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NATIONS UNIES

Ethics Office of the United Nations Secretariat

**Independent Review of Mr. Ismail Ahmed's Request for
Protection Against Retaliation
Conducted by the Chairman of the United Nations Ethics Committee**

11 December 2009

Ethics Office of the United Nations Secretariat

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I. Introduction

1. On 15 June 2009 the Government Accountability Project (GAP) on behalf of Mr. Ismail Ahmed pursuant to section 4.3 of ST/SGB/2007/11 requested that the 22 September 2008 Protection against Retaliation decision of the UNDP Ethics Office be reviewed.
2. On 24 November 2009 the Chair of the United Nations Ethics Committee consulted with members of the United Nations Ethics Committee regarding Mr. Ahmed's case.
3. It is apparent from a review of the facts of this case that on 17 December 2007, following the establishment of the UNDP Ethics Office, Mr. Ahmed submitted to that Office, an updated version of complaints that he had previously submitted on 22 November 2007 to the UNDP Administrator and the former UNDP Office of Audit and Performance Review (OAPR). It is also apparent from the facts, that Mr. Ahmed submitted another updated version of his complaints dated May 2008, hereinafter referred to as the 'May 2008 document', to the UNDP Ethics Office. The complaints that were submitted included allegations of retaliation by the senior management of the UNDP Somalia Country Office.
4. On 4 January 2008 the interim Director of the UNDP Ethics Office requested the Office of Audit and Investigation (OAI) to conduct an investigation.
5. On 8 August 2008 OAI submitted its report regarding the allegations of retaliation as set out by Mr. Ahmed in his 'May 2008 document' to the Director of the UNDP Ethics Office.
6. The Director of UNDP Ethics Office issued her report on 22 September 2008.
7. On 15 June 2009 the GAP, on behalf of Mr. Ahmed, requested a review of that 22 September 2008 decision.
8. In their submission, the GAP contends that there have been several evidentiary or factual errors, as well as due process or conflict of interest issues in relation to the Office of Audit and Investigation (OAI) Report associated with Mr. Ahmed's case.
9. The GAP had requested a copy of the OAI Investigation; however, a copy of the OAI Report was not provided by the UNDP Ethics Office. The formulation of their request for review was therefore based upon the 22 September 2008 decision of the UNDP Ethics Office and the references made therein regarding the OAI Report, as they related to the particular allegations of retaliation made by Mr. Ahmed in his 'May 2008 document'.
10. As a preliminary matter, the GAP has contended in their submission that there was a failure to consider evidence that Mr. Ahmed's 'First Dossier' was a complaint.

Since an organization must establish by clear and convincing evidence that it would have taken the same alleged retaliatory action, absent the protected activity, the issue of whether or not an activity is indeed a protected activity must be clearly established. In this case, it is clear from the 22 September 2008 decision of the UNDP Ethics Office that the ‘First Dossier’ was considered to be a protected activity for the purposes of Mr. Ahmed’s request for protection against retaliation. Paragraph 15 of that decision reads:

...your dossier of October 2006 satisfies both of Updated UNDP Legal Framework’s definitions of wrongdoing and whistleblower.....Thus your “First Dossier” falls under protected activities.

11. As well, Paragraph 16 of the UNDP Ethics Office’s decision provides that:

...your complaint to the Administrator [22 November 2007] was also a protected activity.

12. It is therefore, not an issue that the October 2006 report of misconduct referred to as the ‘First Dossier’ and the ‘May 2008 document’ (an updated version of the 22 November 2007 document submitted to the UNDP Administrator) are, for the purposes of this review, considered as ‘protected activities’.

13. Although, as indicated above, the GAP has raised several evidentiary and factual issues associated with the OAI Investigation, the review will be undertaken in order to determine whether the conclusions made in relation to the allegations of retaliation are supported by substantial evidence. That is, whether there was sufficient enough relevant evidence that a reasonable person, might accept as adequate to support a conclusion that the Organization has been able to establish by clear and convincing evidence that it would have taken the same alleged retaliatory action, absent the protected activity.

