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June 15, 2009

Mr. Robert Benson
Chairman of the United Nations Ethics Committee
United Nations Headquarters
UN Secretariat Room S-3001
New York, NY, 10017

Dear Mr. Benson:

I am writing on behalf of Dr. Ismail Ahmed, a whistleblower from the United Nations Development Programme (UNDP) whose case was reviewed by UNDP's Ethics Office. As counsel for Dr. Ahmed, we are respectfully requesting that the UN Ethics Committee review this case.

According to section 4.3 of ST/SGB/2007/11, "*if following a final determination by the respective Ethics Office of a matter referred to it by a staff member, the said staff member wishes to have the matter reviewed further, he or she may, in writing, refer the matter to the Chairperson of the Ethics Committee. In such an event, the Chairperson, after consultation with the Ethics Committee, may undertake his or her own independent review of the matter...*" In accordance with this policy, we are submitting this letter and corresponding attachments for the consideration of the Ethics Committee.

On 22 September 2008, the Director of the UNDP Ethics Office issued her findings in this case (*see Attachment 1*). According to paragraphs 15 and 16, Dr. Ahmed engaged in protected activity. He is thus entitled to protection against retaliation, according to both the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct and UN ST/SGB/2005/21.

However, the UNDP Ethics Office did not find that Dr. Ahmed had been retaliated against. We are appealing this decision to the UN Ethics Committee based on the following:

1. As explained in detail in section 14 of Dr. Ahmed's May 2008 dossier (*see Attachment 2*),¹ Dr. Ahmed faced retaliation for his disclosures. First, the Country Office (CO) Senior Management tried to cancel his contract in November 2006 after he submitted his first dossier on 19 October 2006. He was then transferred to Dubai without a proper contract and mobilization payment. This was followed by denial of work permit and residence visas,

¹ We are only submitting the dossier annexes that are directly relevant to retaliation (Annexes 67-76) and cited Annexes (Annex 64) with this letter. However, we will send you all the annexes upon request.

which forced him to send his family back to the UK. UNDP then blocked the issuance of Dr. Ahmed's October and November salary payments, residential allowances, pension payments, DSA and expense reimbursements, and ticket expenses amounting to more than \$40,000. In April 2008, Dr. Ahmed managed to secure release of his pension benefits from the Pension Fund office after much effort and without UNDP's assistance. Other reimbursements, including travel payments, DSA and expenses, were withheld for about 10 months and were only issued after repeated intervention from UNDP's Ethics Office. The attached 3 September 2008 email from Dr. Ahmed to Ms. Elia Armstrong provides more detail about the receipt dates of these reimbursements (*Attachment 5*).

Despite well-documented evidence of retaliation, the Office of Audit and Investigations (OAI) investigation reportedly found none. Because neither GAP nor Dr. Ahmed have been allowed to see a copy of this report, it is difficult to refute it thoroughly.²

Nonetheless, based on the letter from the Director of UNDP's Ethic Office, it appears that, at a minimum, the following deficiencies and factual errors existed in that report:

- a) Failure to consider evidence that the non-renewal of Dr. Ahmed's contract was retaliatory: The OAI report concluded that the non-renewal of Dr. Ahmed's contract was not retaliatory because "*at the time when Mr. Ismail Ahmed's contract expired, the FSDP had already closed in accordance with the terms of the project document and instructions from RBAS.*"³ In drawing this conclusion, it appears that OAI failed to consider crucial evidence presented by Dr. Ahmed in paragraphs 14.3.9 and 14.3.10 of his dossier (*Attachment 2*) and by GAP in a 21 March 2008 letter to Mr. Bhalla (*Attachment 6*).

At the end of October 2007, Dr. Ahmed was informed that his contract would not be renewed because the Financial Services Development Project (FSDP) and the partnership with the Somali Money Transmitters Association (SOMTA) that he was working on was going to be closed immediately, although key project activities were either on-going or had yet to start. Moreover, \$1 million in funds for FSDP remained in a UNDP account.

One of Dr. Ahmed's contributions to the remittance programme was the progress he made – through his disclosures and his insistence on full compliance with procurement rules – in halting the fraud and corruption in that programme. One of the procurement decisions in which he was involved was that of a money transfer platform. When Dr. Ahmed's contract ended, however, a UNDP staff member who had repeatedly retaliated against him (and informed him that his contract would not be renewed), started secret negotiations with PayQuik, the platform vendor. This employee then authorized U.S. \$477,041 in advance payment to the supplier without a contract and before the supplier fulfilled any of the other prerequisite conditions (*see Section 16 of Attachment 2*).

