



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MAIGA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON LIABILITY AND  
RELIEF**

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**Counsel for the Applicant:**

Miles Hastie, OSLA

**Counsel for the Respondent:**

Melissa Bullen, UN WOMEN

## **Introduction**

1. The Applicant is a former staff member of the United Nations Entity on Gender Equality and the Empowerment of Women (“UN Women”). She became the Country Programme Manager (CPM) in Côte d’Ivoire at the P-4 level on 1 April 2010. In 2012, her post was upgraded to the P-5 level and advertised. The Applicant applied for the post and was not selected, resulting in her separation.

2. In her Application dated 22 April 2013, she contests that decision on the grounds that it was tainted by bias, improper consideration of performance appraisals and procedural error.

3. The Respondent’s Reply was filed on 20 July 2013, the Respondent having been granted an extension of time by the Tribunal to do so.

## **Facts**

4. The Applicant joined the United Nations Development Fund for Women (“UNIFEM”) on 1 April 2010 as the Country Programme Manager of the Côte d’Ivoire office at the P-4 level. She headed the country office which before her arrival had been headed by Ms. Matenin Coulibaly, the National Programme Officer (NPO). UNIFEM was the predecessor of UN Women.

5. In May 2010, the Applicant reported orally and in writing to the Regional Director, Ms. Odera, who headed the West Africa Regional Office (WARO) of UN Women based in Dakar, Senegal, that the NPO in the Cote d’Ivoire office seemed to have been involved in inappropriate transactions with Non-Governmental Organizations (NGOs) that were recipients of UN Women funds. Ms. Odera was the Applicant’s supervisor.

6. The Applicant alleged that there were many irregularities associated with projects that were to be implemented by the NGOs, including that appropriate terms of reference were missing, the project activities were reported as not carried out by the NGOs and project funds allegedly refunded to the NPO but without any records of such refunds.

7. The Applicant also made a similar report to WARO Deputy Regional Director, Mr. Houinato, orally and by emails on 28 June and 8 August 2010. She copied the Chief of Africa Division of UN Women based in New York, Ms. Letty Chiwara, and Mr. Houinato in another email on the same issue she had sent to Ms. Odera in December 2011. On 30 January 2012, she made the same report to the Chief, Programme Support Division, Ms. Turkoz-Cosslett, also at headquarters.

8. On 24 December 2011, the Applicant filed a further report of the matter to UN Women management and requested that it be forwarded to the United Nations Development Programme (UNDP) Office of Audit and Investigations (OAI).

9. Having received no convincing feedback on the concerns she had raised since 2010, the Applicant filed her report directly to OAI on 17 April 2012 which thereafter commenced a joint investigation with the United Nations Population Fund (“UNFPA”) Division of Oversight Services (DOS).

10. Shortly after the Applicant’s post was upgraded to the P-5 level in the first half of 2012, Ms. Odera conducted a managerial support mission to the Cote d’Ivoire country office between 11 and 14 June.

11. On 18 June 2012, the upgraded post was advertised. The Applicant applied for the position, was shortlisted and invited for a competency-based interview to be held by teleconference on 29 August 2012.

12. Joint OAI/DOS investigations into the Applicant’s report were conducted between August and December 2012 and many persons were interviewed including the Applicant, Ms. Odera, Mr. Houinato and Ms. Coulibaly.

13. The Applicant’s Results and Competency Assessment (“RCA”) for 2010 was not completed during the prescribed deadline but was instead signed off on 27 March 2013 after several exchanges between the Applicant and Ms. Odera.

14. During the 2011 reporting cycle, the Applicant had received a negative performance appraisal. On 6 April 2012, she formally requested an opportunity to rebut the performance appraisal before an RCA Recourse Panel.

15. For 2012, the RCA process was not completed until after the contested decision and the Applicant's separation from the Organization. On 25 April 2013, the Applicant informed the Chief of Human Resources at Headquarters that she wished to contest her performance appraisals for 2011 and 2012.

16. On 8 October 2012, the Chief of Human Resources verbally informed the Applicant of the decision not to select her for the upgraded Post and, on 17 December 2012, the Applicant received written notification of the said decision.

17. On 28 December 2012, the joint investigation report of OAI/DOS was issued and transmitted to the UN Women Management.

18. The Applicant was separated from service upon the expiration of her contract on 31 December 2012.

19. She requested management evaluation of the decision not to select her for the upgraded post on 6 December 2012.

20. The Tribunal held a hearing of the case on the merits from 2-4 September 2014 and on 9 September 2014 during which *viva voce* evidence were received from two witnesses for the Applicant and four witnesses for the Respondent as follows:

- a. The Applicant.
- b. Josephine Odera, Regional Director, West And Central Africa Regional Office for UN Women for the Respondent.
- c. Ndolamb Ngokwey, the UN Resident Coordinator/Humanitarian Coordinator (RC/HC) Côte d'Ivoire in 2010-2013 for the Applicant.
- d. Maxime Houinato, Deputy Regional Director of the West and Central African Regional Office for UN Women for the Respondent.
- e. Mamta Singh, Human Resources Specialist for UN Women for the Respondent.

f. Beverley Grant, then Human Resources Consultant for UN Women for the Respondent.

21. Also placed before the Tribunal were three testimonials in respect of the Applicant from three highly placed functionaries within the Ivorian government who had worked closely with her in the area of gender matters. These government functionaries were:

- a. Fadika Sarra Sako, First Vice-President of the National Assembly.
- b. Kaba Fofana Yaya Fanta, Director of Equality and Gender Promotion, Ministry of Solidarity, Family, Women and Children.
- c. The Minister of Women and Social Affairs Jeanne Peaumont.

22. There were also favourable testimonials for the Applicant from the American Ambassador in Cote d'Ivoire, the Director of Operations at the World Bank and a coalition of seven NGOs in the country including two of those involved in the UNFPA-funded project that the Applicant had had concerns about.

23. Evidence adduced at the hearing is summarized below.

24. The Applicant's testimony.

a. Côte d'Ivoire was in crisis in 2010-2011. She was recruited to head the UN Women Cote d'Ivoire country office on 1 April 2010 as the Country Programme Manager. Before she joined the office, it was headed by an NPO who was on a service contract. Because of the nature of the NPO's contract, she was barred from performing certain tasks such as financial management. She was brought on board to build the capacity in that office.

b. Ms. Odera was the Applicant's supervisor. There were three other people in the office when she joined in 2010 which included the said NPO, the Administrative Assistant and a Driver. The post she occupied was upgraded to P-5 in 2012. She applied for the post but was not selected. She was informed of the non-selection decision in December 2012.

c. She had concerns about some of the NGO partners. One project funded by UNFPA was shown on the records to be implemented by four NGOs. She realized that the activities were not carried out by the NGOs and so could not get the report across to UNFPA. The NPO explained that she implemented the NGO activities herself which meant that the NGOs were only a conduit used to receive money which they handed to the NPO to carry out the activities. There were no proper terms of reference for these projects.

d. She was worried about accountability and the violation of financial rules because the NPO was managing NGO money and so reported to the WARO and personally to the Deputy Director and was assured that action would be taken. Nothing was done about her report even though the Regional Operations Manager (ROM), after his mission in August 2010, recommended that WARO find someone to manage the financial aspects of the office. This was ignored and instead the Applicant was directed not to deal with any personnel-related issues.

e. She later reported the case to Ms. Chiwara and Ms. Turkoz-Cosslett at UN Women headquarters in New York and copied Ms. Odera. This issue was a source of tension between the NPO and herself. The NPO spoke to Ms. Odera more often than her and was often reassured by Ms. Odera that her work was good and that her contract would be renewed. When there was no response, she reported the matter to the OAI.

f. The Applicant's performance was assessed by Ms. Odera who complained that the Applicant was not working well with her colleagues. In 2010, she was not familiar with how to deal with the RCA and had received no directions until one year later. She did not have any mid-year discussions and did not complete the 2011 RCA because she was waiting for that of 2010 to be completed.

g. She had applied for the upgraded post but Ms. Odera told her that she would not support her candidature. She attributed all that was wrong in the office to the Applicant's relationship with the NPO. She kept telling

the Applicant that she was more suited to the technical side of matters but not representation. In June 2012, Ms. Odera conducted a managerial mission during which she told the Applicant that she would not recommend her for the upgraded post.

h. She was given a very short interview for the upgraded P-5 post and the telephone line was bad. On 8 December 2012 she was told that she was not selected. She filed a management evaluation request and applied for other positions in the United Nations. She needed her RCA which was yet to be finalized. She suffered loss of income.

i. At the Ministry of Women Affairs in Mali where she is now working, she earns USD300 to 400 per month. Her separation impacted her family negatively and it was a tough time for her. Ms. Odera finalized her RCA after she had left the Organization and rated her as having met performance expectations.

