



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2018/011  
UNDT/NY/2018/032  
UNDT/NY/2020/008  
Judgment No.: UNDT/2020/116/Corr.1  
Date: 10 July 2020  
Original: English

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**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Katya Melliush, OSLA

**Counsel for Respondent:**  
Matthias Schuster, UNICEF  
Chinonyelum Esther Uwazie, UNICEF

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. In the present Judgment, the Tribunal's determination of Cases Nos. UNDT/NY/2018/011, UNDT/NY/2018/032 and UNDT/NY/2020/008 is consolidated because although these three cases challenge three separate administrative decisions, they all concern the same rejection of the Applicant's claim for compensation for alleged psychological injuries suffered as a result of post-traumatic stress disorder ("PTSD") arising from his traumatic experiences during service with UNICEF in Chad and in Somalia.

2. Judge Ebrahim-Carstens, who was initially assigned to Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032, described the contested administrative decisions in those cases in Judgment No. UNDT/2019/098 dated 29 May 2019 as: (a) the decision of the Advisory Board on Compensation Claims ("ABCC") by which the Applicant's claim for PTSD was rejected "as time-barred, but conditional upon a reassessment upon submission of additional documentation demonstrating medical incapacity"; and (b) the ABCC Secretary's subsequent rejection of the Applicant's claim "on the basis that the Medical Service Division had concluded that there was insufficient evidence concerning the Applicant's medical incapacity such as to grant a waiver for late submission".

3. In Judgment No. UNDT/2019/098, Judge Ebrahim-Carstens remanded the claims back to ABCC for institution or correction of the required procedure "in accordance with the parties' submissions" and by "consent and with the concurrence of the Secretary-General" in accordance with art. 10.4 of the Dispute Tribunal's Statute. Judge Ebrahim-Carstens further ordered that the Applicant's compensation claims be "considered by the ABCC within three months, also taking into account the additional documentation that the Applicant has submitted". Finally, Judge Ebrahim-Carstens granted the Applicant's request for leave "to amend each of the claims to include compensation of three-month net base salary for procedural delay under art. 10.4", noting that the consideration of these

claims under art. 10.4 for procedural delay “is reserved, unless settled by *inter partes* agreement”. For the procedural history leading up to Judgment No. UNDT/2019/098, reference is made to this previous Judgment.

4. Judge Ebrahim-Carstens’ tenure with the Dispute Tribunal expired on 30 June 2019, and Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 were therefore reassigned to the undersigned Judge on 21 November 2019.

5. On 17 February 2020, the Applicant filed the application in Case No. UNDT/NY/2020/008 wherein he contests the ABCC’s decision of 15 January 2020 to refuse his compensation claim once more. As a remedy, the Applicant requests that the decision not to award him compensation be rescinded, and that the Tribunal set a compensation, or that, in the alternative, the claim be referred to the ABCC for reconsideration. The Applicant also claim compensation based on procedural delays.

6. In response to Order No. 31 (NY/2020) dated 20 February 2020, the parties agreed that “for judicial economy all three cases should be consolidated”, but that “none should be withdrawn”.

7. By Order No. 51 (NY/2020) dated 18 March 2020, the Tribunal consolidated the proceedings of all three cases and ordered the Respondent to file the reply in Case No. UNDT/NY/2020/008 by 20 April 2020.

8. The Respondent duly filed the reply on 17 April 2020 in which he contends that the impugned decision was lawful.

9. By Order No. 79 (NY/2020) dated 22 April 2020, the Tribunal ordered (a) the Respondent to file certain documentation referred to in the reply by 7 May 2020 and (b) the parties to file consolidated lists of agreed and disputed facts by 4 June 2020 because, in essence, the Respondent disputed almost all the facts presented by the Applicant and, by extension, therefore also the evidence by which these facts were corroborated.

10. On 7 May 2020, the Respondent filed his submission as per Order No. 79 (NY/2020) informing the Tribunal that copies of some UNICEF security reports, to which he had made reference in the reply, could not be obtained as they only existed in a paper version in the ABCC's offices, which were closed due to the COVID-19 pandemic.

11. On 4 June 2020, the parties filed the consolidated lists of agreed and disputed facts. The Applicant appended some additional documents as evidence.

12. On 5 June 2020, the Applicant filed a "motion to amend pleadings and adduce evidence", and with reference to art. 10.5(b) of the Dispute Tribunal's Rules of Procedure, appended a medical certificate from his psychiatrist dated 2 June 2020. On the same date, the Respondent filed an objection to the motion.

13. By Order No. 99 (NY/2020) dated 8 June 2020, with reference to art. 10.5(b) of the Dispute Tribunal's Rules of Procedure and in the interest of justice and due process, the Tribunal granted the Applicant's request for filing of additional evidence of 4 and 5 June 2020 and ordered the parties to file their closing statements in the following order of sequence: a summary of the Applicant's pleadings (19 June 2020); the Respondent's response (26 June 2020); and the Applicant's final comments (1 July 2020).