14. In this context and in order to conduct this review, the Chair requested and was provided a copy of the Office of Audit and Investigations (OAI) Investigation Report which has been referred to in the 22 September 2008 decision of the UNDP Ethics Office.

15. On the basis of the ‘May 2008 document’, the alleged retaliatory acts for which Mr. Ahmed requested protection were:

- (a) Attempts to revoke his ALD contract in October 2006
- (b) Relocation to Dubai and denial of work permit and visa documents
- (c) Non-renewal of his ALD contract on 30 November 2007
- (d) Blacklisting
- (e) Damage to professional reputation
- (f) Withholding of payments
- (g) Referral to United Arab Emirate (UAE) authorities on his work without a visa

16. In view of the number of allegations of retaliation occurring over an extended period of time the UNDP Somalia Country Office in relation to a particular project, the following summary is provided and based upon the evidence available.

II. Summary

17. In the complaints (i.e. 'First Dossier of October 2006' and 'May 2008 document') submitted by Mr. Ahmed, he alleged that from 2002 to 2007 the UNDP Somalia Country Office in its implementation of the Somali Remittance Programme used corrupt and fraudulent methods in awarding contracts to a consultancy firm and alleged conflict of interest issues in relation to the employment by the Somalia Country Office of an individual from the same consultancy firm.

18. Based on information from the OAI Report, Mr. Ahmed became the Financial Services Programme Officer in the Financial Services Development Project (FDSP) in September 2005. The FDSP Document was issued in October 2004 with an estimated timeframe for project activities of two years. On 26 September 2005, Mr. Ahmed became the Financial Services Programme Officer in FDSP and was issued an Appointment for Activities of Limited Duration (ALD) contract for a period of one year effective 10 October 2005. In July 2006 a revised Project Document was issued extending the project until 31 March 2007. The project was never formally extended beyond that date. On 26 September 2006 Mr. Ahmed signed a one (1) year extension to his ALD contract extending it until 8 October 2007.

19. Mr. Ahmed has also stated that, in March 2006, he submitted an anonymous complaint to the UNDP OAPR fraud hotline about the corruption in the UNDP Somalia Country Office and its relations with KPMG Nairobi. On 21 April 2006 the Office of Audit and Performance Review (OAPR), after conducting an investigation from 12 to 28 March 2006, concluded that the allegations made to the OAPR hotline and in an email sent to the former Country Director, were not substantiated. Mr. Ahmed has indicated that as a consequence of the findings of the OAPR report he submitted his 'First Dossier' complaint on or about 19 October 2006 to the FSDP Project Manager.

20. On 5 October 2006, the Chairman of the Somali Money Transmitters Association (SOMTA) sent an email to the FSDP Project Manager and the UNDP Somalia Deputy Resident Representative (Programme) [DRR(P)] in which he indicated that the "...industry has lost confidence in [the Chief Technical Advisor]. The level of mistrust is such that every action he takes is viewed with great suspicion...As long as [the Chief Technical Advisor] remains that manager of this program we do not believe we can build the lost trust between the industry and UNDP. We simply can no longer work with him."

21. As a consequence of this email a meeting was arranged in Dubai between SOMTA and the UNDP Country Office on 9 October 2006. On this same day, SOMTA formally submitted a letter of complaint reiterating:

The industry has completely lost confidence in [Chief Technical Advisor]. The level of mistrust has reached a stage where every action he takes is viewed with great suspicion. Clearly he has competing professional and personal interests that make it difficult for him to fulfill his duties. As long as [Chief Technical Advisor] remains the manager of this program we do not believe we can rebuild the lost trust between the industry and UNDP. We simply can no longer work with him.

22. The minutes of the 9 October 2008 meeting held in Dubai between SOMTA and the UNDP Somalia Country Office also indicate:

UNDP will deploy one of its project staff members to Dubai to provide technical support to SOMTA and SOMTA members in order to accelerate compliance and capacity building efforts...The arrangement will be effected before the end of October and will be reviewed after two to three months. UNDP will seriously consider extending the capacity building component of the project for another six months from the current ending date of the project, i.e. March 2007, subject to satisfactory performance of the project and partnerships.