25. Ms. Odera's testimony.

a. She is the Regional Director, West and Central Africa Regional Office (WCARO), UN Women, at the D-1 level, based in Dakar, Senegal. At the times relevant to this Application, she was the Regional Programme Director, West African Regional Office (WARO) of UN Women.

b. Prior to the Applicant joining UN Women, the office was headed by an NPO. When the Applicant came on board, she and the NPO had a difficult relationship.

c. Her impression of the Applicant was that she was committed but had very little managerial and operational experience. At no point did she give the Applicant a negative performance appraisal.

d. In or around June 2010, the ROM undertook a mission to the Cote d'Ivoire office. After the mission, she was debriefed by the ROM. He confirmed that the UNDP office assured him that all of the project funds

had been accounted for. She was told also by the NPO's previous supervisor that the matter of the project funding had been settled.

e. Her impression was that progress was slow in the Cote d'Ivoire office and that it was not working well due to relations between the Applicant and the NPO. For the Applicant's 2011 RCA, she noted in the mid-term review that the Applicant needed to improve on interpersonal relations.

f. When on 24 December 2011 the Applicant submitted a summary of the situation related to the management of the UNFPA-funded project, she did not see any need to pursue the matter since the Applicant was not raising anything new.

g. On 9 May 2012, she informed the Applicant that her post would be upgraded and be subject to a competitive recruitment process as part of organizational restructuring. On 2 June 2012, she signed off on the Applicant's 2011 RCA.

h. From 11-14 June 2012, she conducted a managerial support mission to Côte d'Ivoire. This mission was undertaken because of the complaint the Applicant had raised with headquarters, the concerns about the management of the office and the discontent expressed by partners with the Applicant's management. She met with the Applicant, project partners, the Government and the United Nations Country Team (UNCT). She also met with the RC/HC. The staff told her that the relationship of the Applicant and the NPO caused tension and hurt their work and the image of the organization.

i. She had been told that the Applicant abused or shouted at staff but she felt that she could improve because she had other strengths. In 2010, she had already received reports of the Applicant's behaviour with her colleagues and a complaint from a Minister. She discussed her concerns with the Applicant and she promised to improve.



j. She was surprised at the RC/HC's testimony because he had told her that the Applicant was not ready for a representative role. She did not tell him that the Applicant would not get the upgraded job. She was surprised that the RC/HC would tell the Applicant about their discussions.

k. UNCT colleagues told her that the Applicant was intelligent, articulate and committed but lacked experience and diplomacy. Civil society partners expressed some concerns about the Applicant's behaviour. The Applicant alleged that the NPO was engaged in outside activities but the HR Director at UNDP confirmed that this was untrue.

l. She wrote her mission report soon after the mission within the two-month deadline.

m. The selection process for the upgraded position took place between June and November 2012. She shortlisted the candidates including the Applicant. She told Human Resources that she would opt out of the interview panel as she was preparing for her own recruitment. The role of Hiring Manager was carried out by Mr. Seymour who was the Deputy Programme Director of the Programme Division in New York. She did not participate in the interview panel and did not receive any results from the interview process.

n. One Ms. Malwayo with whom she had previously worked was selected over the Applicant. She was not aware of Ms. Malwayo's candidacy for the post.

o. In early 2013, she recorded her assessment in the Applicant's RCA noting that the Applicant submitted her RCA late despite several reminders. She gave her a rating of "Met Expectations".

26. Mr. Ngokwey's testimony.

a. He knew the Applicant when he worked as the RC/HC in Cote d'Ivoire from 2010 to 2013.

b. The Applicant is an intelligent and articulate leader who had been instrumental in keeping gender high on the agenda of the UNCT in Côte d'Ivoire.

c. The Applicant built partnerships for her Organization not only within the United Nations system but also with civil society organizations, bilateral and multilateral institutions as well as with the government. It is through these partnerships and her credibility and organization that she successfully mobilized resources for UN Women-supported activities in Côte d'Ivoire. She was an asset to the United Nations.

d. The Applicant was a competent and ethical manager of human and financial resources and was a whistle blower on issues of improper handling of funds received by UN Women in Côte d'Ivoire.

e. On 13 June 2012, he met with Ms. Odera in his office and she told him that a P-5 post would soon be opened for the UN Women's Côte d'Ivoire office and that she would not support the Applicant's candidacy for it. She told him that she had advised the Applicant not to apply for the position. She spoke about the Applicant's poor performance and relationships with other United Nations agencies and implementing partners which she said she learnt about on several occasions from credible sources.

f. He replied that he was familiar with the Applicant's work and could not substantiate the claim that she underperformed or that she had poor relationships with other chiefs of agencies. He explained that past tensions with only one head of agency which had been resolved could not be the criterion to judge the Applicant's relationships with the UNCT and the Applicant did not have problems with any key national partners. He advised her not to prevent the Applicant from applying for the post of which she was the incumbent as this was unfair.

27. Mr. Houinato's testimony.

a. He is Deputy Regional Director of the West and Central Africa Regional Office (WCARO) of UN Women at the P-5 level.

b. The Applicant joined UN Women in April 2010 at which time the office was being managed by an NPO and shortly after wanted to end the NPO's contract because the relationship between them was not good.

c. On 26 June 2010, the Applicant discussed with him concerns regarding the management of a project in the Côte d'Ivoire office by the NPO. He suggested that she present the supporting documentation.

d. On 19 December 2011, he organized a teleconference with the Applicant and the ROM to review the issues raised by the Applicant in 2010. The Applicant told him that in order to document her allegations, she visited partner organizations trying to gather proof. Because this looked like an investigation locally conducted without authority, he recommended that no such actions should be continued.

e. On 2 December 2011, the Applicant submitted to WARO a summary of the situation related to the management of the project. The document confirmed in writing the Applicant's verbal allegations which had already been discussed.

f. In June 2012, the Regional Director went on special mission to Côte d'Ivoire. He was debriefed by her after the mission but he could not recall when he saw the mission report although he was aware of Ms. Odera's assessment of the Applicant.

g. Even though he did not personally manage the Applicant's performance, he recalled that she was intellectually bright but overwhelmed by her new assignment. In 2012, the Applicant's position at the P-4 level was upgraded to Country Representative at the P-5 level.

h. Following the advertising of the post in June 2012 and the shortlisting of candidates, an interview panel of which he was a member was convened. The panel did not have regard to the Applicant's performance appraisal or of any other candidates. There was no technical or written test for the candidates as this was determined not to be a requirement for the post.

i. The interviews were conducted by the panel sitting in person in Headquarters, except himself, and conducting all interviews by teleconference. The panel interviewed all the candidates based on a pre-established set of competency based questions prepared by the HR section with input from the panel. In total the interview lasted 23 minutes with connection difficulties at the beginning and towards the end. With other candidates the interview took about 45 minutes.

j. The Applicant's answers were brief and did not elaborate on her points. She did not provide concrete examples to illustrate her answers. She showed some gaps in the area of staff and team management relative to the performance of other candidates that were interviewed. The panel members rated the responses for each competency assessed. Another internal candidate was fully recommended over the Applicant.

k. The Applicant was given full and fair consideration. He knew that the selected candidate had worked with Ms. Odera before but had not discussed her suitability with Ms. Odera. Giving priority to an internal candidate happens when an internal candidate and an external candidate tie after a recommendation is made. Both the Applicant and the person recommended were facing the same risk as both their jobs had been reclassified.

28. Ms. Singh's testimony.

a. She is a HR Specialist in the HR section of UN Women.

b. In June 2012 she was responsible for facilitating the recruitment process for the upgraded post.

c. The upgraded post was advertised in June 2012 and Ms. Odera who was both the supervisor of the post and the hiring manager, shortlisted the candidates. Ms. Odera was originally in the panel list but her name was removed and her representative, Mr. Houinato, participated. After the interview, the panel rated the candidates' responses for each competency assessed and fully recommended another internal candidate over the Applicant.

d. The panel did not have regard to the performance appraisals for any candidate. Performance appraisals and references were considered only after the interview process and only for the candidate who was fully recommended.

e. A panel report was prepared by the Human Resources Consultant and the panellists endorsed it before the RCA of the recommended candidate was looked at. It was tasked for the Appointment and Promotions Board approval before the Ex-Director approved it. The Applicant was notified of the selection decision on 17 December 2012.

29. Ms. Grant's testimony

a. She is an independent HR Consultant. In August 2012 she was a HR Consultant in the HR section of UN Women responsible for organizing and coordinating the filling of vacancies in accordance with the relevant rules.

b. The interview panel in this case consisted of four members and she acted in an *ex officio* capacity. The panel interviewed the candidates based on a pre-established set of competency-based questions prepared by the HR section with input from the panel. The hiring manager was one Mr. Seymour.

c. During the interview, all questions were put to the Applicant. She was given the opportunity to speak for as long as desired to fully answer the questions. The Applicant's answers were brief in comparison to those of the other candidates. At no stage of the interview did the Applicant

object to the length and quality of the interview. The panel members rated the candidates' responses for each competency assessed. Another candidate was fully recommended over the Applicant. On 17 December 2012, she sent the Applicant a written notification of the selection decision.

d. The priority given the Applicant was in her being shortlisted and being allowed to compete.

e. The witness stated in cross-examination that she does not speak French, the language of the interview she officiated in.

### **Applicant's case**

30. The Applicant's case as per her oral testimony, pleadings and closing address is summarized below.

31. The Applicant is a whistle-blower who, over a period of two years, reported the inappropriate use of certain NGOs in Cote d'Ivoire as conduits to obtain funds for the use of Ms. Coulibaly, the NPO who had headed UN Women office in the country before her arrival in April 2010. The reports she made to both the WARO Director and the Deputy Director were sometimes ignored and at other times defended by them.

32. In consistently making the said reports over a period of nearly two years and filing it to senior managers in New York and then to the OAI which investigated it, she offended Ms. Odera who was both her supervisor and head of WARO. Ms. Odera accused her of persecuting the NPO, being disrespectful to senior government officials in Cote d'Ivoire and other implementing partners and lacking people-management skills.

33. Ms. Odera had told both the Applicant and the RC/HC during her mission to Cote d'Ivoire in June 2012 that she would not support the Applicant's candidature for her soon-to-be-upgraded post.