² GAP believes that reports about retaliation – as well as substantive reports investigating the whistleblowers' disclosures – should be made available to the whistleblower and that a failure to provide at least a redacted version violates a whistleblower's due process rights. GAP appealed Ms. Armstrong's decision to withhold the report (see attachment 13). On 24 February 2009, Ms. Armstrong responded and said that Dr. Ahmed would not be provided with a copy of the report.

³ 22 September 2008 letter from Ms. Elia Armstrong to Dr. Ahmed, para. 26.

After this fraud was exposed, country office management agreed with the SOMTA Council that the project activities would continue and UNDP would provide the technical support for which Dr. Ahmed had been responsible. But rather than renew Dr. Ahmed's contract, UNDP assigned a new staff member, Mohamed Abdi Ware, to work as his replacement. Although this staff member had a different title, he worked full-time on FSDP and SOMTA activities.⁴ Since the only justification that management gave Dr. Ahmed for the non-renewal of his contract was the proposed immediate closure of the project's activities, the decision by UNDP management to continue the activities and the hiring of someone to replace Dr. Ahmed clearly show that this justification was pretextual. It appears that OAI did not investigate or consider this evidence, which is a crucial component of Dr. Ahmed's retaliation claim.

- b) Failure to consider evidence that Dr. Ahmed's first dossier was a complaint: The OAI report did not consider Dr. Ahmed's submission of a dossier in October 2006 to be a whistleblower's disclosure because *"none of the three managers...who received the First Dossier from [Dr. Ahmed's] supervisor read it. They had assumed that it contained the same issues as had been investigated by OAPR⁵ in March 2006. In fact, at the end of October 2007, the Deputy Resident Representative for Operations (DRR-O) locked it up in case it might be needed for a future audit."*⁶

This argument is untenable for three reasons. First, three managers formally received the dossier only two weeks after they received complaints of wrongdoing from SOMTA; the dossier provided evidence supporting SOMTA's allegations. Second, the allegations in the First Dossier implicated the two Resident Representatives (Eric Overvest and David Allen) who were both deeply involved in the procurement irregularities and improper relationship with KPMG. Finally, all four managers, including the supervisor, were aware that the OAPR investigation in March 2006 was based on an anonymous complaint. It was clear to them that the dossier folder put together by a staff member with first-hand knowledge of the issues and the project could not be assumed to contain the same allegations as those made in an anonymous email. It is inconceivable that the managers would receive such a dossier after the OAPR investigation and the subsequent formal complaint from SOMTA and decide not to read it.

The claim that none of the senior managers had read the dossier is also contradicted by a 9 February 2008 email from Sergio Valdini (DRR-O) which confirms that he had actually read the entire dossier line by line and still decided not to forward it to OAPR, in violation of UNDP procedures (as pointed out in para. 14 of the Ethics Office report). If senior management thought that the allegations in the dossier were the same as those investigated by OAPR, Mr. Valdini would have said so in this email correspondence.

⁴ The new staff member resigned from UNDP a few months after he joined. He told Dr Ahmed that he decided to leave the programme after he learned about the fraud and corruption.

⁵ OAPR was UNDP's Office of Audit and Performance Review. It has since been renamed OAI.

⁶ 22 September 2008 letter from Ms. Elia Armstrong to Dr. Ahmed, para. 18.

Further, if Country Office (CO) Senior Managers thought that this had already been investigated specific actions taken by them are inexplicable:

- The managers elected to “lock up” the folder.
- The DRR-O refused Dr. Ahmed access to the dossier at the end of October 2007 when he discovered that it had never been sent to OAPR. (*see paragraph 12.16 of Dr. Ahmed’s dossier*)
- The dossier was not given to the OAPR auditors who conducted a full-scope country office audit including the Financial Services Development Project (FSDP) in September 2007, nor to the PricewaterhouseCoopers team that audited FSDP in October 2007.
- Management did not notify Dr. Ahmed after he submitted the dossier that they would not take any action, given that they allegedly thought the dossier contained the same allegations as the anonymous email investigated by OAPR.

It appears that these important factors were not considered by OAI.

It also appears that OAI did not consider Dr. Ahmed’s evidence that his First Dossier was a complaint. As Dr. Ahmed said in paragraph 12.14 of the May 2008 version of his dossier, “*I submitted the dossier, including a summary of the evidence and all the relevant information supporting the allegations of wrongdoing, to KNS Nair in October 2006 (see Annex 64)... When he saw the evidence, KNS agreed that it amounted to serious violations of UNDP rules and regulations and would require fresh investigation from OAPR. He said he would consult senior management and make sure that the dossier was forwarded immediately to New York. He also asked me to be available for assisting the investigators once they began their investigation.*” Moreover, Annex 64 of Dr. Ahmed’s dossier contains a 19 October 2006 email from Dr. Ahmed to KNS Nair with the Subject line “Complaint Dossier on Allegations of Fraud and Corruption.” The title of that email alone indicates that this dossier was a complaint.

