

Government Accountability Project

National Office

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July 23, 2008

Mr. Francis Dubois
Principal Adviser
Director, Office of Audit and Investigations (OAI)
United Nations Development Programme
DC1-422
One United Nations Plaza
New York, NY, 10017

Re: Ismail Ahmed

Dear Mr. Dubois,

I am writing in response to your letter dated 18 July 2008 to clarify certain issues where I fear there has been a serious misunderstanding.

- 1) First, in your letter you write: “[I]n May 2008, Mr. Ahmed submitted a new complaint with additional allegations and evidence. This additional complaint is closely related to his previous complaint and can not be investigated separately. During the last two months Mr. Ahmed has continued to provide us with additional evidence on both his disclosures of wrongdoing as well as his allegations of retaliation.”

This statement indicates that you may have misinterpreted our July 16, 2008 letter to OAI. GAP and Mr. Ahmed never requested that you investigate Mr. Ahmed’s May 2008 complaint separately from his previous disclosures. Rather, GAP requested that OAI separate the report on retaliation from the report on Mr. Ahmed’s substantive disclosures regarding corruption and misconduct at UNDP and elsewhere.

Under the terms of Chapter II of the UNDP Legal Framework, the Ethics Advisor has tasked OAI with immediately investigating Mr. Ahmed’s allegations of retaliation, *not* his substantive allegations of wrongdoing. However, it now appears that the release of OAI’s report on retaliation is to be delayed because OAI has improperly tied it to a continuing investigation into Mr. Ahmed’s substantive disclosures. According to Mr. Ahmed, all the additional questions raised by the investigator after the June 13 interview have been relevant to his disclosures concerning misconduct and not related to his allegations of retaliation.

In paragraph 43, the UNDP Legal Framework states: *“If, in the opinion of the Ethics Advisor, there is a credible case of retaliation or threat of retaliation, the Ethics Advisor will refer the case to the Director, OAPR for investigation and will immediately notify the complainant in writing that a formal investigation has been initiated. OAPR will seek to complete its investigation and submit its report to the Ethics Advisor within 120 days.”* (emphasis added) Clearly, “the case” referred to above is the retaliation case. This is the case in which GAP represents Mr. Ahmed. Moreover, the directive cited instructs OAPR (now OAI) to “seek to” conclude its investigation and report to the Ethics Advisor within 120 days. By linking allegations of retaliation – already established by the Ethics Advisor as credible – to other issues of great complexity such as money laundering, fraud and corruption, OAI will not complete the investigation and submit its report within the recommended time frame. On the contrary, OAI appears to have complicated the matter unnecessarily and in violation of the Legal Framework under which it operates when investigating retaliation.

The UNDP Legal Framework explicitly identifies investigations of retaliation as a priority for OAI/OAPR in whistleblower cases. In addition to the citations previously provided to you in our earlier letter, we also refer to paragraph 11 (e), which states that OAPR/OAI is responsible for:

“Carrying out investigations into allegations of retaliation after referral of the complaints by the Ethics Advisor and providing the outcome of the investigation into retaliation to the Ethics Advisor (see Chapter II, Section 3)” (emphasis added)

In the current case, not only has OAI conflated the investigation of financial impropriety with the investigation of retaliation, but Mr. Ahmed has been refused interim relief by the Ethics Advisor, in consultation with OHR, despite our request for it in a letter dated January 30, 2008. The failure to provide such relief while conducting an investigation into Mr. Ahmed’s substantive disclosures has left him vulnerable to ongoing retaliation. This conduct has been duly reported to you.

We urge you to clarify the objectives of your investigation such that they pertain to retaliation, in compliance with your policy. We also respectfully request that OAI complete the report and issue it expeditiously. A retaliation report that could – and should – have been issued within 120 days is now overdue at 240 days since OAI first received the complaint, and counting. In addition, the Ethics Advisor should immediately issue interim relief to Mr. Ahmed.

- 2) On another point, you state in your letter that *“our interview with Mr. Ahmed, which was originally scheduled for 2 April 2008, did not occur as Mr. Ahmed refused to participate in this interview.”* We strongly dispute this version of the events that transpired in March and April. During this time, GAP was verbally informed twice by Ms. Ahlenius’ office that OIOS would investigate Mr. Ahmed’s case. Simultaneously, Mr. Ahmed was told that OAI would investigate. As we sought to clarify the information about the investigative process, OAI unilaterally scheduled an interview with Mr. Ahmed on April 2. When GAP argued that OIOS was the appropriate venue for the investigation, based on a detailed and factual argument, we were told informally and without explanation that responsibility for the case

had been assigned to OAI. We were also told that this arrangement was in keeping with an MOU between OIOS and OAI that supersedes the UN Legal Framework upon which we have argued Mr. Ahmed's case since January. For the record, we have never seen this MOU, although we have requested it both verbally and in writing. As a result, both GAP and Mr. Ahmed are attempting to substantiate allegations of retaliation within a Kafkaesque scenario based on a set of regulations and a jurisdictional agreement that we have never seen.