34. In this case the bias of Ms. Odera, who as the Applicant's supervisor was an influential decision-maker in the selection for the Applicant's upgraded post, is documented as shown in her June 2012 mission report. There is evidence of its transmission to other relevant decision-makers and documented proof of its intended effect upon the selection process. There were so many procedural errors that the said selection process appears to be a mere formality.

35. The Applicant was not given full and fair consideration because the selection process was biased by the influence of the WARO exerted directly by Ms. Odera and indirectly through Mr. Houinato her Deputy and another interview panellist, Mr. Daniel Seymour.

36. The bias is based on a desire to retaliate against the Applicant and the June 2012 mission report is clear evidence of bias and designed to speak to the Applicant's candidature. The said mission report or its contents were disseminated amongst most or all persons relevant to the selection process.

37. UN Women's denial of bias and denial of any role for Ms. Odera in the selection process is not borne out by the facts:

a. Ms. Odera being the hiring manager and supervisor of the advertised post shortlisted the candidates. The claim that Mr. Seymour was the hiring manager is untrue.

b. The Selection Guidelines require the hiring manager to participate on the selection panel and that any reasons for the hiring manager to be excluded are to be recorded. Not only was the reason for the absence of Ms. Odera not recorded, none of the Respondent's three other witnesses could recall why Ms. Odera was not on the panel.

c. Ms. Singh testified that Mr. Houinato represented Ms. Odera on the interview panel and that the panel's report was transmitted to Ms. Odera even though Ms. Odera protested that she was not involved.

d. Ms. Odera's views concerning the Applicant's candidature were made clear in her June 2012 mission report and she transmitted these to

Mr. Houinato, an interview panellist. They were transmitted also to Ms. Turkoz-Cosslett whose deputy Mr. Seymour, was a panellist and designated “hiring manager”. Ms. Singh indicated that Ms. Turkoz-Cosslett received the report of the interview panel.

e. The scores of the Applicant and the selected candidate were extremely similar. Half-points separated the Applicant and the selected candidate. According to Ms. Singh, this is normally the result of averaging the scores of panellists. Mr. Houinato admitted a preconception of the Applicant’s performance.

f. UN Women provided no evidence of how the selection decision was taken after the interview panel produced its report, or the reasons of the ultimate decision-maker.

38. A flawed interview led by Ms. Odera’s deputy and the deputy of Ms. Turkoz-Cosslett, the Global Programme Director who was a recipient of the Odera mission report, was the soul of this selection process. The Applicant was given half the interview time of any other candidate. No probing questions were asked of her and no written assessments were made nor were performance evaluations considered.

39. The concerns of bias and retaliation are further fortified by the following procedural irregularities:

a. The shortlisting was done by Ms. Odera who was purportedly not the hiring manager.

b. Contrary to the selection rules that UN Women argues apply, the performance appraisals of the internal candidates were neither transmitted to nor considered by the panellists.

c. There was no technical assessment despite efforts at testing substantive knowledge. UNDP’s recruitment rules expressly require an assessment other than an interview. UN Women’s rules are silent on the issue. The Applicant submits that UNDP’s rules reflect that a competency-



based interview is not designed to replace a technical or substantive, knowledge-based assessment. Such an assessment acquires additional importance if the interview panel has no performance record upon which to base their assessment, nor objective measure of assessing a staff member's knowledge. According to Mr. Houinato, the Panel asked only the questions provided to it, preventing any probing of substantive knowledge. Another effect of failing to conduct a written assessment is that no record exists of the substantive questions or the propriety of any answers.

d. The Applicant was interviewed for half the length of time of the other candidates. The imbalance in interview durations raises serious questions about the fairness of the process, the opportunity given to the Applicant and the panel's interest in her candidature.

e. With regard to the absence of probing questions, UN Women attributes the brevity of the interview to the brevity of the Applicant's responses to the pre-set questions. This is untenable. Although panellists are intended to begin with a provided list of questions, they are expected to probe with candidate-specific follow-up questions.

f. The interview which was conducted in French was recorded by a non-French speaking HR representative. The HR unit is facilitator to the entire recruitment process. The HR representative records the agreed ratings, rankings and comments and serves as an *ex officio* member of the interview panel, recording results of the interview panel deliberations and drafting a report. In this case, the HR representative did not even understand the language of the interview.

g. Candidates were scored relatively as Mr. Houinato testified that compared with other candidates, the Applicant showed gaps in her answers. The selection process is designed to assess candidates against the set criteria not relative to other candidates. This is a guard against favouritism or bias, it ensures that multiple candidates can be

recommended, and it ensures uniformity in selection consistent with the rank-in-post and not rank-in-person philosophy.

h. Non-competencies were scored as it was shown that 20% of the interview assessment was scored on an “Overview” question, not one related to any competency assigned to be scored. The selected candidate was scored significantly higher than any other candidate on this “Overview” question. This question should not have been graded. Its inclusion further supports an inference of bias.

i. Arbitrary scoring. Panellists are required to give brief bullet points relating to each competency listed in the panel report which is then rated on a scale from 1 (lowest) to five (highest) for each competency being assessed. However, for some ratings, it is impossible to discern why a different score was given for an answer that generated substantially identical comments. To the extent that this outcome was random, it was irrational and arbitrary. The fact that the selected candidate was given a higher rating than the Applicant supports the inference of bias.

j. No cut-off for “fully recommended” was provided. The panel converted a point scoring on a scale of 1-5 on each competency (a 25-point total, which should have been a 20-point total excluding “Overview), to a “fully recommended, “recommended with reservations” and “not recommended ranking”. The score sheet provides no information regarding how this conversion was performed.

k. No priority consideration was given. In cases of selection following a reclassification, the incumbent’s application should receive priority consideration. UN Women could provide no evidence of how the Applicant’s application was given such priority consideration. Priority consideration cannot mean identical scores are required. Only substantially equal scores could be required to trigger priority consideration. There is nothing to suggest that this priority only applies as between internal candidates, or that such priority is exhausted upon the shortlisting of candidates.

1. There was no evidence of central review or decision making post-interview.

40. In summary, the only basis for consideration of the Applicant's candidature for a P-5 country representative post was an interview that lasted less than 23 minutes. Its grading was recorded by a HR official who did not understand the language of assessment. Non-competencies were scored. Other scores given appeared arbitrary. No priority was apparently afforded to the Applicant as the incumbent. A candidate with whom Ms. Odera had worked was selected.

41. The Applicant prays for the following reliefs:

a. Rescission of the contested decision, or an order that she be deployed in the next P-5 country representative position available (or a similar such post), together with payment of salary at the upgraded P-5 level since the time of her separation.

b. A declaration that her negative and contested performance appraisals should not have been considered in any selection exercise, and a removal of them from her file.

c. In the alternative to the relief sought above, 24 months' salary at the P-5 level, as pecuniary damages.

d. In addition to the relief sought in sub-paragraphs a and c above, USD\$50,000 for moral injury as a result of bias in the selection process, ultimately resulting in emotional and reputational damage. The Applicant submits that she had no income until September 2013, whereupon she began earning \$300-400/month.

e. Pre-judgment interest upon the pecuniary amounts, from the dates they would have been due, and interest upon the non-pecuniary damage from the date of judgment, including through any period of an unsuccessful appeal.

f. Post judgment interest upon all amounts awarded, from the date of the Dispute Tribunal judgment, including through any period of an unsuccessful appeal.

### **Respondent's Case**

42. The Respondent's case is summarized below.

43. A party alleging bias or other improper motivation bears the burden of proving such bias on a preponderance of evidence. If the Administration is able to even minimally show that the Applicant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden shifts to the Applicant who must satisfy it through clear and convincing evidence.

The Applicant has not done so because:

a. The issues she raised were promptly and adequately addressed to the satisfaction of management. Action was taken and support offered. In addition to managerial action, the allegations were investigated professionally. Her claim that she was ignored is unsubstantiated.

b. Ms. Odera did not and could not manipulate the selection process. She shortlisted the Applicant and her role in the process ended there.

c. The Applicant received full and fair consideration. The interview was fair. The panel asked the same questions of every candidate but the Applicant's responses were lacking. There was no evidence of personal *animus* towards her from any interview panel member or any attempt to manipulate the selection process.

d. Priority consideration cannot take precedence over the requirements to select the best candidate who was not the Applicant.

e. Legitimate performance feedback is neither retaliation nor bias. There is no evidence of bad faith, bias or improper motivation with respect to the performance evaluation procedures as they were applied to the Applicant. Contrary to her claim, the Applicant at no stage received a

negative performance appraisal. The Applicant was provided with regular feedback concerning her performance and ways to improve it and given guidance as to her work objectives.

f. The Applicant did not engage in a formal rebuttal process. Although an automated email was generated in April 2012 registering the Applicant's purported disagreement with her assessment, the Applicant neither indicated her disagreement in writing in her RCA nor submitted a formal application for rebuttal.

g. The Applicant has not produced any evidence that the decisions as to the duration of her contract renewals were arbitrary or based on improper motives. The approach taken in relation to the Applicant's contractual status was consistent with a system-wide approach as part of the implementation of the UN Women Regional architecture.

h. The Applicant was neither the subject of an investigation nor a complaint. The Applicant's assertion that she was the subject of various negative or retaliatory statements and actions are unfounded.

i. The Applicant made no claim of retaliation. The Applicant at all material times reserved the right to seek redress through informal or formal complaint procedures but took no action to do so. The Applicant at no time gave any indication that she had experienced or feared retaliatory action as a result of her reporting her concerns regarding the project. Having failed to do so, her insistence that she was the victim of retaliatory action is without merit.