The conclusion that “There is no evidence that Mr. Ismail Ahmed filed the First Dossier as an independent formal complaint” may be based on the mistaken belief by the investigator that the report should have gone to the Resident Representative. During the interview, the external investigator contracted by OAI who was not familiar with UNDP complaints procedure accused Dr. Ahmed of not properly following them. He said that “*If you file a formal complaint I expected it to go to the highest official, the resident representative, and put it on his desk and say I hereby file a complaint, but you went through KNS. How should I see this?*” (*see p. 6 of Attachment 10*) Although Dr. Ahmed explained to him during the interview that UNDP guidelines required him to submit the complaint to his manager, the investigator’s questioning and the conclusion in the report suggest that the investigator still mistakenly believes that this was not the correct procedure.

The failure to consider Dr. Ahmed’s first dossier as a complaint is further compounded by the claim in the investigation report saying that “*nothing in the First Dossier implicated the senior management who are alleged to have retaliated against Mr. Ismail Ahmed.*” The First Dossier implicated both David Allen (DRR-O) and Eric Overvest (DRR-P) who were responsible for the retaliation. For example, the dossier contained an exchange of emails

between David Allen and a programme manager in which they discussed how best to circumvent the procurement procedure and obtain a waiver for Mayank Patel, who was at the time a KPMG partner, in his fraudulent proposal to establish a Central Bank for Somalia. The dossier also contained suggestions provided by Mr. Allen's office on how to rig bids in favour of KPMG. The First Dossier also implicated Eric Overvest, who authorized fraudulent payments for the contract on the Establishment of Central Bank for Somalia between UNDP and KPMG. Furthermore, Mr. Overvest was responsible for the decision to remove Mr. Patel from the project he was hired on following the complaint of corrupt practices against him from SOMTA, thereby pre-empting a new investigation by OAI. This contravened UNDP regulations, which required full and thorough investigation. Therefore the claim by OAI that nothing in the first dossier implicated senior management raises serious questions about the credibility of the investigation report.

OAI's failure to consider this information is injurious to Dr. Ahmed, as the omission allowed OAI to conclude that his relocation to Dubai without an amended contract and proper visa in November 2006 was not retaliatory. However, while claiming that this action was not retaliatory, OAI concurrently suggests that country office representatives engaged in inappropriate actions toward Dr. Ahmed, as: *"The Country Office Senior Management relocated Mr. Ismail Ahmed to Dubai without sufficient support. There is no indication that Country Office Senior Management did reconsider its decision after it became clear that the relocation of Mr. Ismail Ahmed could not be formalized...the delays in communicating the official decision and the insufficient support for your posting to Dubai should not have occurred..."*⁷

The decision not to formalize the relocation involving denial of a work permit and a residence visa was made after the UAE Resident Representative formally complained about the decision. As Dr. Ahmed said in his dossier, this was in clear violation of UAE immigration and employment laws. The decision not to formalize relocation, "delays in communicating the official decision and the insufficient support" found by the investigators came after the attempts to cancel his contract. Although these retaliatory actions took place one after the other, OAI failed to consider the link between the numerous retaliatory actions.

These actions would have been considered retaliatory if OAI had complied with the UN's bulletin (ST/SGB/2005/21) regarding Protection Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations or with UNDP's Legal Framework for Addressing Non-Compliance with UN Standards of Conduct. According to paragraph 2.2 of the UN's bulletin, *"the burden of proof shall rest with the Administration, which must prove by clear and convincing evidence that it would have taken the same action absent the protected activity referred to in section 2.1 above."* Similarly, according to paragraph 52 of UNDP's Legal Framework for Addressing Non-Compliance with UN Standards of Conduct, *"the present policy is without prejudice to the legitimate application of Regulations, Rules and administrative procedures, including those governing evaluation of performance and non-extension or termination of appointment/employment. However, in applying such Regulations, Rules and administrative procedures to any UNDP*

⁷ Ibid. para. 25.

staff member, UNDP management must prove by clear and convincing evidence that it would have taken the same action absent the protected activity.”

According to these standards (and global best practices), once a whistleblower establishes a *prima facie case* that protected conduct was a “contributing factor” in challenged discrimination, the burden of proof shifts to the Organization to demonstrate by “clear and convincing evidence” that it would have taken the same action for independent, legitimate reasons in the absence of protected activity. It is not clear what the legitimate reasons would have been for Country Office Senior Management failing to provide Dr. Ahmed with sufficient support⁸ or reconsider its decision after it became clear that the relocation of Dr. Ahmed could not be formalized and after the UNDP UAE Resident Rep formally complained about the relocation, which was in violation of UAE immigration and employment laws.