14. The parties duly filed their closing statements as per Order No. 99 (NY/2020).

## **Facts**

### *The agreed facts*

15. In the parties' joint statement of 4 June 2020, they presented a consolidated list of agreed facts, but only in response to Case No. UNDT/NY/2020/008.

16. The Tribunal notes that the administrative decision contested in Case No. UNDT/NY/2020/008, namely "[t]he decision of the [Advisory Board on Compensation Claims ("ABCC")] to refuse [the Applicant's] application for compensation", supersedes

the decisions challenged in Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032, which the Applicant describes exactly in the same manner in the respective applications. The evidence and facts in the three cases are therefore the same.

17. The consolidated list of agreed facts is as follows:

... The Applicant commenced working for UNICEF on 28 October 2002.

... Effective 30 June 2009, the Applicant held a permanent appointment with UNICEF at P-4 level. [Footnote omitted]

... From July 2006 until February 2010, the Applicant served [redacted] in Ndjamena, Chad.

... From at least March 2010 until January 2013, the Applicant served [redacted] [in] Bosasso, Somalia. [Footnote omitted]

... Effective 25 January 2013, following a competitive recruitment exercise, the Applicant was offered the post of [redacted] P-4, in New York, where he remained until his separation.

... On 20 January 2016, the Applicant submitted a claim for compensation for Post-Traumatic Stress Disorder (PTSD) to the ABCC in connection with his work for UNICEF between 2008 and 2012.

... In a memorandum dated 9 November 2017, the Secretary to the ABCC informed UNICEF that the Applicant's claim had been dismissed on the basis that it was "time-barred and non-receivable". However, in the same memorandum, the Secretary to the ABCC stated that, should (further) medical documentation demonstrating medical incapacity be submitted, the Applicant's claim may be further considered.

... On 13 November 2017, the United Nations Staff Pension Committee determined that the Applicant was incapacitated from further service on the basis of PTSD, pursuant to which the Applicant was awarded disability benefit under article 33 of the Regulation of the United Nations Joint Staff Pension Fund.

... On 1 December 2017, the Applicant was notified of the decision by the Secretary to the ABCC rejecting his claim for compensation.

... Effective 06 December 2017, the Applicant separated from service on health grounds.

... On 15 December 2017, the Applicant, through his counsel, filed a request for management evaluation challenging the decision by the Secretary to the ABCC rejecting his claim for compensation.

... On 12 January 2018, UNICEF informed the Applicant that since the Secretary to the ABCC had confirmed to UNICEF that “he” would reassess the claim with application of the standard enunciated in the pre-2017 version of Appendix D, and that the Applicant had the opportunity to submit further information, medical or otherwise, to explain the late submission of his claim, the request for management evaluation was “moot”.

... On 2 February 2018, the Applicant’s counsel submitted to the ABCC a medical report, which outlined the Applicant’s condition and the reason for the delay in submitting his claim.

... On 26 February 2018, in order to preserve his rights, the Applicant filed an application, which was registered by the Dispute Tribunal as Case No. UNDT/NY/2018/011.

... On 4 May 2018, the Secretary to the ABCC informed UNICEF that a waiver of the deadline had “been reviewed and is denied.” In the memorandum informing UNICEF of the decision, the Secretary to the ABCC referenced advice by the UN Division of Healthcare Management and Occupational Safety and Health (DHMOSH) in which DHMOSH concluded that the Applicant was not incapacitated from submitting a claim for compensation in the period from September 2012 to January 2016.

... On 13 June 2018, the Applicant, through his counsel, filed a request for management evaluation challenging the decision of the Secretary of the ABCC in relation to its refusal to consider his claim for compensation. No response was issued by UNICEF in relation to this request.

... On 18 July 2018, in order to preserve his rights, the Applicant filed an application against the decision of the Secretary to the ABCC, which was registered by the Dispute Tribunal as UNDT/NY/2018/032.

... On 21 November 2018, the Respondent submitted his reply in relation to Case Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032. In the reply, the Respondent submitted that he had no comment with respect to the Applicant’s submission on the merit that:

- the Secretary to the ABCC did not have the authority to grant and/or refuse a request for a waiver of the time limit; and
- the Secretary to the ABCC applied the incorrect version of Appendix D, the Respondent respectfully submitted that he had no comments.

... On 29 May 2019, the Dispute Tribunal issued Judgement No. UNDT/2019/098, with respect to Case Nos. UNDT/2018/011 and UNDT/2018/032. The Dispute Tribunal remanded the Applicant's claim to the ABCC, for institution or correction of the required procedure in accordance with the parties' submissions and Article 10.4 of the Dispute Tribunal's Statute. The Dispute Tribunal ordered that the Applicant's compensation claims be considered by the ABCC within three months of the date of the Judgment. Further, the Applicant was granted leave to amend each of his claims to include compensation of three-months' net base salary for procedural delay under Article 10.4. However, the Dispute Tribunal reserved consideration of these claims for procedural delay, unless settled by *inter partes* agreement.