44. The Applicant has failed to establish evidence of procedural irregularity. The Applicant claims that the selection process did not follow the applicable procedures and was manipulated to her disadvantage by the Regional Director, however, the records demonstrate the contrary.

a. The Applicant received full and fair consideration. Discrimination and bias were absent; proper procedures were followed and all relevant material was taken into consideration.

b. A written assessment was neither required nor necessary. Under the Selection Guidelines, the use of an interview panel as the selection tool was reasonable and lawful and was certainly not a breach of the Applicant's rights.

c. The non-consideration of the Applicant's pending performance appraisals was neither improper nor prejudicial. The panel did not have regard to the performance appraisal tool in relation to any of the candidates. The Applicant did not suffer any disadvantage as a result. In any event, the Applicant's performance appraisals were not relevant to the upgraded post and their non-consideration did not handicap her.

d. The interview was fair. The panel asked questions addressing the relevant competencies. The Applicant was given every opportunity to answer. The interview was of adequate length. The outcome of the interview did not represent the subjective views of the Regional Director or any other individual.

e. Reference checks were irrelevant and were not conducted because the Applicant was not a recommended candidate.

45. The Respondent submitted that "priority consideration" does not prevent selection of a better candidate. Priority consideration cannot take precedence over the requirement to select the best candidate for the post under art. 101.3 of the United Nations Charter.

46. The Applicant's requested remedies are untenable. Not every violation of due process rights will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages. The Applicant has established no identifiable harm warranting compensation that was caused to her or to her career. She has failed to establish any irregularity in the selection process or its outcome or any form of negligence or violation of specific rules by the Administration.

47. The Applicant has suffered no prejudice. The Applicant has not applied for any positions in UN Women despite being on several occasions informed of

specific positions and invited to apply. In relation to her claim that she has been unable to find work and is hampered by issues with her performance evaluations, the Applicant is currently employed as a senior government official in Mali.

48. In light of the above submissions, the Respondent requested the Tribunal to dismiss the Application.

### **Considerations**

49. The one critical issue that begs for determination in this case can be summarized in the questions:

- a. Was the Applicant afforded full and fair consideration in the selection process for her re-classified post?
- b. Do the records point to any taint of bias or retaliation against the Applicant in the impugned selection process?

50. While it is the Applicant's case that the entire selection process was tainted by bias and retaliation against her due to the influence of WARO exerted directly by Ms. Odera or indirectly through others involved in the selection process, the Respondent's case is that the Applicant received full, fair and unbiased consideration.

51. The Tribunal will interrogate the issue by examining the attitude and response of UN Women management to the Applicant's concerns and reports about alleged project irregularities; the contents of Ms. Odera's mission report of June 2012 and its circulation; whether the Applicant was denied any priority consideration to which she may have been entitled and finally whether the selection process itself was affected by procedural irregularities.

***What was the attitude of the management of UN Women to the various official reports made by the Applicant alleging a financial scam and other irregularities in the implementation of the UNFPA-funded project? Did the Applicant's insistence that there had been project irregularities and her subsequent report to OAI negatively affect her relationship with the UN Women management and constitute a reason for her non-selection?***

52. In her testimony, the Applicant told the Tribunal that as the UN Women CPM in Côte d'Ivoire, her duties included management of Human Resources issues, programmes and other matters in that office at a time that the country was still in crisis. Before she came on board, the NPO, Ms. Matenin Coulibaly was responsible for the office and managed programme activities with the WARO.

53. Soon after the Applicant assumed her duties, one of her first tasks was to respond to UNFPA about a project it funded for UN Women in Côte d'Ivoire that had started in late 2009. Upon looking into the project implementation, she had concerns about some UN Women NGO partners. In particular, the project was to have been implemented by four NGOs. The Applicant said she realized that the activities were not carried out by the NGOs and so a narrative and financial report could not be sent to UNFPA.

54. She further discovered that contracts were signed between the four NGOs and WARO on 28 October 2009 for the implementation of the UNFPA-funded project. It was obvious that the NGOs received the money but did not carry out the activities. Ms. Coulibaly told the Applicant that she conducted the activities herself. The Applicant testified that there were no proper terms of reference and that the NGOs were merely a conduit as they would receive money to implement the project but would give the money back to the NPO who would then by herself carry out the project activities.

55. The Applicant testified that she felt that what happened was a financial scam in which the NGOs were used to obtain funding and the NPO then managed NGO money. Because she was worried about accountability and the violation of financial rules, she reported the matter to the WARO and in particular to Mr. Houinato. Nothing was done to address her report. After the ROM's mission to



the Côte d'Ivoire office in August 2010, he recommended, because of her concerns, that someone be put in place to manage the financial aspects of the office. This recommendation was not implemented.

56. The Applicant further testified that towards the end of 2011, she contacted the four NGOs to request that they submit narrative and financial reports on the funds that they received in 2009. Each of the four responded, stating that they did not implement the activities for which they signed contracts with WARO in 2009 and that they had returned the funds to the NPO and could therefore not submit any reports as requested. The head of one of the NGOs indicated that she returned the funds her organization received to the NPO by a bank cheque whose number was 4500349 drawn on the bank Caisse d'Epargne.

57. At a staff meeting on 12 December 2011, the NPO admitted that the four NGOs had returned the monies they received from WARO to the country office without specifying who received the monies or how they were returned. None of these explanations regarding the returned project funds were documented in the Côte d'Ivoire country office.

58. In June 2010, the NPO had presented financial reports and receipts allegedly related to the said UNFPA-funded project to the Applicant as the head of the Côte d'Ivoire country office. The Applicant refused to validate the reports and asked that they be filed away until they were audited. In July 2010, the country office submitted a narrative report on the project to UNFPA while a final narrative and financial reports were submitted by UN Women headquarters.

59. The Applicant said that the queries and concerns she raised concerning the said project implementation caused tensions between her and the NPO. She said the NPO spoke to Ms. Odera often and was constantly reassured by her that her work was good and that her contract would be renewed.

60. The Applicant also testified that she had made various reports regarding the said project to Ms. Odera, starting with a memorandum on 13 May 2010 and followed by about four emails in 2010 and two emails in 2011. She had copied Letty Chiwara, the UN Women Chief of the Africa Division at headquarters, in

one email to Ms. Odera. She had also called and emailed Mr. Houinato on the same matter on 28 June and 8 August 2010.

61. On 24 December 2011, the Applicant sent a written report on the matter to Ms. Odera and copied Mr. Houinato, the ROM and Ms. Chiwara. On 30 January 2012, she sent the report to Ms. Turkoz-Cosslett in New York.

62. On 17 April 2012, the Applicant sent a formal report of the alleged irregularities in project implementation to the OAI and was interviewed by OAI on 6 August 2012.

63. In her testimony, Ms. Odera stated that the Applicant and the NPO had a difficult relationship and that the Applicant reported what the NPO did. The two, she testified, had problems whose genesis she did not know. The witness said she sent the ROM on a support mission to Côte d'Ivoire from 24-29 August 2010 and she was thereafter debriefed by him.

64. She continued that the ROM's mission looked at the issue of funds from projects run by the NPO and told her that while there had been some administrative issues during project implementation due to lack of capacity in the country, UNDP had assured him that all the project funds had been accounted for. The witness said he showed her the accounts which confirmed this.

65. The witness told the Tribunal that it had come to the attention of the WARO through various partners of UN Women that the Applicant approached several NGOs and attempted to persuade them to make statements about the management of the project by the NPO. She stated that she was concerned that the Applicant was conducting an investigation.

66. The debriefing by the ROM, she said, made it clear that the Applicant needed a lot of support if she was going to manage and that she did not know how to take on her role. Ms. Odera told the Tribunal that she did not go into the details of the ROM's report.

67. She testified also that the mission she undertook to Côte d'Ivoire in June 2012 was a managerial support mission precipitated by the reports made to

headquarters by the Applicant on the projects managed by the NPO. That mission, she stated, was exceptional because both Misses Chiwara and Turkoz-Cosslett at headquarters who had received the Applicant's reports of project irregularities, had sent her on the mission.

68. Mr. Houinato who was Ms. Odera's deputy at the WARO and a member of the impugned interview panel for the re-classified post of the Applicant, stated that shortly after the Applicant joined UN Women Côte d'Ivoire office in April 2010, she wanted to end the NPO's contract as the relationship between them was not good.

69. According to him, on 26 June 2010, the Applicant raised issues as to how a project was managed by the NPO in the Côte d'Ivoire office. She suspected the mismanagement of the project which had taken place before she arrived. He said that the project complained of was closed at the time the Applicant was recruited.

70. He testified that he asked the Applicant to present documents in support of her concerns. WARO asked the ROM to review the situation during an upcoming mission to the Côte d'Ivoire office from 24-29 August 2010.

71. When the Applicant raised the same issues in 2011, the witness said he held a teleconference on 19 December 2011 with her and the ROM and told her to gather and document the proof of her allegations of direct implementation of the project by the NPO.

72. He said that when the Applicant told him that she was trying to gather proof of her allegations through statements from the NGOs involved, he told her she had no need to investigate how things had been done in the past because she was not authorized to conduct investigations. He stated that on 24 December 2011, the Applicant sent a document which merely put in writing her verbal allegations that had already been discussed. The witness stated that he found nothing in the issues raised by the Applicant that needed reacting to or acting upon as they did not present any fiscal risk to UN Women.