- c) Failure to consider evidence that the Country Office violated standard Close of Business (COB) procedure: According to the letter from Ms. Armstrong, “*the CO explained that your final salary payment was initially issued as a cheque rather than an EFT as standard COB procedure in the country office.*”⁹ However, this directly contradicts a memo dated 8 January 2007 sent by Country Office management entitled “Payment by USD Dollar Cheques” (see Annex 72 and paragraph 14.6.9-12 of Dr. Ahmed’s dossier). This circular said that “*due to increasing attempts of fraud in the case of dollar cheque payments, all such payments will be done through Electronic Fund Transfer (EFT) modality ... In exceptional cases (duly authorised by either the RR, CD or a DCD) when a payment has to be made by a dollar cheque, the staff member must sign a declaration letter (attached) that s/he as soon as possible will cash the cheque in Standard Chartered Bank in Nairobi, possibly at the Westland branch (no mail / post of cheques allowed either by pouch or any other means).*” The tightening of dollar cheques and use of local currency in all local payments were recommended by an OAI audit report following problems in North Korea. Yet, the country office initially refused for several months to issue outstanding payments to Dr. Ahmed via EFT and insisted on mailing cheques, in breach of its own circular on this issue. It only reversed this position after the Ethics Adviser intervened. It appears that OAI failed to consider why Country Office Senior Management attempted to violate standard procedure in the issuance of payments to Dr. Ahmed.
- d) Failure to consider the detailed evidence regarding withholding of outstanding payments: In January 2008 GAP wrote to the Ethics Adviser requesting an urgent action regarding the outstanding payments of more than \$40,000. However, despite repeated interventions from the Ethics Adviser, UNDP continued to withhold these payments. The stated reasons for the withholding changed frequently.

After months of delays and reviews the country office finally released all outstanding payments amounting to \$41,930.01. The last payment was released on 26 August 08 – after nearly ten months of delay. It appears that OAI has not considered the relevant evidence provided in the dossier and subsequent correspondence (see Attachment 5).

⁸ More information is available in section 14.2 of Dr. Ahmed’s dossier.

⁹ 22 September 2008 letter from Ms. Elia Armstrong to Dr. Ahmed, para. 30.

- e) Failure to consider Dr. Ahmed's testimony on the attempts to revoke his ALD contract: It also appears that OAI failed to consider Dr. Ahmed's testimony regarding the attempts to revoke his ALD contract in October 2006. On pages 6-8 of the attached interview transcript and additional notes (*Attachment 10*), Dr. Ahmed explains why his contract was extended for a year and why the Country Director's attempts to revoke it were retaliatory. His statements contradict the OAI conclusions that are summarized in paragraph 22 of Ms. Armstrong's 22 September 2008 letter.

The letter from the Ethics Adviser states, "*Your claims that DRR-P and DEX Advisor attempted to revoke your contract could not be corroborated ... The discussions were about adjusting the ending date of your contract and therefore about amending it rather than revoking it*". The letter contradicts itself by claiming that attempts to cancel the contract could not be corroborated but at the same time admitting discussions about adjusting the ending date of Dr. Ahmed's contract. The term used in the ALD contract is termination if an existing contract is shortened. According to the terms and condition of the ALD contract "*if the appointment is terminated prior to the expiration date, a termination indemnity equivalent to one week of net salary for each month of uncompleted service will be paid*". Dr Ahmed's email complaining about this attempt on 8 November 2006 explains this. It said "*David told me last Friday that the relocation is not just a change of my duty station as I thought before but it may involve termination of my current contract six months before its end date as this assignment will only be up to 31 March 2007*" (*see Attachment 8, p. 3*). The only way to adjust or amend an existing contract is to terminate and issue a replacement according to the terms and conditions of the ALD contract. David Allen asked Dr. Ahmed to agree to this early termination without the indemnity stipulated by the ALD contract.

The Ethics Office letter says that Dr. Ahmed complained about attempts by DRR-P and "*the Directly Executed Projects (DEX) Advisor to revoke your contract*". This is wrong. The dossier said that Eric Overvest (DRR-P) and David Allen (DRR-O) attempted to cancel the contract. It appears that OAI and/or the Ethics Adviser confused David Allen with other UNDP staff and failed to seek an explanation from the relevant managers about this matter.

The Personal Action Form instructing HR office to renew the contract was signed by KNS Nair (Programme Manager) on 8 September 2006 with a handwritten note saying "please extend the contract for one more year" (*see Attachment 8, p.6*). Dr. Ahmed received the contract on 26 September 2006 and signed it on the same day. The first time David Allen raised the issue of canceling/shortening the contract was the first week of November 2006 - almost 40 days after the contract date. Why did this issue only come up after senior management learned about the dossier?