... On 9 January 2020, the Secretary to the ABCC informed UNICEF that the Applicant's claim for compensation had been denied. The Secretary to the ABCC provided UNICEF with a copy of the ABCC's recommendation approved on 6 January 2020 by the [United Nations] Controller, on behalf of the Secretary-General, which stated that the ABCC concluded that "the [Applicant] failed to meet the deadline set out in Article 12 of Appendix D to the Staff Rules and the [Applicant] failed to meet the standard for waiver due to exceptional circumstances".

... On 15 January 2020, UNICEF notified the Applicant of the decision denying his claim.

... On 17 January 2020, the Applicant filed a request for management evaluation challenging the decision of the ABCC.

... By a letter dated 14 February 2020, UNICEF upheld the decision denying the Applicant's claim for compensation for service-incurred illness. Attached to letter was the memorandum dated 9 January 2020 from the Secretary to the ABCC to UNICEF, to which was attached the recommendation dated 19 December 2019 from the ABCC to the Controller, the approval of the Controller dated 6 January 2020, and the minutes of the ABCC meeting of 11 December 2019.

### *The disputed facts*

#### The Respondent's disagreement with the Applicant's factual submissions

18. While in the joint statement of 4 June 2020, the parties agree that the compensation claim was filed on 20 January 2016, they disagree whether an "injury" as per art. 12 of the applicable Appendix D ever occurred. Concerning the Applicant's related factual

submissions, the Respondent submits that he “either disputes or is not in a position to affirm or deny all or some of the ... facts adduced by the Applicant”.

19. The Tribunal is perplexed that after the Respondent has filed three replies in three different cases before the Dispute Tribunal, as well as many other pleadings, over a period of more than two years, in which he has never questioned the majority of these factual assertions, he now appears to do so. At least, this is the most the Tribunal can ascertain from this general disclaimer, which is paraphrased with such ambiguity and inconclusiveness that the Tribunal is left with no other option than assess each factual point. With reference to art. 4 (basic standards) of the Code of conduct for legal representatives and litigants in person and art. 10.6 of the Dispute Tribunal’s Statute, the Tribunal would encourage the Respondent to use more precision and be more helpful in his pleadings.

20. Most fundamentally, the Applicant submits that he was “the victim of a malicious act/critical incident in Ndjamena, Chad whilst working for UNICEF” in March 2008. The Respondent does not agree to this point, but instead indicates that this “appears” to be the case. The Applicant responds that the Respondent should be in possession of the relevant incidents reports to affirm this, and that such reports also appear to have been reviewed by the ABCC.

21. The Tribunal finds that as corroborated by various medical reports in evidence (see more below), the Applicant has indeed properly established that he was “the victim of a malicious act/critical incident in Ndjamena, Chad whilst working for UNICEF” in March 2008. It is further noted this has been the factual basis for the parties’ contentions, including those of the Respondent, until the joint statement of 4 June 2020. Respondent’s Counsel submits that the relevant UNICEF security reports, to which he refers himself in the reply in Case No. UNDT/NY/2020/008, cannot be produced as the ABCC’s offices are currently closed due to COVID-19 restrictions. This is not a justifiable explanation as the present cases have been pending since 26 February 2018, and if Counsel for the



Respondent is not in possession of the relevant reports, it would therefore appear that his archives are not adequately maintained.

22. The Applicant further submits of relevance to the present Judgment that:
- a. “Following [the March 2008] incident, the Applicant exhibited signs of mental trauma relating to the incident in Ndjamen. In a report subsequently provided by [the Applicant’s psychologist], the Applicant described how he began to ‘shut down’ and to feel numb and unable to interact and socialize with those around him. At the same time, the Applicant complained of repeated nightmares in relation to the event in Ndjamen”;
  - b. “Following treatment for meningitis in Nairobi [in 2012] and prior to his return to Puntland, the Applicant began to complain of cracking up and being unable to cope. As a consequence, the Applicant was prescribed a number of anti-depressant medication”;
  - c. “During the period of this medical leave [assumedly at the end of 2012 and the beginning of 2013], the Applicant flew to Cape Town where he undertook an initial medical consultation which diagnosed him as suffering from PTSD. As a result of the severity of the condition, the Applicant was admitted into a general psychiatric clinic in Cape Town, where he underwent a regular schedule of therapy and medication”;
  - d. “After the completion of this treatment, UNICEF assigned the Applicant to New York where he continued to receive medical support from [his psychologist]”;
  - e. “Despite this medical assistance, the Applicant continued to suffer extreme bouts of depression and anxiety. Indeed, the Applicant was unable to recount the various critical incidents he endured without triggering re-traumatization and aggravating his already-existing disorientation, confusion and depersonalization”;

23. The Respondent does not agree to any of these factual assertions, but instead contends that he is “not in a position to affirm or deny” most of them. The Tribunal notes that it is therefore not clear why the Respondent does not agree with the Applicant’s assertions—is he challenging the competence of the private medical professionals who examined and treated the Applicant, in particular his psychologist; the findings made in the various medical reports; or any other related circumstances? In the following, in order to clarify and establish the relevant facts, the Tribunal will therefore present the various medical reports on file regarding the Applicant’s suffering from PTSD.