23. And, as a result of these discussions, the OAI Report indicates that "...[Chief Technical Advisor] was moved to another position."

24. As indicated above, on or about 19 October 2006, ten (10) days after the decision had been made to relocate Mr. Ahmed to Dubai, Mr. Ahmed provided his 'First Dossier' to the former FSDP Manager. According to the former FSDP Manager, as indicated in the OAI Report, he "...shared the First Dossier with [DRR(P)]...and [the Country Director]...and that he handed it over to [Deputy Resident Representative (Operations)]...before [the former FSDP Manager] departed from Somalia."

25. In relation to the action or rather inaction taken by UNDP Somalia Country Office regarding the complaint submitted by SOMTA and the 'First Dossier' submitted by Mr. Ahmed, OAI found that they:

The complaint submitted by SOMTA and the First Dossier submitted by Mr. Ismail Ahmed in October 2006 were not forwarded to OAPR as they should have been according to UNDP procedures...this was due to the belief...that these allegations had already been investigated.

26. The UNDP Deputy Director of the Regional Bureau of Arab States (DD/RBAS), who assumed this post in November 2006 indicated that he was unaware of Mr. Ahmed's complaints until the beginning of 2008; however, as the OAI Report provides:

In the spring of 2007, [the DD/RBAS]...instructed the Country Office...on behalf of RBAS to close the [FSDP] project.

[The DD/RBAS], and his Headquarters colleagues, believed that the project should be closed as it seemed to have an unacceptably high level of risk.

27. The UNDP Somalia Country Office Director informed the DD/RBAS that in order to properly close the project an evaluation was necessary to which the DD/RBAS agreed.

28. The evaluation undertaken regarding the requested closure of the project by the DD/RBAS commenced in July 2007. Two consultants were engaged to undertake this evaluation; however, due to an apparent disagreement between the two consultants, two separate reports regarding the FSDP were submitted.

29. One of the evaluator's reports dated September 2007 which covers the period 2002-2007, indicates that "The project [FSDP] was extended to the end of September 2007, after which time EC [European Commission] funding ceases, and UNDP will consider whether it is feasible to continue supporting the project."

30. This evaluator's report also provides that:

The EC [European Commission] representative reported that complaints from Somali beneficiaries regarding UNDP's performance also revolved around a lack of transparency in coordination, including non-transparent staffing and suspected preferential treatment given to certain contractors... UNDP personnel confirmed that a number of official complaints... were about consultancies awarded to KPMG.

and

...the EC reported that UNDP has failed to meet its contractual requirements. At the time of the interview – mid-September 2007 – the EC had still not received the annual report for 2006... It therefore expressed dissatisfaction with the overall management of the project, which caused unnecessary delays, and stated that due to inadequate reporting it was unclear whether the FSDP has achieved its objective of supporting the remittance industry so that remittance flows to Somalia improved.

31. It is noteworthy that this evaluator's report, although critical of UNDP's earlier role in the project observed that during Phase II of the project, the associated risks had been minimized and SOMTA and its members would require continual support and that:

...the risk of discontinuing engagement is greater than the risk of continuing support for the Somali remittance sector.

32. During this same timeframe, it is noted that on 28 July 2007 another meeting in Dubai between SOMTA members and the UNDP Country Office occurred in order to review the progress made since their 9 October 2006 meeting. The minutes of that meeting provide, in part:

...[the] agreement [EC donor support for FSDP]; however expires at the end of September 2007. An exceptional 6 months' extension of the agreement was already provided in March and no further extension can be granted. This means that the support to SOMTA will stop at the end of September.

33. The SOMTA members were informed that an external evaluation was planned in order to determine if future support is warranted; however, the minutes provide that it was made:

...very clear to the members of SOMTA that in principle, support will stop by end of September.