The claim that Dr. Ahmed was "mistakenly given a contract extension for one year" which "exceeded the life expectancy of the project" is contradicted by the fact that Mayank Patel's contract, which was funded from the same project, was also extended for a year in August 2006. The project ending date was immaterial as projects are frequently extended beyond their anticipated closing date, sufficient funds existed to extend the project, and the partnership with SOMTA had not even started.

Although the Ethics letter maintains that senior management actions were not retaliatory, it nevertheless suggests that they acted inappropriately by saying that “*The CO management should have been clear and consistent about the termination date of your contract*”. This shows that senior management failed to provide clear and convincing evidence to justify their attempt to cancel/shorten the contract absent the protected activity. There was no reason other than retaliation for senior management to single out Dr. Ahmed’s contract for cancellation while allowing Mayank Patel’s contract funded from the same project and extended at the same time to “exceed the life expectancy of the project”. The fact that Dr Ahmed’s contract was extended even after the one year and that the project activities continued for about two years after this date clearly show that there was no basis for the claim that the extension should have been six months. As explained in the dossier, the intention was to force Dr. Ahmed to resign because it would not have been viable for him to take up a new duty station for such a short period.

f) Failure to investigate the blacklisting within UNDP: Dr. Ahmed was excluded from the short list and long list for an economist position he was uniquely qualified for. By citing requirements provided by the Country Director, which are different from the advertised specifications, OAI failed to fully investigate this issue. Furthermore, according to the Ethics Office’s summary of OAI’s report, the Country Director said “*the office was particularly looking for someone with UNDP experience*”. If this were the case, UNDP should not have short-listed people who had no UNDP experience while at the same denying to long-list a country office staff member who fulfilled all the qualification requirements in the specification. The OAI report says that “*Although he was not long-listed for the Senior Economist Post, the Country Office provided a reasonable explanation as to why other candidates were more qualified*”. Once again, there is no clear and convincing evidence that UNDP would have taken the same action absent the protected activity.

2. There were significant due process errors and conflicts of interests in OAI’s investigation. These include:

a) Participation of a management representative in the investigative interview with Dr. Ahmed and the write-up of the retaliation report: Despite Dr. Ahmed’s objections, Ms. Lori Lee – a UNDP Senior Programme Advisor for the Bureau of Development Policy – was allowed to participate in his interview with the external investigator hired by OAI and subsequently edit the retaliation report. GAP raised numerous concerns to OAI and the Ethics Advisor about this individual’s participation. As we stated in our June 10 email to OAI:

[A]s a direct or indirect management representative, Ms. Lee represents a party to the conflict. Her presence at the interview may have a chilling effect on either the investigator or the whistleblower. We therefore believe that Ms. Lee’s presence, even if confined to an observatory role, is improper and we strongly object to it.

In an email on June 11, GAP requested that OAI send Ms. Lee’s Terms of Reference for this mission, as OAI and Ms. Lee had represented her job duties differently (*see Attachment 9*). Whereas OAI said that Ms. Lee is “*seconded to OAI to assist with this internal investigation and is an integral member of the investigating team,*” Ms. Lee told Dr. Ahmed that she was a

“Senior Programme Advisor for the Bureau of Development Policy,” who would participate as “an observer.” OAI never clarified Ms. Lee’s role in the investigation and sent her to the interview anyway, despite GAP’s objections. According to Dr. Ahmed, Ms. Lee was not just an observer at the interview, as she had previously claimed she would be. She took notes and submitted questions to the investigator.

Subsequently Ms. Lee took over the write-up of the investigation report. As the contract for the external consultant ended before the completion of the investigation, Ms. Lee assumed the responsibility of concluding the investigation and issuing recommendations. On 10 September 2008 the external investigator confirmed this in an email saying that “*My support for OAI in the investigation has recently come to an end. To my knowledge Lori is still working on it therefore I would like to suggest that you contact her*” (see Attachment 9).

In summary, the presence of a management representative in an interview with a whistleblower compromises the independence of the investigation, as management is the defendant in the complaint. The whistleblower was not accorded the same access to interviews of management conducted by OAI.