73. He stated that he and other colleagues at WARO also heard persistent rumours of tense relationships between the Applicant and some partners and UN

colleagues. He said the Regional Director finally went on mission to the Côte d'Ivoire office in June 2012 to address the project management concerns raised by the Applicant among other issues. He was debriefed after the mission.

74. Mr. Ngokwey was the UN RC/HC who headed the UNCT in Côte d'Ivoire at the times material to this Application. It was his testimony that the Applicant was an intelligent and articulate leader who effectively defended UN Women's mandate and kept gender high on the UNCT agenda in the country. He described her as a competent and ethical manager of human and material resources who had acted as a whistle blower by calling attention to improper handling of funds received by UN Women in Côte d'Ivoire.

75. It was his testimony that when Ms. Odera met with him in his office on 13 June 2012 during her mission to Côte d'Ivoire, she had expressed concerns about the Applicant's poor performances and relationships with other United Nations heads of agency and implementing partners which she said she heard about from credible sources without stating those sources. The witness stated that he told Ms. Odera that the Applicant was an asset to the UNCT and that the fact that she had had tensions in the past with one head of agency which had since been resolved could not be used to judge her relationship with the UNCT.

76. In closing submissions on 30 September 2014, it was submitted for the Respondent that inquiries into the project managed by the NPO confirmed that although there had been administrative issues due to lack of capacity, funds had been accounted for and the matter settled. It was also submitted that in December 2011, the Applicant raised the same issues and that she had been taking action to elicit evidence and information from third parties despite it being a historical matter which did not pose any fiscal risk to the Organization.

77. The Respondent also submitted that on 28 December 2012, OAI transmitted its confidential investigation report to UN Women management who took appropriate action and that the report was not shared with the Applicant since she was not the subject of it. The Tribunal was not told what the investigators found or recommended or what this so-called appropriate action taken by UN Women management was.

78. The Tribunal, on 9 February 2015, ordered the Respondent to produce the OAI investigation report. The said report was produced on 13 February 2015 with a Motion from the Respondent that the Tribunal make orders that the document should not be used for any other purpose outside these proceedings.

79. In its examination of the said investigation report, the Tribunal noted that one of the investigative findings made was that Ms. Cecile Mukarubuga who was the WARO Director in 2009 when the project funds were received from UNFPA had approval rights for up to \$30,000. She had decided with the NPO, Ms. Coulibaly, that the UNFPA funds were to be channelled through the bank accounts of four NGOs in sums she could approve in order to quickly secure the funds and have the NPO implement the project.

80. Ms. Coulibaly agreed with the four NGOs that the UNFPA funds would be transferred to their bank accounts and the same funds would then be given back to her. The investigation report found that apart from being the NPO for UN Women in Côte d'Ivoire in charge of the country office at the time, Ms. Coulibaly was also a foundation member and the Coordinator of the NGO REFAE and a signatory to its bank account.

81. REFAE was one of the four NGOs who pretended, at the instruction of WARO and the NPO, to enter into a contract to implement the project for which UNFPA funds were to be obtained. The various sums paid to three of the four NGOs were given back to Ms. Coulibaly, sometimes with cheques that did not indicate the name of the beneficiary and some of this money was deposited into the bank account of the said REFAE to which Ms. Coulibaly was signatory.

82. With regard to how much of the UNFPA funds were deposited in REFAE's account; a certain Ms. Lattroh told investigators that while approximately USD107,680 was deposited into REFAE's account, Ms. Coulibaly gave the deposited sum as approximately USD95,708, a discrepancy of nearly USD12,000.

83. Also, while REFAE records showed that the UNFPA funds were given back to Ms. Coulibaly in cheque, Ms. Coulibaly told investigators that REFAE

gave the money back to her in cash whenever she requested money to implement any activities. The report noted that in spite of investigators requesting to see the REFAE bank statements for 2009 and 2010 and the personal bank statements of Ms. Coulibaly for the same period, none of these were made available to them at any time.

84. It is cause for serious worry and concern that Ms. Lattroh told investigators that REFAE was created at the initiative of UN Women in Cote d'Ivoire and that there were several instances in the past when funds for UN Women had transited through the REFAE bank account to facilitate activities for other projects. Although this claim was not shown to have been investigated further, the question remains whether the NPO, with the knowledge of WARO, had merely registered REFAE for the sole purpose of using it to illegally and fraudulently gain access to project funds.

85. The investigation report also found that there were irregularities in the selection of one Mr. Nouhoun Coulibaly, a friend of the NPO, as lead consultant and in the payment of unearned DSA to him for which Ms. Coulibaly was responsible. It was also found that Ms. Coulibaly was in a conflict of interest regarding her dealings with REFAE of which she was Coordinator and account signatory while she was also at the same time the NPO of UN Women in Côte d'Ivoire. The investigation also established that Ms. Coulibaly was engaged in unauthorized outside activities by undertaking other paid work while employed with UN Women.

86. The Tribunal is not in any doubt that the investigation into the report of irregularities in obtaining project funding, in its dodgy implementation and also engagement in outside activities made by the Applicant against Ms. Coulibaly clearly opened a can of worms. It laid bare not only the reckless financial activities of Ms. Coulibaly at the Cote d'Ivoire country office but also on the WARO complicity in these activities from October 2009 up till September 2010 when the NPO was found to be still personally handling the project funds.

87. When the Applicant first blew the whistle on what was happening, the ROM was sent by Ms. Odera on a mission to the Côte d'Ivoire office and the

Applicant was thereafter told by WARO that all the funds for the UNFPA project had been accounted for.

88. When the Applicant engaged on different occasions with Mr. Houinato on her observations and suspicions concerning the UNFPA-funded project, she was told that nothing had gone wrong and warned about gathering any information from NGOs regarding how the project funds were obtained and returned to the NPO. Mr. Houinato testified that doing so amounted to an unauthorized investigation into a project that was completed before the Applicant came to UN Women in Côte d'Ivoire and which posed no fiscal risks.

89. But is it true that the UNFPA-funded project had become history as claimed by Mr Houinato at the time the Applicant went to work for UN Women in Côte d'Ivoire? The investigation report shows at its pages 10 and 11 that Ms. Coulibaly collected various sums of money for the UNFPA project from the REFAE account between 12 November 2009 and 15 September 2010. It also showed that on 14 June and 30 June 2010, Ms. Coulibaly was still handling the said project funds and sending some of it into REFAE account. It must be recalled that the Applicant started heading the Côte d'Ivoire office on 1 April 2010 and that responsibility for the report of the project which was yet to be made to UNFPA fell to her.

90. With regard to Mr. Houinato warning the Applicant to stop collecting evidence from the NGOs who were used as conduits for the UNFPA funds, the Tribunal is totally unconvinced by his posturing that doing so would have amounted to conducting an unauthorized investigation.

91. The Tribunal is persuaded that his warning to the Applicant was self-serving since WARO, of which he was Deputy Director at the times the UNFPA project funds were unlawfully obtained, bore responsibility for the unethical decision and action of obtaining the funds by deception and allowing the NPO to handle the funds like her personal automated teller machine (ATM) contrary to the financial rules of the Organization. It can be deduced that if he was not minded to cover up what had happened under Ms. Mukarubuga, he would not stop the Applicant from lawfully engaging in preliminary fact-finding as properly

prescribed by Section II of ST/AI/371 (Revised disciplinary measures and procedures).

92. It is inconceivable that the Applicant as a head of office would sit idly by while her subordinate, the NPO, wrongfully kept NGO funds in a hidden account she could easily access, hired consultants as she pleased and recklessly spent the illegally-obtained funds under the Applicant's watch. Instead of helping to stop the scam that was unfolding, the WARO preferred to protect the errant NPO and accused the Applicant of mistreating her, of causing tensions in the Cote d'Ivoire office and of being a bad manager.

93. Although it is the position of the Respondent that the former WARO Director Ms. Mukarubuga and the NPO took project money from the NGOs so that the NPO would implement the project activities by herself because the NGOs lacked capacity to do so, Ms. Coulibaly herself told investigators that the NGOs were selected based on their reputation within the United Nations system. Was she lying to investigators? Interestingly, a fifth NGO, AFJCI, which is a professional association of women lawyers, also received funds for the UNFPA-funded project, implemented their activities and submitted their reports without any interference.

94. It is the Tribunal's finding that the Applicant as head of the UN Women Cote d'Ivoire office acted properly and ethically in blowing the whistle on the corrupt and disgraceful misuse of NGOs as conduits for obtaining money and the abuse of the project funds so obtained as established by the OAI/DOS investigators. The Tribunal finds also that Ms. Odera and Mr. Houinato strenuously and unethically sought to cover up the corrupt dealings with project funds by the WARO and Ms. Coulibaly. For reasons best known to them, they refused to address and correct the NPO's excesses and rather claimed that the Applicant had unexplained problems with the NPO and was a poor manager.

95. It is unfortunate that Mr. Houinato would tell the Tribunal that all the project funds from UNFPA were accounted for and that there was no fiscal risk to the Organization while Ms. Odera testified that the Applicant's reports that Ms. Coulibaly was involved in outside activities were false. These testimonies, given



after the OAI investigation report had been released to UN Women, were merely intended to deceive the Tribunal. These false testimonies also go to show that both the WARO Director and her Deputy not only had plenty to hide but were also unfairly committed to running the Applicant out of UN Women.

96. It is also unsettling that in spite of the fact that the Applicant reported the matter to senior UN Women managers in New York, they too refused to act until the said Applicant reported to the OAI.