#### The relevant medical reports

24. The Tribunal notes that subsequent to the Applicant’s experiences in Chad and Somalia, after having consulted various medical professionals, he was first diagnosed with PTSD by a Medical Doctor from the University in Cape Town, where he was admitted at a clinic for a three-week inpatient stay. This Medical Doctor explained in an email of 14 January 2013 that the Applicant had “residual features of PTSD and continues to have episodes of acute anxiety and fear usually triggered by nightmares or situations of violence”, but also that he “made good progress and worked hard in therapy during his leave in Cape Town”. The Medical Doctor then referred the Applicant to further treatment in New York, where he was to take up a position with UNICEF, with his later psychologist.

25. When arriving in New York in 2013, the Applicant started to see his psychologist and has been under his care for his PTSD condition since 24 January 2013. This follows from the psychologist’s report dated 1 February 2018 (see more below). The Tribunal therefore finds this fact appropriately established.

26. As the Respondent has further made no direct challenges to the psychologist’s credentials, competence or professional objectivity, the Tribunal accepts them all as stated in his medical reports. Accordingly, from the psychologist’s curriculum vitae follows that he is a “New York State Psychologist” with a Ph.D and “ABPP” (assumedly, an

abbreviation of “the American Board of Professional Psychology”) and a professional license number. He has worked in the field of psychology since 1973 (more than 37 years), has made many publications and presentation, and also serves on various professional committees and institutes.

27. The first report of the psychologist on file is dated 9 December 2014 and is addressed to the Medical Services Division of the United Nations Secretariat [“the MSD”]. In this report, he, *inter alia*, states that:

a. The Applicant was under his care for treatment of PTSD, which was “brought about by experiences he underwent while working for the United Nations (UNICEF) in Somalia and Chad”;

b. Upon the Applicant’s posting to New York in 2013, “because of the nature of the work and the demands of his job ... [he] was exposed to situations, material and information that was trauma inducing and triggered his PTSD symptoms in such a manner that he was unable to function”;

c. The Applicant was therefore temporarily transferred out of the entity, which resulted “in the almost immediate remission of his symptoms”. Over time, the Applicant was “able to return to his high level of functioning at work, his mood elevated and he noticed a significant decrease of his disruptive anxiety, and the remission of acute PTSD symptoms”, and was “once again happy and looking forward to going to work on a daily basis during this time”;

d. The Applicant, however, had to return to his previous entity in August 2014 at which time “his PTSD symptoms returned” and “[h]is anxiety became overwhelming and he began having difficulty with attention, concentration, memory skills, and his level of consciousness began fluctuating, a common symptom of PTSD”. This caused him “extreme difficulty in carrying out his work responsibilities adequately”, and “was hospitalized [with] a significant

concussion” after falling in his bathroom as he was “overwhelmed with distress and anxiety and lost consciousness”.

e. The Applicant was recommended to return to work “as long as the demands of his job do not expose him to emergency related work or environments, such as to acts of war, civil violence, or natural disasters”.

28. The psychologist’s second report on file is of 28 November 2016 and is also addressed to MSD. In this report, the psychologist, in essence, sets out a detailed account of the Applicant’s experiences in Chad and Somalia, his diagnosis of the Applicant’s suffering from PTSD and the reason therefor, and a treatment plan. Among his observations were that:

a. “[A] direct link” existed between the Applicant’s “extended exposure to war experiences in Chad and Somalia where he had reason to fear his life was in danger” and “his emotional decompensation and development of PTSD”. This had “radically altered the trajectory of his life and career such that he is unable to tolerate high levels of stress, anxiety, frustration and tension that are required to function at his former level of employment in senior management”;

b. “Once back at UNICEF in New York”, the Applicant “was repeatedly retraumatized during meetings and video conferencing”. As “[t]he nature of these meetings was dealing with emergency situations”, the Applicant “would be triggered and enter into states of overwhelming anxiety, hyperarousal and dissociated states of altered consciousness” for which reason he was transferred to another job;

c. The Applicant was “[o]n many occasions ... asked/required to retell his war experiences and explain why he has difficulty in his present day functioning” at meetings taking place in “February 2013, Spring 2013, October 2013, November 2014, March 2015, May 2016 (approx.)”;

d. “The retelling of traumatic events in a non-clinical (and even in a clinical) situation if not handled carefully and compassionately is documented in the literature to cause retraumatization and the strengthening of neural networks created during the original traumatic events”;

e. The psychologist indicated that the Applicant had stated “[d]uring the repeated re-telling ... he would be re-traumatized, cry, shake and enter into dissociated levels of consciousness, which included disorientation, confusion, fear, depersonalized and having experiences of derealization including feeling that he was melting into the floor; “he would begin to forget where he was”; and “[h]e also would hear whistling noises that he later remembered as the sound of bullets that had been shot at him and flew close to and passed his head”. These experiences were “a ‘flashback’ of his previous experience, and another symptom of PTSD”.