- b) Failure to interview a key witness to retaliation: The most important independent witness to some of the retaliatory actions was Sh Isse (SOMTA vice-chairman and a Council member). In a telephone conversation, Abdullahi Sh Ali (UNDP Policy Specialist) told Sh Isse that if SOMTA were to hire Dr. Ahmed there would be no partnership relationship between UNDP and SOMTA (see paragraph 14.4.7 of the Dossier). Abdullahi Sh Ali and Eric Overvest were on mission to Dubai at the end of November 2007 when this took place. While the investigators failed to interview this key witness, they interviewed Abdullahi Sh Ali, who was involved in the retaliation, as a witness. The letter from the Ethics Office says that Dr. Ahmed was informed of a decision to close his project in July 2007 and that this was “witnessed by a policy analyst”. The policy analyst referred to as a witness is Abdullahi Sh Ali who, according to Dr. Ahmed, was not present at the meeting he purports to have witnessed.
- c) Conflicts of interest with OAI investigating: On 28 March 2008, GAP sent a letter to the United Nations Office of Internal Oversight Services (OIOS) requesting that it take jurisdiction of Dr. Ismail Ahmed’s case from OAI. This external disclosure was made because Dr. Ahmed believed that OAI had a conflict of interest in investigating his case and thought that UNDP would destroy documents and evidence. This external disclosure to OIOS was made for valid reasons and in compliance with the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct. These reasons, which are more thoroughly explained in Attachment 7, included a conflict of interest on the part of OAI in investigating Dr. Ahmed’s disclosures. Dr. Ahmed disclosed fraud and wrongdoing involving UNDP Somalia and KPMG in 2006 and suffered retaliation as a result. KPMG had previously conducted several internal audits for OAI (formerly OAPR), including in the UNDP Somalia office in which Dr. Ahmed worked.
- d) Objectivity of the lead investigator: IR}S Forensic Services & Investigations, the firm hired by OAI to conduct this investigation, assigned Mr. Ludo Block to conduct it. During the

interrogation of Dr. Ahmed, Mr. Block asked questions indicative of an intent to investigate the whistleblower rather than the retaliation, i.e.:

Q: Another issue is Dalsan. You refer to an article that Peter Pham (sic) on Dalsan. As I understand during the time he wrote the article he was in Nairobi and you were the informant for that article. (emphasis added)

A: Sorry what did you say?

Q: As I understand Peter Pham was in Nairobi around the time he wrote the article and that you were his informant for that piece he wrote on Dalsan. (emphasis added)

A: That is outrageous. It is ridiculous. Can I suggest that if you want to investigate me or support the investigations that the country office had been carrying out, you should tell me so and say that I am also investigating you. [Ludo: *I'm not investigating you*]. It is ridiculous for you to suggest that. You should have asked me the question rather than say I was the source of the article (*Attachment 10, p. 12*).

This line of questioning violates paragraph 73 of the “Updated UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct,” which states that “*all investigators... have a duty of objectivity...*” Not only is the question irrelevant to an investigation of retaliation, but it reveals Mr. Block’s preconceived notion that Dr. Ahmed was the source for the article.

It is also worth noting that Mr. Block’s transcript of the interview with Dr. Ahmed contained serious omissions and inaccuracies that would not have been corrected had Dr. Ahmed not insisted that he be allowed to tape the interview. Dr. Ahmed spent hours listening to his recording and editing the numerous mistakes in Mr. Block’s version of the transcript. The presence of these errors, some of which were factual, suggests that Mr. Block may have also made significant mistakes in transcribing interviews with other witnesses.

Some of the errors in Mr. Block’s transcript could have violated Dr. Ahmed’s due process rights. For example on page 1 of the transcript Mr. Block wrote that the taped “recordings would not be shared *with any third party*,” whereas the actual agreement stipulated that “recordings would not *be made public*.”

The initial transcript included substantive errors regarding:

- Dr. Ahmed’s answer regarding the problems he had with his visa during his stay in Dubai. These changes can be seen on pages 16-17 of Dr. Ahmed’s edited transcript (*Annex 10*);
- Dr. Ahmed’s statements about the deletion of references to the FSDP projects from reports (*see page 10 of Annex 10*);
- Dr. Ahmed’s account of his contract extension (*see pages 5-6 of Annex 10*).

e) OAI’s failure to provide Dr. Ahmed an opportunity to respond to allegations made against him in the report: The OAI report alleged that “*1) your delay in returning to Nairobi per*

instruction by DRR-P, 2) the lack of your deliverables, 3) your delay in organizing Close of Business (COB) procedures at the end of your contract” contributed to the delay in the settlement of payments. Not only has OAI failed to give Dr. Ahmed an opportunity to respond to these serious allegations, but it appears that it has not considered the correspondence on this issue between the Country Office and Dr. Ahmed and the outcome of the August 2008 review conducted by UNDP HQ. As explained in an email to the CO senior management on 11 August 08, Dr. Ahmed could not travel to Nairobi on 10 November 2007 as instructed by DRR-P because his contract ended on 8 November without receiving a new contract (*see Attachment 12 and Attachment 5*).

On 26 August 2008, UNDP HQ conducted a review of this issue and accepted Dr. Ahmed’s explanation of the situation and agreed to process his DSA payments from 10-30 November 2007. As the OAI report was issued on 8 August 2008, it appears that the investigators have not considered this evidence, although Dr. Ahmed provided the detailed August 2008 correspondence on this issue and the final outcome to the Ethics Adviser.