34. Following the issuance of the two separate reports of the evaluators, the Deputy Director, RBAS, instructed the UNDP Somalia Country Office to operationally close the project in September 2007.

III. Review of Allegations

A. First Allegation: Attempts to revoke his ALD contract in October 2006

35. In relation to the first allegation, the GAP contends that there was a failure to consider Mr. Ahmed's testimony regarding the attempts to revoke his ALD contract in October 2006, referring specifically to pages 6 – 8 of the interview transcript *and additional notes* (i.e. Attachment 10 of the GAP submission). It is noted from the OAI Report that Annex 29 refers to the "Agreed interview notes Mr. Ismail Ahmed of 13 June 2008". It is apparent from an examination of Attachment 10 of the GAP submission, which shows 'tracked changes' and, Annex 29 of the above-noted OAI Report, that these two documents are exactly the same. It is therefore, not in issue that the interview with Mr. Ahmed was considered in its entirety.

36. As well, the OAI Report included as an Annex, a 123 page scanned copy the 'First Dossier', which Mr. Ahmed confirmed during his interview was the dossier he prepared, minus the originals. The information contained in this 'First Dossier' relates to allegations of improper contracts being awarded to KPMG and the recruitment of the Chief Technical Advisor.

37. On the basis of the information available, there is agreement that following Mr. Ahmed's contract being extended there were discussions regarding the date upon which the contract would end.

38. As indicated above, the FDSP Document that was issued in October 2004, had been extended in July 2006 until 31 March 2007, Mr. Ahmed's one-year contract extension until 8 October 2007 was, at the time, clearly beyond the projects extended timeframe of 31 March 2007. However, this matter becomes a moot point as it was subsequently agreed that Mr. Ahmed's services were needed in Dubai in support of the Somali Money Transmitters Association (SOMTA).

39. On the basis of the above, there was substantial evidence to support the conclusion that alleged attempts to resolve Mr. Ahmed's ALD contract in October 2006 would have occurred absent the protected activity.

B. Second Allegation: Relocation to Dubai and denial of work permit and visa documents

40. In relation to the second allegation, it is contended that the DRR/(P) and the former Deputy Resident Representation (Operations) (DRR(O)), as a consequence of the submission of the 'First Dossier', used an agreement with SOMTA to post Mr. Ahmed to Dubai as a retaliatory act.

41. On the basis of information contained in the OAI Report, the relocation of Mr. Ahmed was first discussed at a meeting between SOMTA and UNDP on 9 October 2006 [note: as indicated in the Summary above, this is ten (10) days before Mr. Ahmed submitted his 'First Dossier'] which the Country Director had requested in order to improve the relationship between the parties after SOMTA had lodged their October 2006 complaint regarding the Chief Technical Advisor.

42. According to the minutes of the UNDP-SOMTA 9 October 2006 meeting, it was agreed that:

UNDP will deploy one of its project staff members to Dubai to provide technical support to SOMTA and SOMTA members in order to accelerate compliance and capacity building efforts.

43. It is further stated that SOMTA requested that Mr. Ahmed be placed in Dubai where he could be involved more closely as it was recognized that he had a lot of expertise in this area.

44. The Country Director stated that to solve the problem with SOMTA it was decided that that Mr. Ahmed would be moved to Dubai.

45. On the basis of this information, there was substantial evidence to support a conclusion that the Organization would have taken the same alleged retaliatory action (relocation to Dubai), absent the protected activity.

46. However, the issue of Mr. Ahmed's status in Dubai and the support he received from the UNDP Somalia Country Office then becomes an issue.

47. On 20 November 2006, Mr. Ahmed left for Dubai. The “Purpose of Travel” contained on the Travel Authorization associated with Mr. Ahmed’s 20 November 2006 relocation to Dubai states: “To take up duty station in Dubai, UAE”. However, it is also to be noted that this travel authorization also provides for Mr. Ahmed’s return to Nairobi on 20 December 2006. At the time Mr. Ahmed traveled to Dubai his contract had not been amended in order to reflect that his new duty station was Dubai. According to Mr. Ahmed he had received assurances from the former DRR (O) and the FSDP Manager that an amended contract would follow shortly thereafter.