29. In the third report of the psychologist of 1 February 2018, the psychologist addresses the ABCC. Over 25 pages, the psychologist explains in much detail why he believes that based on his medical assessment of the Applicant, he was not capable of filing his claim before 20 January 2016, referring to the nature and scope of PTSD and the medical/psychological history of the Applicant since 2008. The psychologist, *inter alia*, observes that:

a. “There are several circumstances that must be taken into account about the nature of PTSD and how it might compare with another type of loss such as the loss of an eye or a spinal cord injury resulting in a paraplegia”;

b. “Because the brain is the receiving organ of trauma related PTSD, the effects are not always visible to the victim’s family, employer, the public at large and sometimes to the victims themselves. PTSD, once referred to as Shell Shock, can range in severity from mild to severe and from acute to chronic”;

c. “PTSD has a history of being seen as a sign of personal, emotional and moral weakness that underscored the lack of understanding of this very real and crippling disorder. This sociocultural and medical misunderstanding of the disorder has resulted in PTSD victims feeling intense personal shame and a devastating loss of self-esteem. Moreover, because severe, chronic PTSD is accompanied by dissociative symptomology such as depersonalization, derealization, gaps in memory, reality testing, time distortion and attention and concentration skills victims can feel as if they are losing their mind, going crazy, and they may be unaware of what’s happening to them. Unlike victims of a purely physical trauma/loss mentioned above, the chronic PTSD victim most frequently experiences the loss of his/her ability to function in relationships and at work as a personal failure, a source of shame, weakness, and a need to hide their symptoms to avoid loss of family, friends and employment. Many victims of PTSD, turn to alcohol and or drugs use/abuse in an effort to medicate their symptoms”;

d. “In reaching a decision regarding [the Applicant’s claim] the committee must understand that while PTSD appears on the surface to be an emotionally based disorder, there are very real changes to brain structures and the neuroendocrine system that negatively impact the victim’s neurocognitive functioning and importantly the ability to undertake normal day to day functions. In that regard it is based on the nature of [the Applicant’s] condition which I have concluded prevented him from submitting any claim for compensation under the ABCC provisions”;

e. “[I]mmediate and long-term deficits of war and combat related trauma including exposure when being forced to repeatedly to tell his experiences while working at UNICEF in NYC is associated with coronary artery disease, problems with immune functioning, changes in cognitive functioning with deficits in attention, learning, memory, and reaction time. Furthermore, intrusions (i.e. unwanted memories or memory fragments of past traumatic events in the form of

thoughts or sensory experiences) can be triggered by external recollections of the original trauma e.g. when being required to repeat and tell stories of the original events. As such, while [the Applicant's] original symptoms emerged in 2008, his being required to retell his story on seven or eight occasions to UNICEF staff should be considered as the continuation of his original trauma”;

f. “The nature and scope of his PTSD makes any recount a traumatic and destabilizing experience. As such [the Applicant] did not retain the capacity and ability to fully recount his experiences prior to the submission of his ABCC claim. Any prior attempts were met by immediate post-traumatization and indeed this is a recurring theme even today. The medical interventions previously undertaken were cursory at best and failed to identify the nature and scale of the problem”;

g. “[The Applicant's] direct exposure to war trauma including the efforts to save others and being under direct fire, fearing for his life on more than one occasion and being exposed to the sights and smell of death began in 2008 significantly undermined his ability to recount events and properly address the issues relating to his PTSD”;

h. “The committee should consider that [the Applicant], a man who loved the work he was doing, was desperately trying to save his career at UNICEF. As with many people who are deeply involved and devoted to their careers [the Applicant] became so identified with his career that the very nature of his self-definition, self-esteem and integrity of self, became tied to and dependent on his job. [The Applicant] survived his traumatic experiences without becoming completely psychotic because of his sense of duty to UNICEF, and his devotion to his fellow employees and the people he was trying to help. Because of the trauma that went undiagnosed and untreated for four years, [the Applicant's] primary mode of functioning became survival at all costs and saving his sense of self and his career,

now both tied to each other, he could not understand or appreciate his inability to function and handle the stressful demands of his once active career”;

i. “As a result of these events [the Applicant] displayed little understanding or insight into his condition. The repeated retraumatizing manifested in dissociative flashbacks, repeated loss of orientation to place and time, frequent loss of consciousness, paralyzing fear and his inability function due to his impaired ability to tolerate mild forms of frustration and interpersonal friction. As a result, the requirement of formally recounting events for the purposes of an ABCC claim would have been beyond his capacity until the filling in 2016. The reason for this is that for [the Applicant] like other victims of severe trauma, having to recount their trauma is equivalent to being forced into a flashback where the past is relived in the present moment. It is the reliving of the trauma in the present that is retraumatizing because it leaves these victims physically and emotionally depleted, deeply symptomatic (discussed above) and unable to function in the here and now. This not only exacerbates their PTSD symptoms, but it deepens the victims, like [the Applicant] feelings of shame, failure, despair and depression”.

