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INTEROFFICE MEMORANDUM MEMORANDUM INTÉRIEUR

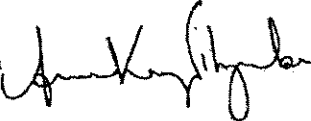
to: Mr. Nicolas Michel  
A: Under-Secretary-General  
Legal Affairs and UN Legal Counsel

DATE: 20 June 2008

Maria Vicien-Melburn  
Director-General, Legal Division,  
Office of Legal Affairs

RÉFÉRENCE: ODG/OLA/CM

FROM: Mrs Anna Tibaijuka  
DE: Director-General  
UNON



SUBJECT: Allegations of Misconduct by Senior Staff members in relation to  
OBJET: the General Assembly Resolution 62/63 (ID/OIOS Report No.  
0058/08)

1. Our duty station has been faced with a rather very complex political and legal issue with which I will appreciate OLA's advice and guidance on.
2. In that respect, I refer to the recently concluded ID/OIOS investigation into the above-mentioned subject matter. (See copy of this Report attached as Annex 1). OIOS has made a finding of serious misconduct against three Senior staff members: Mr. A. Barabanov; Mr. P. Marshall; and Mr. Mataitini and has recommended that appropriate action be taken against the staff members by UNON and DSS respectively.
3. You will notice from the conclusions that the Senior staff members were found to have violated the Staff Regulations and Rules of the United Nations and the Laws of Kenya.
4. Specifically, the ID/OIOS Report found:  

...that Mr. Mataitini, former Chief of Security, provided a UNON weapon to Mr. Barabanov, although he did not have a Firearm Certificate as required at that time by the national laws of Kenya. Mr. Mataitini admitted that he had done so pursuant to a private agreement between him and Mr. Barabanov." In that respect, the ID/OIOS Report found "...that Mr. Mataitini's action was in violation of the national laws of Kenya at that time, which was in violation of Staff Rule 101.2(c) which requires staff to comply with local law. Mr. Mataitini also failed to perform in accordance with the highest standard of integrity required by Staff Regulation 1.2(b)."

5. Similarly, the ID/OIOS Report also found:

"...that Mr. Marshall improperly facilitated the acquisition of a Temporary Firearm Permit for Mr. Barabanov, a non-security staff member. This was a violation of the national laws of Kenya."

6. According to the ID/OIOS Report:

"Mr. Marshall provided incorrect information to the Chief Firearm Licensing Officer of Kenya by signing a Licenses and Temporary Firearms Permits list including Mr. Barabanov's name, in contravention of Section 5 (9) of the Kenya Firearms Act, Chapter 114, which was in violation of Staff Rule 101.2(c) which requires staff to comply with local law. Mr. Marshall claimed he did not notice Mr. Barabanov's name on the list, but ID/OIOS does not find his claim credible. Mr. Marshall also failed to perform in accordance with the highest standard of integrity required by Staff Regulation 1.2(b)."

7. The ID/OIOS Report found that:

"Mr. Barabanov improperly had Messrs. Mataitini and Marshall issue him with UNON firearms and temporary Firearm Permits. Particularly as UNON Chief of Administration Mr. Barabanov failed to perform in accordance with the highest standard of integrity required by Staff Regulation 1.2(b)."

8. Based upon its conclusion that Mr. Barabanov improperly requested and received UNON firearms and temporary Firearm Permits and that Mr. Mataitini and Mr. Marshall improperly acceded to his requests, ID/OIOS recommended that:

- i. The Department of Safety and Security take appropriate action against Mr. Nauludole Mataitini.
- ii. The Department of Safety and Security take appropriate action against Mr. Peter Marshall.
- iii. The Director General of UNON takes appropriate action against Mr. Alexander Barabanov.

9. For information purposes, you may wish to note that Section 5(9) of the Firearms Act (Chapter 114 of the Laws of Kenya) provides that:

"If any person makes a statement which he knows

to be false for the purpose of procuring whether for himself or any other person, the grant of a firearm certificate under this section, or the variation or renewal of a firearm certificate he shall be guilty of an offence and liable to imprisonment for a term not exceeding two months or to a fine not exceeding two thousand shillings or both."

10. Similarly, Section 320 of the Penal Code (Chapter 63 of the Laws of Kenya) provides that:

"Any person who willfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year."

11. We have subsequently brought the matter to the attention of the Under-Secretary-General, Department of Management as required by ST/AI/371. The dilemma I now face is whether, in light of GA Resolution 62/63 and in practice, we have any obligation to inform the Government of Kenya at this point that the United Nations is following up the matter in accordance with the procedure laid down by ST/AI/371. Primarily, I am concerned that in this age of blogs and inner-city press, should the report find its way into the public domain, the United Nations would not be put in a situation of having to defend itself to the Kenyan Government as to why we have not brought the matter to the Government's attention.

12. In another report by OIOS, ID Case 515/06, which is attached here as Annex 2, the OIOS has recommended that the report be shared with the Kenyan Government. Meanwhile, the Kenyan Police investigated the same incident and issued a report which I have attached as Annex 3. The Kenyan Police Report makes certain recommendations regarding certain United Nations staff with which I would be grateful for OLA's input before proceeding to act.

13. The Senior Legal Officer, UNON, Mr. Chris Mensah, will be in New York during the week of 24 June 2008. In light of your busy schedule, I would be grateful if he can begin discussions on the matter with your Officers during his visit to New York. I will be in New York sometime between the last week of June and the first week of July and I hope to be able to have a discussion with you on the matter.

Thanks and Best Regards

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CC: Mr. David Veness  
USG  
Department of Safety and Security

Mr. Chris Mensah  
O-I-C, Office of the Director General,  
Senior Legal Officer,  
UNON