Moreover, it is false to insinuate that Mr. Ahmed has not cooperated with this investigation because he did not submit to an interview on April 2nd. Despite OAI's ad hoc procedures, Mr. Ahmed has sought to accommodate you at every turn. The effort and time he has invested in this case since March 2006 is testimony to his commitment to expose, correct and prevent wrongdoing at UNDP. Both he and GAP want a thorough, impartial investigation of the retaliation that he has faced, as well as the wrongdoing that he has exposed. Simply put, the facts speak for themselves, and the conduct that you are imputing to him is senseless in light of these facts. We are happy to substantiate these facts and the correspondence between Mr. Ahmed and Kevin Curtis of OAI in greater detail if you require further clarification of this matter.

- 3) You allege that the Office of Audit and Investigations received a copy of Mr. Ahmed's allegations in January 2008. This is misleading. Mr. Ahmed sent a copy of his dossier to OAI in November 2007 when he submitted it to the Administrator. This was before the Ethics Office commenced its work and at the time OAI/OAPR was responsible for receiving both allegations of wrongdoing and complaints of retaliation. You personally acknowledged receipt of the dossier in an email dated 30 November 2007 saying that "*this office is now dealing with this matter.*"

As of December 17, 2007, OAI had not decided if it would investigate. At that time, Mr. Ahmed decided to send his dossier to the newly appointed UNDP Ethics Advisor. January 2008 is the date when OAI was ordered by the Ethics Advisor to investigate the case. It is not the date that OAI first received a copy of Mr. Ahmed's allegations, as you incorrectly implied. Furthermore, the May 2008 version of the dossier submitted to OAI after OIOS refused to take jurisdiction of the case was not a "new complaint" but an updated version of the dossier submitted to OAI in November 2007.

The original submission date of the dossier is important because the Ethics Adviser argued in his letter on 3 March 2008 to GAP that "*because Mr. Ahmed wrote to me on 17 December 2007 (17 days after his contract had expired), it was not possible for me to recommend suspension of the action as that action had already taken place. It was obviously also not possible to recommend that Mr. Ahmed be reassigned or that he be placed on special leave with full pay as he had already separated from the organization.*" The claim by OAI that it received a copy of the dossier in January 2008 is troubling as this appears to support the erroneous claim used by the Ethics Adviser to deny interim relief to Mr. Ahmed. OAI received the dossier in November and confirmed receipt of it before Mr. Ahmed separated from UNDP in November 2007.


- 4) It is not true that the post election security situation in Kenya substantially delayed the investigation, as you imply. As correspondence from the country office shows, this only affected UNDP operations between 23 December and 10 January 2008. After this date, normal operations in Nairobi resumed and there was no security problem that could have prevented an investigator from traveling to Nairobi.
- 5) It is not true that Mr. Ahmed has requested more time to gather information. Rather than ask for a delay, Mr. Ahmed submitted on July 18 all the additional information the investigator had requested. In this July 18 email Mr. Ahmed urged the investigator to release the *retaliation report* – which the investigator told him was complete – to the Ethics Adviser.

Mr. Ahmed did raise concerns about OAI's decision to suddenly close the investigation into the other substantive issues by the end of this week. This decision means that someone other than the principal external investigator would conclude the investigation into these issues. But, if the retaliation report is already completed, as Mr. Ludo Block has said, then it should be released immediately.

Finally, we wish to state for the record once again that we view it as highly improper for Ms. Lee, whose role in this process has never been clarified for us, to have been present during Mr. Ahmed's interview and to now assume responsibility for concluding the report into Mr. Ahmed's allegations of retaliation.

Thank you for your consideration of these matters. We would like to speak with you before the end of the week to discuss a possible timeline for release of the investigative report regarding Mr. Ahmed's allegations of retaliation. Please let us know when you are available for a conference call.

Respectfully,



Beatrice Edwards
International Program Director

CC: Ms. Elia Armstrong, Ethics Adviser
Mr. Egbert C. Kaltenbach, Director, Office of Audit and Investigations
Mr. Robert Benson, Chairman, Ethics Committee