30. The psychologist’s PTSD diagnosis is corroborated by a “Treating Psychiatrist” (a Medical Doctor with a medical facility in New York) in medical report dated 20 February 2017. His “[l]icense #” is also indicated at the end of the report. The Respondent has not challenged the psychiatrist’s credentials, competence or professional objectivity, and the Tribunal therefore accepts them as stated. In line with the psychologist’s findings, the psychiatrist stated as:

[The Applicant’s] extended exposure to war experiences in Chad and Somalia resulted in his developing Major Depressive Disorder (MOD) and Post Traumatic Stress Disorder (PTSD), manifesting a consistent and resistant to medication set of neuropsychiatric symptoms. His symptoms have also moved into several physical manifestations, the origin and link to the aforementioned primary diagnosis being unclear. He persists with symptoms of depersonalization, derealization, emotional constriction, flashbacks, recurring nightmares and intrusive thoughts of being killed.



Even though his mixed mood state, anxiety, sleep disorder, concentration problems, sense of hopelessness, helplessness, and worthlessness, are somewhat relieved through varied psychotherapy interventions with [the psychologist] and psychopharmacology medication management through this writer, he still has recurrent emotional decompensations and has further developed back pains, diplopia, syncope and vertigo for which he is getting a thorough evaluation and work up with ENT [assumedly referring to ear, nose and throat], Neuro Ophthalmology, and Neurology. Consequently, [the Applicant's] extended exposure to war experiences has radically altered the trajectory of his life and career such that he is unable to tolerate high levels of stress, anxiety, frustration and tension that are required to function at his former level of employment in senior management.

31. The Tribunal notes that whereas the Respondent has not even intended to disprove any of the findings of any of the mentioned medical professionals, he argues that the ABCC was not obligated to rely on any of their reports and instead referred to a report from the MSD to the ABCC dated 29 April 2018 for concluding that the Applicant's compensation claim was time-barred.

32. In this report, a Medical Doctor working with MSD, noted that he "reviewed the file in detail as well as the report by [the Applicant's] psychologist" and concluded that the Applicant "was not incapacitated from submitting an ABCC claim in the period from September 2012 to January 2016". The Medical Doctor underlined that "MSD's response does not address the validity of [the Applicant's condition] or its cause, but only the matter of incapacity from submitting a claim from the point at which he was diagnosed with depression and PTSD [in South Africa] at the end of September 2012, to the date of submission on 20 January 2016". The Medical Doctor accepted "that the process of submitting a claim may in itself be traumatic and cause some degree of avoidance", but notes that following the Applicant's PTSD diagnosis "there are significant periods of time when [he] was considered fully fit for work, functioning successfully at a senior level, and had ready access to psychiatric help and support" and that he "also had access to in-house administrative, counselling and medical support that could have shielded or largely eliminated the effects of submitting a claim". During "any of these periods and

commencing after his diagnosis in 2012”, the Medical Doctor opines that the Applicant “knew of his condition (PTSD), had sought treatment for it, and had ascribed it to traumatic experiences at work”. The Medical Doctor further observes that the Applicant had “at numerous times sought special consideration for the nature of his work by describing his condition and its perceived cause in detail” and that “[a]t these times in particular he could not be considered to be incapacitated from submitting a claim as he had the capacity to tell his story, even though this had some clinical impact, and tell it in a much greater degree of detail than would be required for the initial claim for compensation”.

33. The Applicant submits that, as a matter of fact, the Medical Doctor never examined, or even spoke to the Applicant, and that it has not been demonstrated that he had any particular expertise in mental illnesses, such as PTSD. The Respondent has not as much as intended to disprove the Applicant’s assertions, which the Tribunal therefore accepts.

34. Accordingly, the Tribunal fully accepts all diagnoses and statements made by the medical professionals, who, in fact, examined the Applicant in person, in particular his psychologist. Any possible reservations of the Respondent thereon are, therefore, dismissed as unfounded.

## **Consideration**

### *Anonymizing the Judgment*

35. In the Applicant’s latest submissions to the Tribunal, his name has not been stated on the frontpage, although he has not filed a formal motion for anonymization. Considering that the present Judgment contains “information of a confidential and sensitive nature”, the Tribunal will, however, *sua sponte* do so (see the Appeals Tribunal in *Kadri* 2017-UNAT-772, para. 15).

