



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/012

Judgment No.: UNDT/2025/062

Date: 8 September 2025

Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Sètondji Roland Adjovi, Etudes Vihodé Ltée
Anthony Kreil Wilson, Études Vihodé Ltée

Counsel for Respondent:

Alister Cumming, UNICEF

Introduction

1. The Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), contests the decision not to investigate his complaint of prohibited conduct by UNICEF personnel at the Sudan Country Office (“SCO”).
2. For the reasons set forth below, the Tribunal decides to reject the application.

Facts and procedural background

3. The Applicant joined UNICEF on 12 April 2018 as a Fundraising Specialist at the P-4 level in Geneva, Switzerland. On 19 April 2022, he was reassigned to the P-4 position of Youth and Adolescent Development Manager in Khartoum, SCO.
4. On 4 October 2023, the Applicant filed a complaint of potential prohibited conduct with the Office of Internal Audit and Investigations (“OIAI”). He alleged that there was an improper disclosure of his personal information by UNICEF personnel to third parties in Sudan. He further detailed that, on 5 July 2022, his marital status and sexual orientation were disseminated on social media by a local activist. As a result of the dissemination of this information, the Applicant and his spouse, who also served at SCO, were unable to return to the host country due to security concerns. The Applicant submitted that the disclosure had been committed by UNICEF personnel with access to his private information.
5. On 17 October 2023, OIAI decided to close the case after a preliminary assessment by which it concluded that it was unlikely that an investigation would reveal misconduct.
6. On 15 December 2023, the Applicant requested management evaluation of the decision to close his complaint.
7. On 31 January 2024, the Deputy Executive Director (“DED”), Management, UNICEF, decided that the management evaluation request was not receivable. He further concluded that, even if the request was found to be receivable, the contested decision was fully consistent with the regulatory framework concerning the initiation of investigations.

8. On 29 April 2024, the Applicant filed the instant application.
9. On 3 June 2024, the Respondent filed his reply, challenging, *inter alia*, the receivability of the application.
10. By Order No. 85 (GVA/2024) of 25 July 2024, the Tribunal instructed the Applicant to file a rejoinder addressing, *inter alia*, the issues of receivability raised by the Respondent in his reply. The Tribunal furthermore encouraged the parties to explore an amicable settlement.
11. On 26 August 2024, the Applicant filed his rejoinder.
12. On 4 September 2024, the Respondent informed the Tribunal that there was no prospect for an informal resolution of this matter.
13. On 1 April 2025, the instant case was assigned to the undersigned Judge.
14. On 5 April 2025, the Tribunal invited the parties to a Case Management Discussion (“CMD”), which took place virtually via MS Teams on 29 April 2025 at 2.30 p.m. (Geneva time).
15. 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”.
16. On 3 July 2025 at 5:06 p.m. (Geneva time), the Applicant filed his closing submissions.
17. On 3 July 2025, at 5:41 p.m. (Geneva time), the Respondent filed his closing submissions.
18. Later that day, the Applicant filed a motion to strike the Respondent’s closing submission from the case record.
19. 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.

20. 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.

21. By Order No. 89 (GVA/2025) of 18 July 2025, the Tribunal decided that the Respondent's procedural mistake did not amount to a manifest abuse of proceedings that would warrant an award of cost. Similarly, it found that the actions of Counsel for the Respondent did not amount to "serious flaws" warranting a referral for accountability. The Applicant's motion was thus rejected.

Consideration

Receivability

22. Maintaining that the impugned decision had no impact on the Applicant's terms and conditions of appointment in terms of staff rule 11.2(a), the Respondent asserts that this application is not receivable *ratione materiae*.

23. The Respondent cites *Nwuke* 2010-UNAT-099, paras. 28-30, for the submission that a contested decision is only appealable if it directly affects the rights of a staff member under the terms of his or her appointment. Further, he submits that the only circumstance in which the complainant's rights are directly affected is when such rights are specifically granted by a Staff Regulation or Rule, or by another administrative issuance. Based on the foregoing, it is argued that the Applicant has no general right to compel the Administration to initiate an investigation into the issue he raises.