Eric Overvest’s actions including the cancellation of Dr. Ahmed’s travel authorization while he was on mission, delaying/withholding the extension of the contract, the instruction demanding that he travel to Nairobi without a UNDP contract and the refusal to approve Dr. Ahmed’s annual leave were retaliatory. It appears that OAI did not consider the evidence regarding the retaliatory nature of the series of actions taken by Eric Overvest in November 2007.

The UNDP review in August 2008 accepted Dr. Ahmed’s mission output and the fact that he spent his leave days to complete urgent work requested by SOMTA. Therefore there is no basis to the claim that there was a “lack” of “deliverables”. The claim that Dr. Ahmed’s “delay in organizing Close of Business (COB) procedures” at the end of his contract contributed to the delay in reimbursement of outstanding payments is also without basis. Dr Ahmed was cleared by HR office in December after they received his LP and IDs, but payments were withheld for many more months.

- f) Lack of protections for witnesses: As GAP wrote in our 28 March 2008, letter to OIOS, “*Mr. Ahmed knows of at least two key witnesses who are considering speaking with OIOS, but who will not speak with OAI investigators, as they fear retaliation. Thus, the information that these witnesses have will be withheld if OIOS is not the investigating body.*”

The appointment of an external investigator by OAI was not enough to ensure protection for these witnesses, as a UNDP management representative participated in the interview with Dr. Ahmed (and presumably with other witnesses) and DRR-P contacted witnesses on behalf of OAI (see Interview Notes). Numerous witnesses feared their confidentiality would be compromised if they spoke with the investigator.

It is worth noting that Paragraph 6 of UNDP’s Legal Framework excludes certain employees – including service contract holders and independent contractors – from protection from retaliation for making a protected disclosure or cooperating with a duly authorized audit or investigation. Many employees within the UNDP Somalia office have

service contracts and thus have no recourse if they are retaliated against for participating in an investigation. A credible investigation process must ensure that such witnesses are protected for coming forward.

3. UNDP did not fully inform Dr. Ahmed or his counsel of his legal rights: Dr. Ahmed's ability to represent himself was significantly hampered during the investigation. On 28 July 2008, during a phone call with an OAI representative, GAP incidentally learned that UNDP had updated its Legal Framework in May 2008. Neither Dr. Ahmed nor GAP had been informed of these changes to UNDP's whistleblower protection policy.

Moreover, when GAP was ultimately told that OIOS would not conduct the investigation (after we learned indirectly that OAI had already begun to investigate) the only explanation given was a reference to a 2001 MOU between OIOS and OAI. This response was written as if paragraphs 32 and 33 of the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct – which allows for external disclosures to OIOS – did not exist. GAP has never been given access to the MOU cited, although apparently it supersedes the publicly released Legal Framework on which we based Dr. Ahmed's appeal for protection. GAP repeatedly requested this MOU, as we could hardly represent our client effectively when neither he nor we had access to the applicable UNDP rules and regulations. However, neither UNDP nor OIOS ever responded to GAP's request for a copy of this agreement.

We did, however, obtain enough information about the MOU to understand that it is primarily a budgetary agreement. Without having seen the MOU, we cannot be sure that the United Nations system is not administering justice based on financial considerations rather than legal ones. If this is the case, it is a major flaw in the ethical standards of the UN system.

4. UNDP inappropriately denied Dr. Ahmed interim relief because of flaws in its own process: GAP wrote to the UNDP Ethics Advisor on 30 January 2008 requesting interim relief for Dr. Ahmed, which the Ethics Advisor is authorized to provide. In a letter dated 3 March 2008, the UNDP Ethics Advisor at the time said that he could not grant this request, saying that *“because Dr. 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 Dr. Ahmed be reassigned or that he be placed on special leave with full pay as he had already separated from the organization.”* This fails to acknowledge the fact that UNDP's OAPR, which was responsible for receiving complaints of retaliation in November 2007, received Dr. Ahmed's complaint *before* he separated from the Organisation. Considering that the UNDP Ethics Advisor assumed his functions on 1 December 2007, and Dr. Ahmed's contract expired at the end of November, Dr. Ahmed could not have submitted a complaint to the Ethics Adviser before his contract was terminated. The refusal of interim relief amounts to a shell game in which the responsibility for taking action shifts from office to office, leaving the whistleblower without protection. Moreover, the refusal of interim relief was tautological. If

the form of retaliation is termination or non-renewal and the whistleblower has established a prima facie case of retaliation, then the whistleblower is entitled to interim relief.¹⁰

This left Dr. Ahmed in a vulnerable position as he awaited the outcome of UNDP's review, which took nearly ten months.¹¹ While Dr. Ahmed appreciated the subsequent efforts made by the UNDP Ethics Office to ensure that the reimbursements, which had been inappropriately withheld, were issued to him, this intervention did not go far enough in correcting the negative repercussions that he faced for making his disclosures. Dr. Ahmed has been unemployed since December 1, 2007, as a direct result of UNDP's failure to renew his contract in retaliation for his whistleblowing and repeated attempts to blacklist him and attack his professional reputation. His financial situation has become increasingly difficult, as a direct result of the combined effects of the retaliation against him.