97. The Tribunal finds and concludes that the NPO and the former WARO Director were involved in illegally obtaining certain UNFPA project funds in late 2009. The Applicant uncovered what had happened and her unrelenting reports to the new Director Ms. Odera and other WARO personnel and later to more senior managers at the headquarter offices in New York regarding the dodgy manner in which the UNFPA funds were obtained and handled embarrassed the WARO Director.

98. The fact that the Applicant persisted by later making an official report to the OAI displeased her managers who evidently were anxious to cover up WARO's involvement in the unlawful obtaining and handling of project funds. There is no doubt that the reclassification of her post provided the perfect opportunity to Ms. Odera to ensure the Applicant's exit from the Organization.

***To what extent did the contents of Ms. Odera's Cote D'Ivoire mission report of 11-14 June 2012 appear to indict the Applicant's performance as UN Women representative in the country? Did the circulation of the said report affect the Applicant's chances in any way during the selection exercise for her reclassified post?***

*(a) Contents of the mission report*

99. There is ample evidence that between 11 and 14 June 2012, Ms. Odera conducted a managerial support mission to the UN Women Côte d'Ivoire office. She testified that it was an exceptional mission because both the UN Women Chief of Africa section, Ms. Letty Chiwara and the head of the Program Support Unit at headquarters in New York, Ms. Turkoz-Cosslett, had asked her to

undertake the mission. According to her testimony, the said mission was precipitated by the Applicant's report of the NPO's alleged mishandling of NGO project funds to headquarters, concerns about the performance of the office and discontent expressed by project partners (NGOs) with the Applicant's management.

100. In his closing submissions, the Applicant's Counsel submitted that Ms. Odera's mission report was clear evidence of bias and designed to speak to the Applicant's candidature for the reclassified post. He submitted further that notwithstanding Ms. Odera's evidence that the mission to Côte d'Ivoire was undertaken at the instance of headquarters to address in part the Applicant's concerns about project irregularities; the said concerns received no mention in her mission report.

101. The Respondent's Counsel in closing submissions did not address the Tribunal with regard to Ms. Odera's mission report of 11-14 June 2012.

102. The Tribunal notes that the mission report itself stated that the purpose of the said mission was to assess the Côte d'Ivoire office in view of the tensions in that office and to look specifically at management and HR functions. The mission was to bring to light the prevailing situation and to facilitate decisions on the way forward.

103. The highlights of the report were meetings that Ms. Odera held with different people who were connected in one way or the other to the UN Women office in Cote D'Ivoire. In this regard, it is stated in the report that Ms. Odera: (a) met with and spoke on the phone with some members of the UNCT; (b) met some members of NGOs; (c) met some of the donors; (d) held intensive discussions with the United Nations Resident Coordinator in the country; (e) met the UNDP Country Director; (f) met the head of UNDP HR; (g) met the gender specialist of the European Union delegation; and (h) met with staff in the Côte d'Ivoire office.

104. In the section of the report that dealt with the meetings held by Ms. Odera, it is recorded that UNCT members told her about "serious squabbles" between the

Applicant and the UNFPA head of office in Côte d'Ivoire and "harsh exchanges" between the same Applicant and OHCHR head of office.

105. The report also stated that "most (UNCT) colleagues" were aware of the tension between the Applicant and the NPO while some knew of disagreements between the Applicant and the Administrative Assistant and the Driver.

106. It was also stated that UNCT members told Ms. Odera that at a national diplomatic level, the Applicant was disrespectful to senior government officials and ministers and called them out by their first names without due regard to their positions. It was additionally stated that the Resident Coordinator, Mr. Ngokwey, was insistent on the Applicant's lack of respect to senior government officials and asked that she be taken to a different country as a technical expert because she was not up to the level and maturity of a representative.

107. In the same report, Ms. Odera claimed to have met with different implementing partners in civil society. While not stating the names of the NGOs she met, she reported that they raised concerns on the behaviour of the Applicant and that she was told that the Applicant would send the NPO to meetings and then recall her before the meetings commenced. Under that section of the report, she accused the Applicant of similar behaviour during some previous occasions which she claimed were known to her.

108. Ms. Odera's report devoted an entire heading to her meeting with the UNDP Chief of Human Resources. Under that heading, she reported that she was told that the Applicant was "setting up a case" to reprimand the NPO and that she seemed to have an agenda to unduly punish the said NPO.

*(b) The credibility of the conclusions reached in the report*

109. In concluding the report, Ms. Odera opined that UN Women needed to address a leadership problem in the Côte d'Ivoire country office which had proven to be a "stumbling block" and that the upgrading of the Applicant's post presented such an opportunity.

110. In the same concluding paragraphs of the report, she claimed that the Applicant was intent on getting rid of the NPO. She claimed also that the Applicant had spoken negatively to UN Women's national implementing partners about the NPO and this caused the Minister of Women Affairs to address Ms. Odera on the matter. The report did not clearly reveal its sources and the occasions for most of these opinions and claims. Nothing showed that Ms. Odera met the Minister during her mission or that the said Minister spoke to Ms. Odera at any time.

111. In the few instances where Ms. Odera's report revealed her sources for certain conclusions she reached, there were firm and credible rebuttals. For example, Mr. Ngokwey who she claims told her that the Applicant should be removed as a representative of UN Women in Côte d'Ivoire and sent to another country in a technical role, testified for the Applicant.

112. He said that Ms. Odera told him during her mission that the Applicant performed poorly and did not relate well to other United Nations heads of agencies and national implementing partners and that she heard this on several occasions from credible sources. He testified that he immediately disagreed with her and told her that on the contrary the Applicant was an asset to the UNCT and had no problems with the Minister of Women Affairs or other key national partners.

113. Another example is the claim in Ms. Odera's report that the Applicant was disrespectful to senior government officials and that the Minister complained to her that the Applicant was focused on getting rid of the NPO. It was not clear which Minister complained to Ms. Odera or when the complaint was made.

114. The Applicant filed three testimonials, one by the Director for Equality and Gender Promotion in the Ministry of Solidarity, Family, Women and Children in Cote d'Ivoire, Ms Kaba Fofana Yaya Fanta. Another was by Ms Fadika Sarra Sako, the First Vice President of Côte d'Ivoire's National Assembly. The third was by Ms. Jeanne Peaumont, the Minister for Women and Social Affairs. None of the said testimonials were attacked by the Respondent.

115. Each of these senior government officials involved with UN Women praised the Applicant's networking and communication skills and her engagement with and contributions to gender equality and inclusive reconciliation in their country. They added that the Applicant was always tactful, behaved in a culturally appropriate manner and never caused any problems for any government officials.

116. In spite of the mission report stating that some NGOs, whom it did not name, raised concerns about the behaviour of the Applicant, a letter written by a coalition of seven NGOs working in the country with UN Women was filed by the Applicant. The authors of the letter expressed their thanks for the way in which the Applicant had helped women take a more active part in civil society and how she had provided support to enable more women contest for elective positions.

117. They thanked her for promoting women's rights and for helping in the rehabilitation of women victims of sexual violence. This coalition of seven NGOs included two out of the three NGOs from whom the NPO had retrieved the UNFPA project funds soon after payments were made to them.

118. There were similar letters of appreciation of the Applicant and the work she did in the UN Women Côte d'Ivoire office and in the country from the Director of Operations at the World Bank in Abidjan and the Ambassador of the United States of America to Côte d'Ivoire.

119. Even a cursory examination of Ms. Odera's mission report immediately reveals that the entire report is a total condemnation and indictment of the Applicant and her work in the UN Women Côte d'Ivoire country office. The meetings which Ms. Odera claimed in her report to have held with members of the UNCT, donors and implementing partners appear to have been almost entirely focused on the character and personality of the Applicant and the claim that she lacked the ability to represent UN Women in Côte d'Ivoire.

120. No discussions appeared to have been held or questions asked regarding the reports the Applicant had made on several occasions over a period of two years to the WARO, the UN Women Africa Office and to Headquarters in New York concerning the alleged improper obtaining and disbursement of the UNFPA

project funds and conflict of interest issues on the part of the NPO. Ms. Odera did not elicit any information from the relevant NGOs concerning their involvement in the UNFPA project.

121. In spite of claiming that she undertook the mission partly to address the Applicant's allegations concerning the improper handling of project funds by the NPO, her report did nothing to address the total absence of integrity and accountability in the manner in which UN Women's former WARO Director and the NPO in Cote d'Ivoire obtained funds by false representations. It did not address how the said funds were retrieved by the NPO from three of the NGOs used as conduits or why they were deposited into the bank account of REFAE, an NGO in which the NPO was a founding member and account signatory.

122. While giving a lot of prominence to what she said she heard concerning poor relationships between the Applicant and the UNFPA country representative, both of whom she described as "difficult personalities", Ms. Odera avoided any mention of problems between the two as a result of the UN Women WARO office obtaining funds from UNFPA by false representations in 2009.

123. No in-depth questions appear to have been asked about alleged outside activities in which the NPO was said to be engaged. Instead, Ms. Coulibaly was portrayed as the pristine victim of the Applicant's excesses, abuse and mismanagement.

124. The credibility of the conclusions of Ms. Odera's mission report is further damaged by her style of hasty generalizations. For instance, she constantly referred to what she was told by 'UNCT colleagues'. A close scrutiny of the report shows that out of about ten or more UN agencies operating in Cote d'Ivoire at the time, the only UNCT members she met and spoke with concerning the Côte d'Ivoire office during her 2012 mission were UNDP personnel and the RC/HC.