24. On the other hand, the Applicant argues that the leakage of his personal information had an immediate detrimental impact on the terms and conditions of his appointment, since he was sent to Switzerland; a country where he had been

previously based but where he had no ties. Further, he asserts that no financial support was given to him at the time. He only received support after approaching UNGLOBE, which advocated for him. Moreover, he was not permitted to return to Sudan, which resulted in the termination of his and his husband's appointments with UNICEF Sudan.

25. Citing para. 38 of POLICY/DHR/2020/002 ("UNICEF Policy on the Prohibition of Discrimination, Harassment, Sexual Harassment and Abuse of Authority") (the "Policy"), the Applicant argues that his challenge is receivable. The said paragraph provides that:

A victim who submitted a report of possible prohibited conduct, and who believes, after having been informed of the outcome, that the procedure under this Policy in respect of the report was not followed, may contest the matter pursuant to Chapter XI of the UN Staff Rules.

26. The Respondent objected to the above argument on the basis that it is an attempt at amending the Applicant's initial complaint to OIAI, which was an allegation of possible leaking of personal information, rather than a report of prohibited conduct.

27. Staff rule 11.2(a) provides that:

Staff members wishing to formally contest an administrative decision alleging noncompliance with their contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

28. In *Nwuke*, para. 5, it was held, *inter alia*, that a "staff member has no right to compel the Administration to conduct an investigation unless such right is granted by the Regulations and Rules. In such cases, it would be covered by the terms of appointment and entitle the staff member to pursue his or her claim even before the UNDT, and, after review, the Tribunal could order to conduct an investigation or to take disciplinary measures".

29. The Appeals Tribunal has also held that the denial of an investigation is not an “administrative decision” subject to judicial review unless the denial is “shown to adversely affect the rights or expectations of the staff member and have a direct legal effect” (*O’Brien* 2023-UNAT-1313, para. 30).

30. The Tribunal must, in this connection, determine whether the decision that closed the complaint without an investigation affected the Applicant’s terms of appointment and conditions of employment.

31. It is not disputed that the Applicant was not permitted to return to Sudan, which resulted in the termination of his appointment with UNICEF Sudan. Clearly, this consequence of the leakage affected the Applicant’s terms of appointment and conditions of employment.

32. It is also not disputed that the leakage occurred in a duty station where same -sex relationships are criminalized. The leakage effectively put the Applicant in danger, and the Administration had to relocate him to a safe duty station.

33. It is accepted that the Applicant’s initial complaint to OIAI was an allegation of leaking of personal information rather than a complaint of prohibited conduct (or, specifically, of harassment). However, that does not sustain, in the Tribunal’s view, a finding of not receivability, as the Respondent argues.

34. Indeed, it is evident from the pleadings that the alleged leakage of the Applicant’s personal information carried serious consequences to his terms and conditions of employment with the Organization. It is crucial to note that said complaint did not exist in a vacuum. One must look into the context in which it originated to understand its nature. If proven, the complaint might have naturally led to a conclusion of harassment, which is prohibited conduct. The fact that the Applicant did not specifically raise it as harassment does not exclude such a natural conclusion.

35. Therefore, while the Tribunal takes exception to the Applicant’s “broadening” of the application, since, save for the objection to the introduction of

the matter at a late stage, the Respondent does not dispute the fact that the leakage may have amounted to harassment if proven, the Tribunal accepts the submission.

36. Having accepted the submission that the leakage may have amounted to harassment if proven, the Tribunal recalls that the Appeals Tribunal jurisdiction has held that staff members have certain rights under the Regulations, Rules, Bulletins, and Administrative Instructions issued by the Secretary-General. For claims regarding issues covered by ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority), staff members are entitled to administrative procedures. If they are dissatisfied with the outcome, they may request judicial review.

37. In this connection, para. 38 of the Policy also provides that a victim who submitted a report of possible prohibited conduct and who believes, after having been informed of the outcome, that the procedure under the Policy in respect of the report was not followed, may contest the matter pursuant to Chapter XI of the UN Staff Rules.

38. Therefore, both the UNICEF legal framework and the Tribunal jurisprudence support the conclusion that the Applicant has a right to contest the Administration's decision vis-à-vis his complaint of possible prohibited conduct.