48. However, in relation to his “status” as he left Nairobi on 20 November, it is noted from an email dated 21 November 2006 from Mr. Ahmed to the FSDP Manager which provides:

I was expecting to receive my new contract today but it is not yet ready and it is too late to change my travel plans. Therefore I need a letter of authorization to travel to Dubai as Nairobi is still my duty station [emphasis added].

49. The next day, that is 22 November 2006, a Somalia Country Office Human Resources Officer informed Mr. Ahmed via email that:

I am waiting for clarification from Headquarters on two issues regarding your contract and will send it to you as soon as all is cleared.

50. There is no reference in the information available which particularizes what the two issues were; while this may have been an HR issue, the only reference we have regarding UNDP NY’s involvement regarding Mr. Ahmed is a 11 January 2007 email from the UNDP UAE Resident Representative, to the DD/RBAS after receiving a request for assistance from the UNDP Somalia Country Office from the UNDP UAE office to support Mr. Ahmed in securing office space.

51. The exchange of emails by the UNDP Somalia CO to the UNDP UAE Resident Representative is, however, instructive. In an email dated 19 January 2007, the Country Director indicated to the UNDP UAE Resident Representative:

Although our own intention is to base the s/m [Ahmed] in Dubai, his current status for the moment is still a mission/DSA status. He will remain on mission status pending regularization of his situation. Regarding the latter we will coordinate with your office, RBAS and OHR...

52. It is also noteworthy that during the month of December 2006 Mr. Ahmed explored the availability and requirements in order to secure office space in the Dubai Humanitarian City, where it is understood that UNOPS obtained office space through the UNDP UAE office.

53. As well, Mr. Ahmed via email dated 28 December 2006 contacted a former UNDP Somalia staff member who had been transferred to the UNDP UAE office, indicating he will "...be based in Dubai..." and would appreciate being able to provide him with some information.

54. Following an exchange with this former UNDP Somalia staff member on 3 January 2007 Mr. Ahmed indicated that he will be asking:

...our own management in Nairobi to write to UN Resident Rep in Abu Dhabi regarding my relocation to Dubai.

55. On this same day Mr. Ahmed communicated with UNDP Somalia Country Office and informed them that they need to write to the UNDP UAE Resident Representative "...about my relocation and request his office to support/facilitate getting an office in humanitarian city."

56. Subsequently, as indicated above, the UNDP Somalia Country Office wrote to the UNDP UAE Resident Representative regarding their support in securing office space for Mr. Ahmed.

57. However, following the receipt of the Somalia Country Director's request to the UNDP UAE Resident Representative, the UNDP UAE Resident Representative replied:

...thank you for the clarification...UNDP CO of UAE is deeply committed to support the Somali people, however, as you know placing a staff member from a Somalia office in Dubai, UAE carries with it legal, financial, security and other obligations and responsibilities. Therefore I suggest you kindly consider all these aspects with RBAs and OHR...and we will be happy to be guided by their advice on the matter.

58. Following this exchange the Somalia Country Director submitted a very detailed email to the DD/RBAS, the DD/RBAS responded that the UNDP Somalia Country Office failed to respond satisfactorily to their queries, as a consequence the UNDP Somalia Country Office was "...entirely bound to bear all responsibilities, risks and consequences that that operation may entail."

59. The Country Director subsequently informed the DRR(P) that Mr. Ahmed's relocation to Dubai was never cleared by RBAS therefore his duty station remained Nairobi with frequent missions to Dubai.

60. On the basis of the above information it is clear that as a consequence of SOMTA's intervention regarding the management of the FSDP project it was agreed that Mr. Ahmed would be relocated to Dubai in support of SOMTA. The decision in relation to his relocation is therefore not an issue; however as one of the OAI Report's recommendations provides, the UNDP Somalia:

Country Office Senior Management relocated Mr. Ismail Ahmed to Dubai without sufficient support...