125. The report states that a proposed meeting with the UNCT did not take place and she did not meet the country representatives of UNFPA or OHCHR both of whom she reported the Applicant had had squabbles and harsh exchanges with. In spite of meeting and discussing the Applicant and the UN Women office

with only UNDP personnel, Ms. Odera wrote in her report that ‘most members of the UNCT’ were aware of the Applicant’s problems with the NPO. This was a deceptive ploy used to confuse anyone who would not read her report critically.

*(c) Circulation of Ms. Odera’s mission report*

126. In answer to a question in cross-examination, Ms. Odera stated that she wrote and submitted her mission report to the UN Women Programme Director at headquarters, Ms. Gulden Turkoz-Cosslett and Ms. Letty Chiwara, the UN Women Chief of Africa section also in New York and held a skype debriefing of the mission.

127. With regard to the circulation of the contents of Ms. Odera’s report, her deputy, Mr. Houinato, who was also on the interview panel, testified that he was debriefed by her after the mission and that he also saw the mission report and was aware of Ms. Odera’s assessment of the Applicant. During cross-examination, he said that nothing in the mission report surprised him with regard to the debriefing he got.

128. According to the witness, there were about four staff members present at the debriefing in Dakar during which they were told that there was tension between the Applicant and other heads of agencies in Cote d’Ivoire. He stated also that a teleconference took place between Ms. Odera and headquarters in which the Côte d’Ivoire office was discussed following her mission. The Africa team from headquarters was on that teleconference including Ms. Chiwara’s and Ms. Turkoz-Cosslett’s offices.

129. Ms. Singh who also testified for the Respondent is an HR Officer in UN Women. When cross-examined, she stated that Ms. Odera was originally on the list of panellists for the selection interview for the Applicant’s re-classified post but said she could not recall why Ms. Odera’s name was removed but said her deputy and representative Mr. Houinato participated. She also stated that Mr. Daniel Seymour who was the deputy of Ms. Turkoz-Cosslett in the Programme Division at headquarters was on the interview panel.

130. There is evidence that the interview panel consisted of three UN Women staff members and one external person. The Tribunal notes that with two UN Women panellists who were not only negatively debriefed about the Applicant but were also deputies and representatives of the author of the damning mission report and the Global Programme Director who received the said report, the interview panel was materially tainted with regard to the Applicant's candidature.

***Was the Applicant denied any priority considerations to which she was entitled?***

131. It was part of the Applicant's case that she was not afforded priority consideration to which she was entitled being the incumbent of a re-classified post as provided for in paragraph 4.6.1 of the applicable guidance on the UNIFEM Rank-in-Post policy published on 31 October 2008.

132. Two of the Respondent's witnesses addressed this issue. The first was Mr. Houinato who in reply to a question during cross-examination stated that giving priority consideration to a candidate would arise where an internal candidate and an external one are being considered following a recommendation. He stated that in the case of the Applicant, the risk she faced of losing her post was equal to the risk faced by the internal candidate who was selected as that candidate also had her post re-classified. On her part, Ms. Grant testified for the Respondent that the priority granted the Applicant was in the fact of her being shortlisted and then allowed to compete for her re-classified post.

133. The Respondent argued in the light of the United Nations Appeals Tribunal (UNAT) decision in *Megerditchian*<sup>1</sup> and *Charles*<sup>2</sup> that in addition to having the requisite qualifications, the Applicant was required to pass an interview before being given priority consideration. It was additionally argued that the shortlisting of the Applicant amounted already to priority consideration.

134. While these are conflicting arguments, the first seems to imply that the Applicant had failed the oral interview for her re-classified post and that the matter of availing her any priority consideration did not therefore arise. However,

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<sup>1</sup> 2010- UNAT-088.

<sup>2</sup> 2012- UNAT-242.



the Respondent's witness, Ms. Singh, testified that the Applicant was recommended by the interview panel with reservations and that no waivers of UNIFEM rules were sought or granted.

135. In considering whether the Applicant received priority consideration as provided for in the relevant Rank-in-Post policy, UNAT's decision on the issue as espoused in *Megerditchian* and cited by the Respondent is the relevant authority upon which reliance must be placed. While weighing the circumstances in that case, UNAT noted that the relevant memorandum had clearly set out that there was to be a careful screening of candidates and a competitive selection that emphasizes merit and the required competencies for the job, including an interview.

136. UNAT concluded that in addition to having the requisite qualifications, Megerditchian was also required to pass an interview before she could be given priority consideration. That Tribunal then emphasized that "priority consideration" cannot be interpreted as a promise or guarantee to be appointed or to receive what one is considered in priority for. In other words, it was the firm view of UNAT that after a screening which established that Megerditchian had the requisite qualifications, she would only be qualified for priority consideration after passing the interview that followed. What can be deduced from UNAT's reasoning is that priority consideration is only to be exercised if an Applicant entitled to it is recommended for appointment following an interview.

137. It is in evidence that no rules, regulations, procedures or policies relating to selection processes in UN Women were waived in this case. That being so, there is no doubt that the Applicant's shortlisting for her re-classified post meant that she had scaled the screening process and had the requisite qualifications to compete. In fact, the UNIFEM Selection Guidelines filed by the Respondent as an exhibit to the witness statement of Ms. Singh provides, in its Section V, that in recruitment processes, "the screening process involves long-listing and shortlisting by the hiring manager and Human Resources."

138. The next question to determine is whether the Applicant had passed the interview which followed her short-listing. Ms. Singh told this Tribunal that the

Applicant was recommended with reservations. Having been recommended, the Applicant had clearly reached the point in the impugned selection process where her entitlement to “priority consideration” ought to have been applied.

139. Even the application of priority consideration at this stage may still not earn the Applicant the post. What is required and guaranteed, however, is that priority consideration be made. It is expected that in the interest of transparency, any priority consideration and its outcome would be properly documented.

140. Did the UN Women management apply its policy of priority consideration during the selection process for the Applicant’s re-classified post? There is no evidence that it was applied. There is no denial either on the part of the Respondent that the Applicant was entitled to it. Instead, the Respondent’s Counsel submitted that placing the Applicant on the shortlist and thereby allowing her to compete for her re-classified post amounted to affording her the said priority consideration.

141. This Tribunal is not in any doubt that the Respondent did not as much as avert his mind to whether the Applicant was entitled to any priority consideration in the selection process to her re-classified post. Aside of the absence of evidence in this regard, the confused submissions and explanations on the issue made by the Respondent’s Counsel and his witnesses clearly showed that no attention was paid to the matter of priority consideration of the Applicant. Such a state of affairs is simply unacceptable because UN Women cannot make policies for regulating its selection processes and then turn around and ignore them. It was the duty of those responsible for recruitment processes at the agency to see to it that all the relevant rules and policies were fully observed and applied.

***Were there any other flaws in the selection process?***

*Shortlisting of candidates by Ms. Odera who claimed she was not the hiring manager.*

142. In her Application and closing submissions, it was pled and submitted that there were some other procedural irregularities in the impugned selection process. The Tribunal will address some of these alleged irregularities.

143. The first of these was the shortlisting for the re-classified post which was carried out by Ms. Odera. Part of the Respondent's case is that Mr. Seymour rather than Ms. Odera was the hiring manager. While Ms. Odera herself testified that she was not the hiring manager and was supported by the testimonies of Ms. Grant and Mr. Houinato, Ms. Singh, who was the head of Human Resources at UN Women at the material time, told the Tribunal that Ms. Odera did the shortlisting of candidates and that she was both the hiring manager and the First Reporting Officer (FRO) for that post.

144. The Applicant's argument is that if indeed Mr. Seymour was the hiring manager for the post, then the UNIFEM Selection Guidelines had been breached because he did not shortlist the candidates and the said breach constituted a procedural irregularity.

145. It is noteworthy that the Selection Guidelines require that where a hiring manager does not wish to be included as part of the interview panel, reasons for doing so must be recorded. In this case, the said reasons why Ms. Odera who was the hiring manager was not on the interview panel were not recorded. The Respondent had no reply to this submission.

*Non-review of performance records by the interview panel.*

146. The Applicant's Counsel submitted that UNIFEM Selection Guidelines require that prior to the interview, a number of documents including the last two RCAs of internal candidates were to be transmitted to the interview panel members. This requirement was not complied with. The same Selection Guidelines demand that in the case of internal candidates, interview panels base their recommendations on both the interview and performance as reflected in the RCAs and also on feedback from the hiring manager.

147. Ms. Odera denied giving any feedback to the interview panel. The Respondent submitted that the non-consideration of the Applicant's performance appraisals did not handicap her. This Tribunal finds that the requirements of the applicable guidelines which include that the panel base its recommendations for internal candidates on the interview, the RCA and feedback from the hiring

manager were not satisfied as argued for the Applicant and amounted indeed to a serious procedural breach on the part of the Respondent.

*Absence of any technical assessment in the selection process.*

148. One of the submissions made on behalf of the Applicant is that UNDP recruitment rules and the practices in the entire United Nations system require a technical assessment in addition to an interview. It was also submitted that although the UN Women's rules are silent on this requirement, such an assessment was especially important for an interview panel that had no performance records to work with.

149. Considering that a technical assessment is not provided for in the recruitment guidelines for UN Women, the Tribunal does not find in this case that the absence of a technical assessment was a procedural error.

*Duration of the interview of the Applicant.*

150. The evidence is that the Applicant's interview lasted half the length of time given to the other candidates. It was submitted for the Applicant that the significant difference in interview durations between the Applicant and the other candidates, spoke to a lack of fairness in the process.