In summary, we believe that Dr. Ahmed has a compelling case of retaliation. We also believe that there have been numerous violations of Dr. Ahmed's due process rights and factual errors in OAI's investigation, as explained above and in the attachments accompanying this letter.

Dr. Ahmed has awaited a decision on his case for more than a year. For him the delay has been financially and emotionally difficult. We respectfully request that your Committee undertake an independent review of this matter. As part of this decision, we request that Dr. Ahmed be granted final relief in the form of:

- Compensation in the amount of salary and benefits lost between 1 December 2007 and the present;
- Reinstatement in his position as a UNDP Financial Services Compliance Adviser for the Financial Services Development Project (FSDP) or a comparable position;
- Restoration of seniority that would have accrued during the period between 1 December 2007 and the present;
- Reimbursement for \$50,000 in relocation expenses incurred as a result of his move to Dubai with his family and their subsequent return to the UK following the denial of a UAE work permit and residence visas (evidence available upon request); and
- Reimbursement for \$9,000 in interest charges incurred as a direct result of UNDP's delays in paying reimbursements from November 2006 to August 2008 (evidence available upon request).

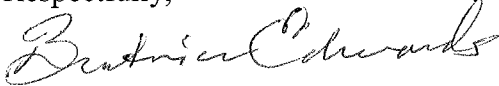
We also request that you encourage UNDP to review and amend its Legal Framework, given the deficiencies that have become apparent through this case.

¹⁰ According to paragraph 48 of UNDP's Legal Framework: "Pending the completion of the investigation, the Head, Ethics Office, may make recommendations to the Administrator that appropriate measures be taken to safeguard the interests of the complainant, including but not limited to temporary suspension of implementation of the action reported as retaliatory and, in consultation with the complainant, temporary reassignment of the complainant or placement of the complainant on special leave with full pay."

¹¹ OAI failed to complete its investigation within the 120-day period outlined in paragraph 46 of its Legal Framework. (Note: This paragraph was changed in the May 2008 Legal Framework. The previous November version, which Dr. Ahmed thought was still in effect, had stricter language about adhering to this timeline.)

Thank you for your consideration of this case. We look forward to your response.

Respectfully,



Beatrice Edwards

International Program Director



Karen Gray

General Counsel

Enclosures:

- **Attachment 1:** 22 September 2008 letter from Elia Armstrong (UNDP Ethics Office) to Dr. Ahmed (Ref: 2007/002)
- **Attachment 2:** Fraud and Corruption in UNDP Somalia Remittance Program, May 2008 (Dr. Ismail Ahmed's Dossier), with annexes relevant to retaliation (Annex 67-77) and Annex 64; additional annexes available upon request
- **Attachment 3:** 4 January 2008 memo from Karunesh Bhalla (UNDP Ethics Office) to Egbert Kaltenbach (UNDP OAI/OAPR) regarding a *prima facie* case of retaliation
- **Attachment 4:** 30 January 2008 letter from Karen Gray (GAP) to Karunesh Bhalla
- **Attachment 5:** Correspondence on payments from April – September 2008
- **Attachment 6:** 3 March 2008 letter from Karunesh Bhalla to Ms. Gray and 21 March 2008 letter from Karen Gray Karunesh Bhalla
- **Attachment 7:** Correspondence with the UNDP Ethics Office and OIOS regarding OAI's conflict of interest in this investigation/requesting an OIOS investigation
- **Attachment 8:** Responses to interview questions regarding attempts to cancel the contract and personal action form regarding attempted cancellation of contract
- **Attachment 9:** Correspondence regarding the role of Ms. Lori Lee and concerns about the OAI investigative process
- **Attachment 10:** 13 June 2008 Record of the interview with Mr. Ismail Ahmed (with changes tracked between Mr. Block's version and the actual recorded interview)
- **Attachment 11:** 23 July 2008 letter to Mr. Francis Dubois from Beatrice Edwards
- **Attachment 12:** Information about Mr. Ahmed's contract extension and Nairobi travel
- **Attachment 13:** 25 November 2008 letter from Beatrice Edwards (GAP) to Elia Armstrong requesting the OAI report