61. On the basis of the above, it is clear that there was an intent to post Mr. Ahmed to Dubai as a duty station; however, when he departed Nairobi on 20 November 2006, he understood his status, at the time, to be ‘on mission’; which continued throughout his stay in Dubai. As indicated above by the UNDP UAE Resident Representative, “...placing a staff member from a Somalia Office in Dubai ...carries with it legal, financial, security and other obligations and responsibilities...” From information provided by Mr. Ahmed, he had to use his national passport in order to obtain continued visitor visas for the duration of his stay in Dubai. This situation was clearly, “without sufficient support” by the Country Office, as noted by the OAI Report in one of its recommendations.

62. It is also troubling that the OAI Report has noted, based upon a 22 November 2006 email to Mr. Ahmed, that the Somalia Country Office was awaiting “...clarification from Headquarters on two issues regarding [his] contract...”, yet there is no indication what these issues were and why Headquarters needed to be involved.

63. On the basis of the above, it cannot be concluded that there is substantial evidence to support a conclusion that the poor support Mr. Ahmed received regarding his status in Dubai would have occurred absent the protected activity. It is therefore concluded that the action, or rather inaction, was retaliatory.

C. Third Allegation: Non-renewal of his ALD contract on 30 November 2007

64. In relation to the third allegation, the OAI report, as previously referred to above, indicated that the FDSP Project Document that was initially issued in October 2004 for an estimated timeframe of two years had been extended until 31 March 2007. The report also indicates that after the issuance of the two (2) consultants’ reports regarding the FDSP in September 2007, the Deputy Director for UNDP RBAS instructed the Somalia Country Office to close the project, as they (RBAS) believed it to have an unacceptably high level of risk.

65. The fact that the FDSP was to be closed is substantiated by Mr. Ahmed’s ‘May 2008 document’. Paragraph 14.3.1 of the ‘May 2008 document’ provides, in part:

In July 2007 I discussed contract renewal with KNS Nair, who agreed that my contract would be extended for at least four months until a new private sector technical assistance unit that was proposed by the Country Office was established in Dubai. The idea was that a private sector adviser post based in Dubai would be created to support Somali private sector groups including SOMTA. This was originally proposed by [the Country Director] in May 2007 and his justification was that since senior UNDP management in New York recommended withdrawal from the remittance

programme because of perceived risks, the full technical assistance currently provided to SOMTA would continue but it would be through a private sector development unit.

66. As referred to above, the minutes of the 28 July 2007 meeting between UNDP Somalia and SOMTA indicated that it was made "...very clear to the members of SOMTA that in principle, support will stop by end of September [2007]."

67. On the basis of an email dated 1 October 2007 from the FSDP Manager and agreed upon by the DRR(P) the contract of Mr. Ahmed was extended until 31 October 2007 and on the basis of an email dated 6 November 2007 from the DRR(P), copied to Mr. Ahmed, his contract was extended until 30 November 2007 in order to prepare the final report and support and handover to SOMTA.

68. As well, it is to be remembered that it was UNDP, New York (RBAS) who had instructed the UNDP Somalia Country Office to close the FSDP in September 2007. The OAI Report also indicates that the "Funds available on the account when the project was closed in September 2007 were largely committed to a grant for SOMTA and the development of the PayQuick payment platform."

69. On the basis of the information, it is concluded that there is substantial evidence to support a conclusion that the Organization would have taken the same alleged retaliatory action [termination of the ALD contract] absent the fact that Mr. Ahmed had submitted his 'First Dossier' and that 'May 2008 document'.

D. Fourth Allegation: Blacklisting

70. The GAP has contended that Mr. Ahmed's exclusion from the short list of candidates for a Senior Economist post in the Somalia Country Office was a retaliatory act as a consequence of his protected activities.

71. The GAP references the fact that the UNDP Ethics Office decision of 22 September 2008 cites the Country Director as stating that:

...the post the office was particularly looking for someone with UNDP experience in human development policy, MDG monitoring, costing and advocacy, national human development report process...