151. Ms. Singh had testified that interviews for P5 posts in which she participated always lasted 45 minutes or more. Mr. Houinato also agreed in cross-examination that the same interview for all the candidates excepting the Applicant typically lasted 45 minutes. There is corroborated evidence by the Applicant that apart from having a very short interview, the telephone line was not good and that some of the time she could not hear the panellists. The Respondent did not challenge or rebut this piece of evidence.

152. The unusually short duration of the Applicant's telephone interview whose quality was affected by a poor connection tends to suggest that the panel was not interested in her candidacy and that it granted her an interview only in order to appear to have given her adequate consideration. This constituted a procedural flaw that significantly compromised the fairness of the process.

***Was harm suffered by the Applicant?***

153. The Applicant pled that she suffered financial and reputational harm as a result of not being selected for her upgraded post. The Tribunal finds that the circumstances of the Applicant's separation which included being mentally pilloried and unfairly discredited by her supervisor and other WARO personnel in order to ensure her non-selection for the upgraded post indeed caused her reputational and financial harm.

**Conclusion**

154. The Tribunal's findings are summarized below:

a. The investigation into the report of irregularities in project implementation made against Ms. Coulibaly the NPO by the Applicant opened a can of worms on the activities of both WARO and the Côte d'Ivoire office of UN Women between late 2009 and 2010.

b. It was established by the OAI investigation that Ms. Cecile Mukarubuga who preceded Ms. Odera at WARO had superintended over an unethical scheme to obtain project funds from UNFPA through deception by holding out four local NGOs as implementing partners. The intention and agreement was to quickly secure the funds from UNFPA through the NGOs and have Ms. Coulibaly retrieve the said funds from them and implement the activities by herself.

c. It was also established that there was abuse of the funds retrieved from the NGOs as one of the consultants hired by Ms. Coulibaly to implement the UNFPA-funded project received DSA for work in two different countries during the same period. OAI investigators also found that the NPO herself was earning income from outside activities while working for UN Women in Cote d'Ivoire.

d. Mr. Fall who as the ROM at WARO had conducted a mission to the Cote d'Ivoire office in August 2010 following the Applicant's initial report of the implementation irregularities to Ms. Odera disowned

WARO's actions with regard to the UNFPA-funded project. He told OAI/DOS investigators that the arrangement to use NGOs as a transit for the funds was a clear violation of policies and procedures he had put in place in January 2009 for processing payments throughout all the UN Women offices in West Africa.

e. The Applicant being dissatisfied with what was going on blew the whistle on the egregious financial scam. When the matter was not addressed by the Regional office, she sent the report to UN Women in New York and later to the OAI. Her actions displeased Ms. Odera and Mr. Houinato at WARO who were anxious to cover up WARO's involvement in the irregular handling of project funds. They were therefore committed to running the Applicant out of the Organization.

f. During her mission, Ms. Odera did not ask any questions about the Applicant's persistent reports concerning the alleged mishandling of project funds and conflict of interest issues on the part of the NPO.

g. Ms. Odera's mission report which was a total condemnation and indictment of the Applicant's personality and her work in the UN Women Côte d'Ivoire country office carefully laid the groundwork for the Applicant's removal. Ms. Odera's claims in that report that the Applicant had poor relationships with implementing partners and senior government officials were stoutly and creditably rebutted and contradicted by the testimony of the RC/HC and other written testimonials.

h. Both Mr. Houinato who was Ms. Odera's deputy and Mr. Seymour, Ms. Turkoz-Cosslett's deputy, were debriefed on the June 2012 mission by Ms. Odera and saw her damning mission report. They later sat on the four-member interview panel for the Applicant's re-classified post. Clearly, the Applicant did not stand a chance and the panel was materially tainted with regard to the Applicant's candidature.

i. With regard to procedural breaches, the Respondent did not as much as avert his mind to whether the Applicant was entitled to any

priority consideration in the selection process to her re-classified post. No attention was paid to the matter of any priority considerations for the Applicant.

j. The UNIFEM Selection Guidelines requirement that where a hiring manager does not wish to be included as part of the interview panel, reasons for doing so must be recorded were not satisfied.

k. The non-consideration of the Applicant's performance appraisals by the interview panel amounted to a serious procedural error on the part of the Respondent.

l. The unusually short duration of the Applicant's telephone interview whose quality was also affected by a poor connection constituted a procedural flaw that indeed significantly compromised the fairness of the selection process.

155. The Applicant has discharged the burden of proof in showing that her non-selection for the upgraded post and her subsequent separation from the Organization were motivated by bias, procedural breaches, retaliation and other improper motives.

#### ***Accountability of United Nations' Managers***

156. The obvious conclusion in this case is that by blowing the whistle on dubious and unwholesome practices in the obtaining, handling and disbursement of certain project funds by UN Women personnel, the Applicant annoyed her managers who were inclined to cover up what had transpired.

157. The Tribunal is appalled that Ms. Odera, even during the proceedings, continued to dismiss the Applicant's concerns about the misappropriation, abuse of project funds and engagement in outside activities by the NPO as unfounded even though she was privy to the contents of the OAI investigation report. Had the Tribunal not ordered the production of the said investigation report, these matters would never have come to light.

158. The non-selection of the Applicant to the upgraded post was undoubtedly prompted by the Applicant's diligence and boldness in unearthing and reporting the financial scam perpetrated by WARO and Ms. Coulibaly, the NPO. On their part, Ms. Odera and Mr. Houinato wanted the matter swept under the carpet. For her diligence in unearthing the financial scam and for speaking out against it, the Applicant was retaliated against and rewarded with separation from the Organization.

159. Unfortunately, the Counsel for the Respondent sought deliberately to mislead the Tribunal by presenting her case as if the OAI investigation report did not exist. It is not surprising that she would contradict the said report in her comments (when it was produced to the Tribunal) by submitting that "there was no evidence that any third party or investigation subject was personally enriched from the project funds."

160. The Tribunal notes with a measure of sadness that the Respondent's Counsel when ordered to produce the investigation report proceeded to produce an incomplete report by omitting the annexes to the said report. Needless to mention, this was most unprofessional.

161. Counsel must realize that in prosecuting a case, they are first and foremost officers of the Tribunal and their efforts at all times must be directed at laying all their cards face up on the table with a view to helping the Tribunal achieve the ends of justice. Counsel at all times must be beyond reproach and not place themselves in a position where they stand or fall with their clients.

162. As held by UNAT in the case of *Dalgaard et al*, "it is the self-evident duty of all counsel appearing before the Tribunals to contribute to the fair administration of justice and the promotion of the rule of law. Counsel for Dalgaard et al failed in this duty by allowing the Appeals Tribunal to proceed on a factual basis which counsel should have known to be untrue..."<sup>3</sup>

163. The Tribunal hereby exercises its power of referral under art. 10.8 of its Statute and refers this case to the Secretary-General for the purpose of considering

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<sup>3</sup> 2015-UNAT-531.



what action should be taken in respect of the conduct of Ms. Odera in deliberately seeking to cover up an egregious financial scam which involved a shameful corruption of civil society organizations by UN Women personnel and wrongfully influencing the outcome of a selection process in retaliation against a whistleblower.

## **Judgment**

### *Damages*

164. In awarding damages in this case, the Tribunal is mindful of the recent amendments to the Statute of the Dispute Tribunal in General Assembly resolution 69/203<sup>4</sup>. Article 10, paragraphs 5 and 5(b) of the Statute of the Dispute Tribunal now read as follows:

As part of its judgement, the Dispute Tribunal may *only* order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation *for harm, supported by evidence*, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation, and shall provide the reasons for that decision (emphasis added).

165. The Tribunal orders rescission of the contested decision and orders the Respondent to reinstate the Applicant and deploy her in the next P-5 country representative position available, or a similar post, together with payment of salary at the upgraded P-5 level since the time of her separation.

166. Should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to reinstate the Applicant, as an alternative he must

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<sup>4</sup> A/RES/69/203 (Administration of justice at the United Nations), adopted on 18 December 2014.

pay compensation to the Applicant in the sum of two years' net base salary at the rate in effect at the date of Judgment.

167. It was pled by the Applicant and stated in her testimony that she suffered loss of income and loss of reputation that have negatively impacted her and her daughter as a result of not being selected for her upgraded post due to bias. The Tribunal found as a fact that the Applicant indeed suffered the harm as pled.

168. The Applicant is also entitled to compensation for the substantive and procedural irregularities occasioned her by the failure of the Administration to follow its own guidelines, rules and procedures and the Tribunal, accordingly:

- a. Awards the Applicant three months' net base salary as compensation for the substantive irregularity.
- b. Awards the Applicant three months' net base salary for the procedural irregularities.

169. If the Secretary-General decides not to perform the obligation to reinstate the Applicant, the total sum of compensation is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

170. This case is referred to the Secretary-General under art. 10.8 of the Statute of the Tribunal for him to consider what adequate action should be taken in respect of the conduct of Ms. Odera in deliberately covering up an egregious financial scam which involved a shameful corruption of some civil society organizations by UN Women personnel and wrongfully influencing the outcome of a selection process in retaliation against a whistle-blower.

Case No. UNDT/NBI/2013/015

Judgment No. UNDT/2015/048

*(Signed)*

Judge Nkemdilim Izuako

Dated this 11<sup>th</sup> day of June 2015

Entered in the Register on this 11<sup>th</sup> day of June 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi