides in relevant part that:

7.1 Upon receipt of a complaint of retaliation or threat of retaliation, the Ethics Office will conduct a preliminary review of the complaint to determine whether (a) the complainant engaged in a protected activity; and (b) there is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation.

...

7.4 The Ethics Office will seek to complete its preliminary review within 30 days of receiving all information requested concerning a complaint of retaliation submitted.

...

8.3 Pending completion of the investigation, the Ethics Office may recommend that the Secretary-General take appropriate measures to safeguard the interests of the complainant, including, but not limited to, temporary suspension of the implementation of the action reported as retaliatory; with the consent of the complainant, temporary reassignment of the complainant and/or change of reporting lines; or, for staff members, placement of the complainant on special leave with full pay.

108. It follows that the provisions of ST/SGB/2017/2/Rev. 1 oblige the Organization to take appropriate measures to prevent the occurrence of possible prohibited conduct and/or address risks of possible retaliation upon receipt of a complaint of retaliation to the Ethics Office.

109. Turning to the present case, the Tribunal first finds that the UNDP-EO fully discharged its obligations under ST/SGB/2017/2/Rev. 1. The evidence on record shows that the Applicant filed a request for protection from retaliation with the UNDP-EO on 21 November 2018. One week later, UNDP-EO replied to the Applicant's request and determined that the conduct she described, rather than relating to retaliation due to her having filed a complaint, related to conduct which could form the basis of general harassment allegations dating back to 2015.

110. Regarding the aspect of her request relating to the investigation for which she was the subject, the UNDP-EO also requested the Applicant's permission to follow up with the OAI. On 3 December 2018, the UNDP-EO informed the Applicant of its determination that the UNDP's Policy for Protection Against Retaliation did not apply to her situation because the report to OAI against her predated either her 27 August 2018 communication to the Director of Operations, UNODC, or the referral of her complaint from OIOS to UNODC.

111. Furthermore, the Applicant did not point out any irregularities in relation to the UNDP-EO's review of her request for protection from retaliation.

112. Second, the Tribunal finds no merit in the Applicant's argument that for the long duration of the investigation, the Administration did not take appropriate measures to address her concerns informally or to protect her from further abuse of authority. The evidence on record shows that on 12 November 2018, the D/DM, UNODC, explicitly asked whether the Applicant had any interest in attempting informal resolution of the matter whereas she preferred to pursue a formal process in respect of her complaint under ST/SGB/2008/5. It is difficult for the Tribunal to understand how a staff member, who refused to engage in informal resolution, turns around to blame the Organization for not addressing her concerns informally.

113. Moreover, apart from a general assertion, the Applicant did not provide any evidence to the Tribunal showing that she was subject to further abuse of authority during the investigation. Also, the Panel found no clear and convincing evidence substantiating her allegations of abuse of authority by Mr. S. and Ms. K. in her complaint.

114. Third, the Applicant's argument that the manner of handling her complaint is marred by a lack of transparency is equally unfounded. Indeed, the measures to protect the complainant are set forth in relevant Staff Regulations and Rules that are publicly available. Also, the Tribunal has consistently held that staff members are expected to know their rights and deemed to know the Regulations and Rules governing their appointment (see, e.g., *Vukasović* 2016-UNAT-699, para. 14; *Amany* 2015-UNAT-521, para. 18). Similarly, in relation to the Applicant's allegation of the Administration's failure to inform her of the specific administrative measures imposed on Mr. S., the Tribunal notes that paragraph 8 of the contested decision states that "pursuant to section 5.18 (b) of ST/SGB/2008/5, and section 7.5 (b) of ST/AI/2017/1, [the D/DM, UNODC,] decided to address the matter through managerial action, possibly flanked by the administrative measure of a reprimand."

115. Finally, the Tribunal finds that the Applicant has not discharged her onus to prove retaliation. The Applicant merely points out that after making his own complaint against her, Mr. S. initially asked that she be put on leave without pay but UNDP decided that the Applicant should continue to exercise her functions and that three months after the start of the investigation, Mr. S. decreased the Applicant's functions considerably to a level of a NO-B staff. However, she did not present any evidence showing that these alleged retaliatory acts were a result of her complaint against Mr. S. and Ms. K. Indeed, Mr. S.'s attempt to put the Applicant on leave and her temporary reassignment were a consequence of the pending investigation of the complaint against her.

116. In addition, while it is not convinced that Mr. S. retaliated against the Applicant by seeking to place her on leave without pay, the Tribunal notes that the Administration protected her from Mr. S.'s proposal to place her on leave without pay by deciding that she should continue to exercise her functions.

117. In light of the above, the Tribunal finds that the Organization did not breach its obligation to protect the Applicant from retaliation.

Conclusion on the lawfulness of the contested decision

118. The Tribunal recalls its findings below:

- a. The Panel properly conducted the investigation except for the failure to interview Witness Mr. S. B.;
- b. The Administration did not commit any errors in making the contested decision itself; and
- c. The Organization did not breach its obligation to protect the Applicant from retaliation.

119. As such, the Tribunal concludes that the contested decision may have been tainted by the Panel's failure to interview Witness Mr. S. B. insofar as it concerns her complaint against Ms. K.

120. To determine whether the failure to interview Mr. S. B. in accordance with sec. 5.16 of ST/SGB/2008/5 would contribute to the unreasonableness of the contested decision, the Tribunal recalls that procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of unlawfulness of the contested decision and the determination of whether a staff member was denied due process or procedural fairness must rest upon the nature of any procedural irregularity and its impact (see *Sarwar* 2017-UNAT-757, para. 87).

121. The Tribunal notes that in relation to the sixth allegation that Ms. K met with U.S.A. Embassy staff in Tirana and stated that UNODC might begin an investigation of the Applicant because of disloyalty and insubordinate behaviour, the Panel finds that it is not clearly and convincingly established because Ms. K unequivocally rejected the allegation whereas the only other information—the excerpts of the Applicant’s WhatsApp communication with Mr. S. B.—is of extremely low reliability and probative value.

122. However, the evidence from Mr. S. B. obtained by the Applicant’s Counsel shows, *inter alia*, that Ms. K. had provided untruthful testimony to the Panel regarding her meeting with the U.S.A. Embassy; that she had informed said Embassy about the investigation against the Applicant; and that Ms. K. had belittled the Applicant during the meeting at the U.S.A. Embassy.

123. Therefore, the Tribunal finds that there is evidence that an interview with Mr. S. B. would have changed the outcome of the investigation in relation to the Applicant’s sixth allegation. Accordingly, the Panel’s finding in this respect is vitiated and tainted by the fact that the Panel did not comply with its obligation to interview relevant and dispositive Witness Mr. S. B. under sec. 5.16 of ST/SGB/2008/5.

124. In light of above, the Tribunal finds that the Panel’s failure to interview Mr. S. B. would have tainted and vitiated the contested decision insofar as it concerns Ms. K.

Whether the Applicant is entitled to any remedies

125. In her application, the Applicant seeks rescission of the contested decision, accountability for the violation of her right to a proper working environment and compensation for harm.

126. In this respect, the Tribunal recalls that art. 10.5 of its Statute delineates the Tribunal's powers regarding the award of remedies, providing that:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

127. Having concluded that the Panel's failure to interview Witness S. B would have tainted and vitiated the contested decision insofar as it concerns Ms. K, noting that the contested decision in relation to Ms. K. is separable from that which concerns Mr. S., the Tribunal finds it appropriate to rescind the contested decision insofar as it concerns Ms. K.

128. The Tribunal further recalls that a finding of unreasonableness, and consequent invalidity of a contested decision, will "give rise to the discretion to award specific performance – an order directing the Administration to act as it is contractually and lawfully obliged to act" (see *Belkhabbaz*, para. 80). Considering that the Panel has conducted a proper and thorough investigation except in relation to Witness S. B., and for the purpose of consistency, the Tribunal finds it appropriate to remand the Applicant's complaint insofar as it concerns the sixth

allegation back to the Administration to have Witness S. B. interviewed by the same Panel.

129. In relation to the alleged harm, the Tribunal recalls that art. 10.5(b) of its Statute, as amended by General Assembly resolution 69/203 adopted on 18 December 2014, provides that compensation for harm may only be awarded where supported by evidence. Indeed, “compensation for harm can only be awarded where there is a sufficient evidentiary basis establishing that harm has in fact occurred” (see *Kallon* 2017-UNAT-742, para. 67). However, other than making general allegations, the Applicant has not provided any evidence supporting that she suffered harm. Therefore, the Tribunal rejects the Applicant’s request for compensation for harm.

Conclusion

130. In view of the foregoing, the Tribunal DECIDES that:

- a. The contested decision is rescinded insofar as it concerns Ms. K.;
- b. The matter is, therefore, remanded to the Administration who shall ensure that the same Panel undertake what is necessary in order to obtain the testimony of Mr. S. B.; and
- c. All other claims are rejected.

(Signed)

Judge Alexander W. Hunter, Jr.
Dated this 13th day of May 2022

Entered in the Register on this 13th day of May 2022

(Signed)

René M. Vargas M., Registrar, Geneva