72. Which is different from the "experience" provided for in the vacancy announcement.

73. However, it is evident from the OAI Report that the Country Director had asked an economist from the SURF-AS Beirut for assistance in narrowing down the long-list of candidates for the Senior Economist post to three (3) or four (4) candidates. It is to be noted that this individual was not associated with or implicated in any way, in relation to any of the issues regarding the Somalia Country Office.

74. As a result of this individual's review, he provided to the Country Director a short-list of twelve (12) candidates; Mr. Ahmed's name was not included on this short-list of candidates.

75. The list of candidates to be interviewed was derived from the list provided by this individual.

76. On the basis of the information, it is concluded that there was substantial evidence to support a conclusion that the Organization would have taken the same alleged retaliatory action [exclusion from the short-list of candidates for the Senior Economist post], absent the protected activity.

E. Fifth Allegation: Damage to professional reputation

77. In relation to the fifth allegation, Mr. Ahmed alleged that after he submitted his 22 November 2007 complaint to the UNDP Administrator, the DRR(P) traveled to Dubai from 26-28 November 2007 and spoke to SOMTA Chairman and a Council member. Mr. Ahmed alleged that the DRR(P) informed them that his complaint would damage the image of UNDP and have negative implications for the Somali Remittance industry. In particular, Mr. Ahmed alleged that the Chairman of SOMTA was made aware of the fact that UNDP management was seriously worried about his continued involvement in SOMTA affairs and that they heard about discussions regarding potential recruitment of him as a consultant for SOMTA.

78. The OAI Report indicates that when it questioned the Chairman of SOMTA after indicating that Mr. Ahmed's attitude had changed after being informed that his contract would end in November 2009 also stated:

It also became very clear that UNDP cannot accept Ahmed who is making all these silly non proven accusations to work on a project UNDP was funding.

79. This is independently corroborated by the response given by an individual familiar with the situation and who provided a statement, in confidence to the OAI investigators. The information provided indicates that when issues regarding the continuation of the IT platform were raised, during the latter period of time Mr. Ahmed was supporting SOMTA, the DRR(P) "...misunderstood it [comments regarding continuation of the IT platform project] as a support to Mr. Ismail. I believe this misunderstanding came because [the SOMTA Chairman] wanted Mr. Ismail's termination for no obvious reason..."

80. On the basis of the above information, it cannot be concluded that substantial evidence to support a conclusion that the Organization would have taken the same alleged retaliatory action [UNDP could not accept Mr. Ahmed working on a UNDP project – being a consultant with SOMTA], absent the protected activity.

81. It is therefore concluded that the UNDP Somalia Country Office as a retaliatory act communicated quite openly in relation to the consultancy contract that:

UNDP cannot accept Ahmed, who is making all these silly non proven accusations to work on a project UNDP was funding.

F. Sixth Allegation: Withholding of payments

82. In relation to the sixth allegation, the issue of withholding payments relates to DSA entitlements, residential security allowance and salary payments. It is to be noted that, as a consequence of the intervention of the UNDP Ethics Office, facilitation of these payments was expedited to Mr. Ahmed's benefit. However, the contention regarding this allegation was that it was retaliatory as a consequence of Mr. Ahmed submitting his complaints of fraud and corruption in the UNDP Somalia Country Office.

83. It is noted that due to the intervention of the UNDP Ethics Office the issues associated with expenses and entitlements and salary payments were resolved.

84. However, quite separate from the 'status' issue discussed in relation to the second allegation, the OAI Report found that, the Country Office had sought advice regarding implementation of the regulations regarding reduced DSA that apply after 60 days on mission; the UNDP Somalia Country Office was advised that a reduced DSA applies after 60 days on a continued mission with the same TOR. However, subsequently, the Country Office was informed by UNDP New York that the earlier advice had failed to take all details into account. The Country Office was subsequently advised to pay Mr. Ahmed full DSA for his entire stay in Dubai. The outstanding amount was paid to Mr. Ismail Ahmed on 19 May 2008.

85. On the basis of the information, it is concluded that although related to the 'status' issue, there is substantial evidence to support a conclusion that the Organization would have taken the same alleged retaliatory action [withholding of payments], absent the protected activity.

86. As well, in relation to the issues associated with the payment of his October and November salaries, the fact that Mr. Ahmed did not return to Nairobi to organize his closure-of-business, the COB process was initiated by the HR unit on 7 December 2007 and, as a result of the holiday season in December and the post-election violence in Nairobi during the first three weeks of January 2008, the operations of the Country Office were limited.

87. Therefore, and again on the basis of the evidence, it is concluded that there is substantial evidence to support a conclusion that the Organization would have taken the same alleged retaliatory action absent the protected activity.

G. Seventh Allegation: Referral to UAE authorities on his work without a visa

88. In relation to this allegation, Mr. Ahmed contends that UNDP had reported to UAE authorities the fact that he had worked in Dubai for a year without a government work permit.

89. As is apparent from the review undertaken in relation to the second allegation, particularly as it relates to Mr. Ahmed's 'status' while in Dubai; there was not substantial evidence to support that part of the allegation that related to his 'status' while in Dubai, and, as a consequence, it has been found to be retaliatory. It therefore follows that in relation to this allegation, also based upon Mr. Ahmed's status while in Dubai, that if there are any legal issues regarding Mr. Ahmed's 'status' between 20 November 2006 and 30 November 2007, the recommended relief for the second allegation will equally apply in relation to this allegation.

IV. Observations

90. The GAP has also raised several due process and conflict of interest issues regarding the conduct of the OAI Investigation.

91. As has been stated from the outset, this review has been undertaken in order to determine whether the conclusions made in relation to the allegations of retaliation are supported by substantial evidence.

92. In view of the extensive documentation and supporting annexes provided by Mr. Ahmed in his 'First Dossier' and 'May 2008 document' as well as the GAP's comprehensive submission of 15 June 2009, it is concluded that there was sufficient enough relevant evidence in relation to this review.

V. Recommendations

93. In relation to the second allegation [as it relates to the poor support provided to Mr. Ahmed regarding his status in Dubai] and fifth allegation [his potential recruitment as a consultant for SOMTA], it has been concluded that as a consequence of this review, these allegations are considered retaliatory.

94. The relief recommended is therefore:

- (a) In relation to the second allegation, provision of support to Mr. Ahmed by UNDP regarding and dealings he may have with the UAE Authorities in order to clarify or rectify this situation and payment of reasonable legal expenses he may have incurred or that may arise (substantiated by receipts) regarding his status in the UAE because of the poor support the UNDP Somalia Country Office provided to Mr. Ahmed regarding his visa/work permit status in Dubai between the period 20 November 2006 and 30 November 2007.
- (b) In relation to the fifth allegation:

- (i) It is quite clear that in order to address the negative consequences of this retaliatory act, the only appropriate form of relief would be some measure of compensation. In this regard, it is noted that the GAP in its request for relief has requested compensation in the amount of salary and benefits lost between 1 December 2007 and the present. Based upon the circumstances of this case, it is recommended that UNDP pay Mr. Ahmed twelve (12) months net base salary as compensation (at the rate in effect at the time of his separation from service); as well
- (ii) A letter prepared by current Director of UNDP Somalia Country Office to each of the current members of SOMTA indicating that during the period of time that Mr. Ahmed was providing assistance to SOMTA representations were made by certain UNDP Somalia personnel which may have caused SOMTA members to question whether or not they should engage the services of Mr. Ahmed following the completion of his service contract with the UNDP Somalia Country Office. SOMTA members are to understand that any such comments do not reflect the view of the UNDP Somalia Country Office regarding Mr. Ahmed and that as a consequence each SOMTA member should feel free to engage the services of Mr. Ahmed if they should so wish.
- (c) Payment of reasonable legal expenses (substantiated by receipts) Mr. Ahmed may have incurred regarding the services provided by the GAP in the formulation and submission of this case.