39. Based on the foregoing, the Tribunal rejects the Respondent's arguments and finds that the application is receivable *ratione materiae*.

Merits

40. The Applicant contests the decision to close his complaint without investigation. He maintains that on numerous occasions during the period between 10 July 2022 and 30 September 2022, when his SCO contract was terminated, he requested that investigations be conducted into the leakage of his personal and highly confidential information to an online blogger, which resulted in him having to be forcibly moved from Sudan.

41. As a result of the preliminary assessment, he was informed that it was

[...] unlikely that an investigation would reveal sufficient evidence to sustain, as a matter of law, a finding of misconduct. Among other things, there is insufficient information to form a reasonable belief that any member of UNICEF personnel improperly accessed your information.

42. According to the Respondent, in arriving at the contested decision, OIAI carried out an initial assessment of the Applicant's allegations. As part of its initial assessment, OIAI made inquiries to establish whether the Organization's records of staff personnel information, stored in a system known as VISION, had been improperly accessed by a SCO staff member.

43. According to the Respondent, however, VISION does not produce an audit trail that provides such detail. The system records who logs into it, but not what the logged account visualizes once logged in. Accordingly, it would not be possible to identify who, if anyone, had accessed the Applicant's personal data. OIAI also confirmed that V01, the victim in the disciplinary case against the Applicant, whom he suspected of the act, did not access the VISION system during the relevant period.

44. The Respondent further argues that OIAI was aware from information obtained during the investigation against the Applicant that he had been "open" about his marital status while at a social gathering in Khartoum when staff and local service providers were present. Additionally, information about his marital status was available on YouTube because the Applicant and his husband participated in a television production in 2015, which discussed their desire to form a family. OIAI concluded that there was no reasonable prospect that an investigation would determine the source of the information that was leaked about the Applicant on social media.

45. Accordingly, OIAI concluded that it was unlikely that an investigation would reveal sufficient evidence to sustain, as a matter of law, a finding of misconduct. There was no prospect of obtaining evidence that would allow OIAI to identify who, if any, leaked the Applicant's personal information.

46. Under para. 38 of the Policy, the Applicant's challenge may only be sustained upon proof that he believed, after having been informed of the outcome, that the procedure under the Policy in respect of his complaint was not followed.

47. In determining the lawfulness of an administration decision concerning the investigation of a complaint, it is well established that 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" (*Kostomarova* UNDT/2016/009, para. 44).

48. Recalling that, in cases of harassment and abuse of authority, the Tribunal is not vested with the authority to conduct a fresh investigation into the initial complaint (*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 (*Sanwidi* 2010-UNAT-084, para. 40).

The relevant procedure

49. Under the prevailing Policy, two steps must be followed before deciding to investigate or not to investigate a complaint.

50. The first step is for OIAI to acknowledge receipt of a report and undertake an initial assessment to determine whether an investigation is warranted in accordance with para. 19 of the POLICY/DHR/2020/001 v. 7 May 2020 ("UNICEF Policy on the Disciplinary Process and Measures"). This Policy also provides that the OIAI retains the ultimate authority to decide which cases it will consider.

51. According to para. 20 of the UNICEF Policy on the Disciplinary Process and Measures, if the report does not contain sufficient information to warrant an investigation, the reported conduct would not, as a matter of law, amount to misconduct, or it is unlikely that an investigation would reveal sufficient evidence to sustain, as a matter of law, a finding of misconduct, OIAI shall close the case.

52. The second step is to inform the victim (in this case, the Applicant) about the status of the investigation and the outcome of the matter.

53. The Applicant argues that the Administration's claim that the discretion to close the case without further investigation or action after a preliminary assessment is flawed since its discretion is not unfettered.

54. This argument is correct, but only to a limited extent. As already pointed out, the UNICEF Policy on the Disciplinary Process and Measures provides that a challenge may only be sustained upon proof that the Applicant believed, after having been informed of the outcome, that the procedure under the Policy in respect of his complaint was not followed. Therefore, the Policy defines the boundaries relating to challenges to decisions to close a complaint without investigation.

55. In this case, an initial assessment was conducted, and the Applicant was informed about its status and its outcome. The evidence he presented was assessed by the investigators, who made a grounded decision not to pursue an investigation. No procedural steps have been violated, therefore.

56. Notwithstanding, the Tribunal will analyze whether the assessment of the Applicant's allegations was somehow tainted or vitiated.

57. The main arguments put forth by the Applicant are the following:

a. OIAI's refusal to investigate occurred despite his having been informed that the leak originated internally from someone within the SCO, and despite there being twenty-one SCO staff members with access to his sensitive information concerning sexual orientation and marital status;

b. OIAI's assertion that there was insufficient information to form a reasonable belief that any SCO staff member improperly accessed the Applicant's personal data is disingenuous and fails to acknowledge the seriousness of the breach and the number of individuals with access;

c. The undisputed fact that 21 SCO staff members had access to the Applicant's personal information, coupled with the subsequent unauthorized disclosure of his marital status, establishes a *prima facie* case that one or more

of these individuals, or someone to whom they improperly granted access, was responsible for the leak;

d. The Applicant challenges the credibility of OIAI's initial assessment and inquiries, particularly the conclusion that HRIS does not generate an audit trail and that it would therefore be impossible to determine whether, and by whom, the Applicant's personal data was accessed. He argues that this assertion strains plausibility and reflects investigative incompetence;

e. The Applicant argues that in any advanced Enterprise Resource Planning ("ERP") system, every user action is recorded in audit logs for security purposes. This includes the viewing or accessing of records, user session initiations, and screen interactions. To retrieve personal information, a user must first initiate the appropriate transaction code (T-code), enter identifying information about the staff member, or conduct a search, all of which are logged. The Applicant contends that these standard logging features make it implausible that no audit trail exists, as claimed by OIAI; and

f. The Applicant argues that the justification provided by the DED, UNICEF, in its management evaluation is contradicted by a 29 July 2022 email from UN-GLOBE, which recommended retrieving VISION access logs and referenced specific reports (e.g., t-code HRBEN0006) that display spouse data accessible to HR/Finance staff. These technical details suggest that audit trails do exist, undermining the Administration's claim. If such logs truly cannot be traced, it would indicate a serious security flaw in UNICEF's systems.

58. The Applicant's arguments presented above are not pertinent to the scope of the instant review, as they primarily disagree with the assessment of his claims rather than highlight alleged flaws in the preliminary assessment itself. In fact, the Applicant's assertions invite the Tribunal to make its own determination with respect to the underlying decision, rather than review its legality. Such an evaluation falls outside the Tribunal's mandate, which does not extend to substituting its judgment for that of the decision-maker.

59. Notwithstanding, it bears noting that the Applicant does not provide evidence supporting the foregoing arguments. To be clear, OIAI concluded, based on its preliminary assessment, that an investigation would not reveal an act of misconduct because it was impossible for the investigators to effectively identify the SCO staff member, if any, who leaked the Applicant's personal information to a third party.

60. In support, the Respondent provided a Note for the Record dated 20 December 2023, in which the Investigation Specialist in the Applicant's case reported a Microsoft Teams conversation with the Information Communication Technology Manager ("ICT Manager"), Digital Core-Solutions Center & Support, UNICEF, after which he noted the following:

2. [...], OIAI made an ICT request to obtain all logs showing access pertaining to Vision personnel records in relation to [the Applicant] and [his partner], between 1 April to 5 July 2022.

3. [the ICT Manager] advised during the conversation that she confirmed with the person in charge of the HR module that Vision does not log when someone simply looks at information within it. It logs when a person accesses the system itself, and if a user changes information in Vision, it logs who made the change. However, it does not log a user simply viewing information in Vision.

61. The Applicant claims that such assessment was incorrect because an email exchange from 29 July 2022 between the DED, UNICEF, and the Agency Coordinator at UNGLOBE, UNICEF, indicates otherwise. Specifically, the Applicant claims in its closing submissions that:

18. [...] The plausibility of the justification provided by [the DED, UNICEF] in the management evaluation response is also undermined by the 29 July 2022 email from [the Agency Coordinator, UN-GLOBE] to [the DED] where he advised that an investigation be initiated that "VISION access logs are retrieved by ICT to confirm who consulted the victims profiles 2-3 weeks before July 5th, 2022" and informed [the DED] that "other reports (e.g. t-code HRBEN0006, staff benefits) still show spouse data and may be accessed by CO colleagues in HR/finance.

62. However, having read the correspondence thread referenced by the Applicant, the Tribunal disagrees that it contains contradictory information, as the following transcript will demonstrate.

63. On 29 July 2022, the Agency Coordinator, UN-GLOBE, told the DED, UNICEF, that: (emphasis added)

To support the affected staff members, **we** have developed the note attached to summarize the key points of the case and **make four proposals**, categorized by priority and sensitivity:

...

4. Investigation and accountability: **we are of the opinion that CO management has reasons to launch a formal investigation on the case, we point out to aggravating factors and suggest that VISION access logs are retrieved by ICT to confirm who consulted the victims profiles 2-3 weeks before July 5th, 2022.**

64. To which the DED, UNICEF, responded:

Thank you for your email.

I have advised the country office to consult with the staff members on the basis of the security assessment, and discuss with them the options going forward. This was also the view of the country office. Please note that ultimately we will be driven by the security considerations, as their safety is of paramount importance. We also need to take into account wider security implications towards UNICEF or its staff – if any.

I'm pleased to let you know that DHR and GSSC have addressed the systems issue and we are rolling this out globally to all our offices around the world in the coming days/weeks [...].

I would like to share your email with:

...

- OIAI related to conducting an investigation on access to confidential personnel information, and

...

65. The Agency Coordinator, UN-GLOBE, then replied:

...

We were informed about the DHR/GSSC system solution and hope that by the end of August all the changes are implemented. This time, we have asked trusted UN-GLOBE colleagues who work in operations to check if the data was protected. **We are cautiously optimistic, as the access to personal action form summary was indeed blocked, but other reports (e.g. t-code HRBEN0006, staff benefits) still show spouse data and may be accessed by CO colleagues in HR/finance.** We will reevaluate that by end of August.

66. The exchanges above confirm that the Organization was exploring options to obtain the necessary information and protect the personal data of staff members moving forward. It does not indicate that the possibility of retrieving the access logs had been established, as the Applicant tries to claim. It furthermore does not demonstrate that the DED, UNICEF, contradicted himself in the management evaluation response.

67. The Applicant's assertion transcribed in para. 61 above is, therefore, misleading.

68. Despite the foregoing, the Tribunal shares the concern regarding the protection of staff members' personal information, particularly for those in situations similar to the Applicant's, and encourages the Organization to pursue technical solutions to detect improper access. However, at the time of the preliminary assessment, the Organization maintained that such identification was not possible. In the absence of evidence proving this position to be incorrect, the Tribunal must accept it.

69. In this connection, the Tribunal recalls that OIAI considered the Applicant's allegations and pursued the possibility of a potential leakage within SCO. After verifying that the alleged leak could not be proven, OIAI's conclusion cannot be faulted by any procedural or material mishap.

70. In addition, OIAI also noted that the Applicant had disclosed information about his marital status and sexual orientation in various settings, including a video on social media, which would make it all the more unlikely that OIAI would be in a position to identify an act of misconduct.

71. Clearly, OIAI took into account all relevant information and properly concluded that an investigation would be unlikely to reveal sufficient evidence about who, if anyone, leaked the Applicant's personal information. The Tribunal is unable to find that the Respondent erred in concluding that there would not be sufficient evidence to sustain a finding of misconduct. It was made by a competent, responsible official, and it was duly notified to the Applicant in consonance with his due process rights.

72. All factors considered, the Tribunal finds that OIAI fully discharged its duty when it acknowledged receipt of the Applicant's report and undertook an initial assessment to determine whether an investigation was warranted, having duly informed the Applicant about the status of the preliminary assessment and its final outcome. No violations have been identified in the treatment of the Applicant's complaint.

73. As the Tribunal finds no unlawfulness in the contested decision, the Applicant is not entitled to the remedies he seeks.

Conclusion

74. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Margaret Tibulya

Dated this 8th day of September 2025

Entered in the Register on this 8th day of September 2025

(Signed)

Liliana López Bello, Registrar, Geneva