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Introduction

1.   The Applicant, a former staff member of the United Nations Human Settlements Programme (UN-Habitat), contests the decision/s of the United Nations Office of Internal Oversight Services (OIOS), not to launch an investigation of the reported misconduct and also his

14.   T e A!!"#$ant 4as 4#t d&a4n f&om @#'8a and se&2ed a

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>> C.   B#s$ondu$t of su!e&2#so& .-Pa&t C of t e A!!"#$ant:s
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21.   010) #nfo&med t e A!!"#$ant on 14 Janua&8 2013 t at #s &e!o&t 4ou"d 'e &e2#e4ed $a&efu""8 '8 t e 1n2est#gat#on D#2#s#on *-1D3,/010)% and a de$#s#on 4ou"d 'e made as to t e most a!!o!&#ate met od of add&ess#ng t e #nfo&mat#on t at e ad !&o2#ded. 010) a"so ad2#sed t e A!!"#$ant t at #t 4ou"d dete&m#ne 4 et e& #ts 0ff#$e o& anot e& 0ff#$e 4as mo&e su#ta'"e to add&ess t e matte&s e ad &a#sed. T e ema#" fu&t e& #nfo&med t e A!!"#$ant t at #f 1D/010) dete&m#ned t at #s &e!o&t 4as to 'e #n2est#gated '8 010)% #t 4ou"d not 'e o'"#ged to #nfo&m #m of u!dates on o& t e out$ome of t e #n2est#gat#on.

22.   T e Ct #$s 0ff#$e &e!o&ted on t e A!!"#$ant:s &e5uest fo& !&ote$t#on on 27e'&ua&8 2013. 1t found t at out of 13 $ommun#$at#ons e f"agged% se2en d#d not $onst#tute &e!o&ts of m#s$ondu$t !u&suant to t e &e5u#&ements of)T/)G=/2005/21. As !e& t e ot e& s#;% 4 #$ &a#sed one&ns a'out t e management $ a#n% t e Ct #$s 0ff#$e found t at t e8 d#d not ont#tute

24.   On 15 7e'&ua&8 2013% t e A!!"#$antHs &e5uest fo& management e2a"uat#on of t e 2 7e'&ua&8 2013 de$#s#on of t e Ct #$s 0ff#$e 4 as found not to 'e &e$e#2a'"e. T e A!!"#$ant f#"ed an a!!"#$at#on 4#t t e T&#'una" 4 #$ $ a'''enged% inter alia% t e de$#s#on of t e Ct #$s 0ff#$e *t e -Ct #$s $ase3,.

25.   T e D#&e$to&% 1D/010)% #nfo&med t e CD% UN+(a'#tat% '8 memo&andum of 25 Ba&$ 2013% t at afte& &e2#e4#ng t e A!!"#$ant:s $om!"a#nt% 010) ad dete&m#ned t at -t e matte& 4ou"d 'e 'est and"ed '8 UN+(a'#tat3 and &efe&&ed #t to UN+(a'#tat fo& #ts attent#on and a!!&o!&#ate a$t#on.

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32. 0n 30 Janua&8 2014\ t e Banagement C2a"uat#on Un#t *-BCU3, &e?e$ted

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3>.   In Wasserstrom *2014+UNAT+456,⸏ t e A!!ea"s T⅋#'una" $ons#de⅋ed t

41.   1n Nwuke 2010+UNAT+099% t e A!!ea"s T&#'una" stated t at t e !&o2#s#ons of)T/)G=/200>/5 $&eate &#g ts to an #n2est#gat#on of $"a#ms of !&o #'#ted $ondu$t and to $e&ta#n adm#n#st&at#2e !&o$edu&es. 1t fu&t e& e"d t at #f a $"a#m fo& #n2est#gat#on fa""s unde& #ssues $o2e&ed '8)T/)G=/200>/5% -t e T&#'una" as ?u&#sd#$t#on to e;am#ne t e adm#n#st&at#2e a$t#2#t8 *a$t o& om#ss#on, fo"'o4ed '8 t e Adm#n#st&at#on afte& a &e5uest fo& #n2est#gat#on.3

42.   (o4e2e&% #n Nwuke UNAT a"so noted t at -.#/n t e ma?o&#t8 of $ases% not unde&taA#ng a &e5uested #n2est#gat#on #nto a""eged m#s$ondu$t 4#"" not affe$t d#&e$t"8 t e &#g ts of t e $"a#mant% 'e$ause a !oss#'"e d#s$#!"#na&8 !&o$edu&e 4ou"d one&n t e &#g ts of t e a$$used staff mem'e&3 and t at -a staff mem'e& as no &#g t to $om!e" t e Adm#n#st&at#on to $ondu$t an #n2est#gat#on un"ess su$ &#g t #s g&anted '8 t e 9egu"at#ons and 9u"es3.

43.   T e &e$e#2a'#"#t8 of an a!!"#$at#on aga#nst an 010) de$#s#on de!ends u"t#mate"8 on 4 at #s !&esented to 010) fo& #n2est#gat#on and 4 at t e A!!"#$ant seeAs to $ a""enge 'efo&e t e T&#'una".

44.   1n t e !&esent $ase% t e sta&t#ng !o#nt #s t e $ontent of t e A!!"#$ant:s &e!o&t to 010)% 4 #$ e f#"ed afte& #s se!a&at#on.

45.   Pa&t A of t e A!!"#$ant:s &e!o&t &e"ates to 4 at t e A!!"#$ant des$&#'ed as a""eged -.g/&oss '&ea$ es of UN !&o?e$t management and !&o$u&ement &u"es and &egu"at#ons3.

4<.   T e 010) de$#s#on not to #n2est#gate t at !a&t one&ns t e #nte&ests of t e 0&gan#sat#on and !otent#a""8 t e &#g ts of an8 a$$used staff mem'e&sK #t does not and $annot affe$t t e &#g ts of t e A!!"#$ant. An8 #m!a$t of t e #n2est#gat#on &e5uested '8 t e A!!"#$ant 4ou"d a2e 'een on at &#d !a&t8% not on #m.

46.   T e T&#'una" f#nds t at 4 ate2e& t e out$ome of t e de$#s#on of 010) on !a&t A of t e A!!"#$ant:s &e!o&t% #t 4ou"d not a2e affe$ted #s te&ms o& $ont&a$t of em!"o8ment. T e&efo&e% t e se$t#on of t e a!!"#$at#on $ a""eng#ng 010) de$#s#on not to #n2est#gate !a&t A of t e A!!"#$ant:s &e!o&t #s not &e$e#2a'"e% ratione materiae.

4>. >Posttsf 4 278.3508a9 ( )-5.808"50] TJD/R r "1 4 9

4>. >Posttsf 4 278.3508a9 ( )-5.808"50] TJD/R r "1 4 9

Preliminary Issues

54.   In a su'm#ss#on to t e T&#'una" dated 21 August 2014% t e A!!"#$ant &a#sed t &ee !&e"#m#na&8 #ssues. 7#&st% e &e5uested !e&m#ss#on to !&odu$e to t e T&#'una"

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4. The Report of the Office of Internal Oversights Services on strengthening the investigation functions in the United Nations *A/5>/60>, of 10 7e'&ua&8 2004

59. Concerning OIOS' response to parts B and C of the Appellant's report, the memorandum of 25 March 2013 demonstrates that OIOS, on the basis of the available documentation, determined that the matter would be best handled by UN-Habitat and referred the Appellant's report to that agency.

60. The question for the Tribunal is whether OIOS committed a manifest error in the exercise of its discretion.

61. The OIOS Manual states in sec. 3.2.2 that "referrals commonly occur for matters related to performance and disagreement over administrative decisions".

62. Parts B (Mal-intended recruitment, and C (Misconduct of supervisor), of the Appellant's report was comprised of allegations that concerned performance evaluation and management, separation/non-renewal and allegations of constructive dismissal. Each of these can be properly categorised as "matters related to performance and disagreement over administrative decisions".

63. The Tribunal concludes that the OIOS decision not to investigate the Appellant's complaint but to refer it to UN-Habitat was in accordance with its administrative guidelines and was a legitimate exercise of its discretion.

64. The Tribunal finds that there is no evidence to support the Appellant's allegation that the decision made by OIOS – after his separation from service – was arbitrary and capricious, that it was an attempt to cover up wrongdoing within the Organisation, or that it did or could amount to retaliation against him.

65. In his application to the Tribunal, the Appellant also claimed that OIOS did not provide him with the requisite information and provided misleading information. The Tribunal finds that these claims do not constitute separate administrative decisions which can be considered by the Tribunal independently of the substantive claim; however, they can be raised incidentally to assess the procedural regularity of the contested administrative decision not to investigate his report into parts B and C.

65. The alleged misleading information referred to by the Applicant was the 010) email of 11 July 2013 advising him that it had reviewed his report and given it due attention, and that it was not obliged to inform him of updates on or of the outcome of the investigation.

66. Under sec. 3.1.4 of the 010) Banual's -Complaints and Victims3

> Many source reporting misconduct and claiming to be a victims should be informed that the 010) mandate does not provide for assistance to victims or for conflict resolution, and that their personal concerns may be addressed through other means