*The issues of the case*

36. The Tribunal observes that the parties agree that the legal basis for the impugned administrative decision is art. 12 of Appendix D of the Staff Rules in force before 2017, which provides that “Claims for compensation under these rules shall be submitted within four months of the ... injury or onset of the illness; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date”. The Tribunal further notes that art. 13 of the applicable Appendix D provides that “The determination of the injury or illness and of the type and degree of disability shall be made on the basis of reports obtained from a qualified medical practitioner or practitioners”.

37. The Tribunal notes that the parties further agree that the issue in contention is whether the ABCC appropriately determined that no exceptional circumstances were present to allow the Applicant to file his compensation claim after the expiry of the four-month time limit as per art. 12 of the applicable Appendix D.

38. The issues of the present case can therefore be defined as:

- a. Did the ABCC properly exercise its discretion when rejecting the Applicant’s compensation claim?
- b. If not, what remedies is the Applicant entitled to?

*Was it appropriate for the ABCC to reject the Applicant’s compensation claim?*

Parties’ submissions

39. The Applicant, in essence, submits that the ABCC’s repeated decisions to reject his compensation claim were unlawful under art. 12 of the applicable Appendix D. He contends that, in his case, there are exceptional circumstances, supported by the medical

evidence, which the Applicant presented to the Board” and which warrant a waiver of the deadline.

40. The Respondent’s submissions, as stated in the closing statement, may be summarized as follows:

a. The Secretary-General “properly exercised his discretion in denying the Applicant’s claim for compensation”. Under the standard of review, “it is not the role of the Dispute Tribunal to decide whether it was open to the ABCC to make a different recommendation or to substitute its decision for that of the Secretary-General”. The ABCC “applied the correct legal test in rejecting the Applicant’s claim, which was given full and fair consideration”;

b. The ABCC determined that “there were no exceptional circumstances to warrant a waiver of the deadline set out under Article 12 of Appendix D to the Staff Rules in force at the time”. Article 12 of Appendix D required that claims for compensation for service incurred injury or illness be submitted within four months of the injury or onset of illness, provided that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date;

c. It is not disputed that the Applicant “filed his claim outside the deadline set out under Article 12 of Appendix D to the Staff Rules”. The essential question in this case is therefore “whether there were exceptional circumstances justifying a waiver of the deadline”. No criteria in the Staff Rules or the jurisprudence of the Dispute Tribunal or the Appeals Tribunal defines what constitutes “exceptional circumstances”. In *Dahan*, the Dispute Tribunal held that when considering whether there were “exceptional circumstances” warranting the consideration of a claim that is filed past the four-month deadline, the decision-maker held “a wide discretion which is not qualified in any way by the applicable regulatory framework”;

d. In determining whether the Applicant could have filed his claim at an earlier stage, the ABCC applied the “exceptional circumstances” test under Article 12 of Appendix D to the Staff Rules. It “considered the Applicant’s individual circumstances—his attendance records, reports from his Psychologist and the fact that at significant periods, he had psychiatric and inhouse administrative and medical support and was able to tell his story in much greater degree than was required for filing a claim to the ABCC—and reasonably found that it would have been possible for the Applicant to submit his claim at an earlier stage”. The use of the word “incapacity” in the ABCC’s minutes “must be understood in that context”. The ABCC’s consideration whether the Applicant was “incapacitated” was “part of its broader consideration whether the Applicant had been prevented to file a claim at an earlier stage, for any reason, including health reasons, which aligns with the wide discretion acknowledged in *Dahan*”.

e. The ABCC was “entitled to rely on the report of [the Medical Doctor from MSD]. Nothing in Appendix D “prohibits the ABCC from relying on the report of a medical professional familiar with the UN Staff Rules and Regulations, including Appendix D, and who had access to the medical record of the Applicant”. The minutes of the ABCC’s meeting “indicate that it also considered the reports of the Applicant’s psychologist, and found that while they generally described the symptoms of PTSD, they did not address the issue of why the Applicant could and did invoke his trauma for other special (employment) considerations, but failed to invoke it to file a claim form and submit medical reports to the ABCC”;

f. The minutes show that “the Applicant’s claim was given fair and adequate consideration”. The ABCC “limited its consideration to whether there were exceptional circumstances warranting a waiver of the deadline under Appendix D”. Having found that “there were no such exceptional circumstances, the ABCC appropriately refrained from considering the merits of the Applicant’s claim”. The

Applicant has “not shown that the ABCC made any findings in relation to the merits of his claim”;

g. The Applicant has “failed to provide any evidence of bias against him by the Secretary to the ABCC”. The “mere fact that the Secretary had been involved in previous decisions rejecting the Applicant’s claims does not show bias”. The minutes show that “the Secretary provided the ABCC with relevant background information, including the additional information that the Applicant submitted for the ABCC’s consideration”. There is “no indication of impartiality or any evidence that the ABCC was unduly influenced”;

h. Whether the Applicant “was awarded a disability benefit by [“the United Nations Joint Staff Pension Fund (“UNJSPF”)] in 2017 is not relevant to the question of whether he could have submitted his claim to the ABCC in a timely manner following his diagnosis of PTSD in 2012”. In *Giles* UNDT/2020/091, “the Dispute Tribunal confirmed that the UNJSPF and the ABCC are independent bodies, with different benefits, which are governed by different legal frameworks and have different decision-makers”.

#### The Tribunal’s limited judicial review

41. Pursuant to art. 12 of the applicable Appendix D, the Secretary-General is conveyed a broad discretion on whether to grant a waiver to the four-month deadline to file a compensation claim to the ABCC on the basis of “exceptional circumstances” as it is stipulated that he “may” do so.

42. This discretion, however, is not unfettered. As the Appeals Tribunal stated in *Sanwidi* 2010-UNAT-084, at para. 40, “when judging the validity of the exercise of discretionary authority, ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. This means that the Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered,

and also examine whether the decision is absurd or perverse”. The Appeals Tribunal, however, underlined that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him” or otherwise “substitute its own decision for that of the Secretary-General”.

43. In this regard, “There can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion” (see *Sanwidi*, para. 38).

44. The Appeals Tribunal further held that “the Dispute Tribunal is not conducting a “merit-based review, but a judicial review” explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision” (see *Sanwidi*, para. 42).

Did the ABCC properly exercise its discretion under art. 12 of the applicable Appendix D?

45. The Respondent, in essence, submits that the ABCC appropriately established that there were no exceptional circumstances to waive the four-month deadline under art. 12 of the applicable Appendix D—this decision was correctly based on the MSD’s report and the Committee was not obligated to rely on the medical opinion of the Applicant’s psychologist and other private medical practitioners.

46. The Tribunal does not agree with the Respondent. Article 13 of the applicable Appendix D did indeed require the ABCC to make its determination “on the basis of reports obtained from a qualified medical practitioner or practitioners”. The scope of the ABCC’s discretion in exercising its powers is also not unlimited under the jurisprudence of the Appeals Tribunal (see *Sanwidi* as quoted above).

47. Without taking on the role of the decision maker, the question for the Tribunal to determine is therefore whether it was appropriate for the ABCC to base its determination only on the MSD's findings and not on the psychologist's medical opinion according to which the Applicant could not reasonably have been expected to file his compensation claim before 20 January 2016.

48. The Tribunal notes that as convincingly explained by the psychologist, PTSD differs from many other types of diseases and illnesses because the symptoms of PTSD do not manifest themselves at the same time as the event(s) that caused it—PTSD is per definition a *post* traumatic mental illness—and those symptoms often oscillate over time.

49. In this sense, PTSD is indeed not a typical injury for the ABCC to assess and requires the Committee to consider what event actually defines the notion of “injury or onset of illness” in terms of art. 12 of the applicable Appendix D. As regards to PTSD, the notion of injury or onset of the illness can certainly not be dated from the traumatic event, because it is precisely a post-traumatic syndrome. It is also not obvious to date it from the time of the first PTSD diagnosis, because there could be remission of the symptoms. It is more rational to date the “injury or onset of the illness” when the psychological symptoms are so severe that the patient acknowledges that his/her syndrome no longer allows him/her to fulfill his professional obligations. The PTSD may flare up again for a patient who has had remission of her/his symptoms, and this time to a more harmful level. Therefore, for this kind of illness with fluctuation of symptoms, considering that the compensation claim would be per definition time-barred if the compensation claim under art. 12 of the applicable Appendix D was not filed in the four-month time limit after the first PTSD diagnosis seems not to take into consideration the specificity of this illness. This is precisely why the notion of “exceptional circumstances” under the applicable Appendix D offers some flexibility.

50. As follows from the various medical reports regarding the Applicant and otherwise from the facts, during the relevant time period from 2008 to 2017, his PTSD symptoms



fluctuated considerably—from appearing to have (at least, almost) recovered at times, to eventually deteriorating to the point that UNJSPF declared him incapacitated for further service with the Organization:

- a. In 2008, the Applicant fell victim of “a malicious act/critical incident” in Chad while working for UNICEF;
- b. Subsequently, the Applicant worked in Somalia for UNICEF until September 2012. While according to his own account of the event, he started to feel better, he was also exposed to another traumatic violent incident;
- c. In late 2012/early 2013, the Applicant was diagnosed with PTSD in South Africa and underwent medical treatment, which apparently improved the Applicant’s psychological condition;
- d. In 2013, the Applicant relocated to New York to assume a position with UNICEF. The nature of his work and the demands of the work caused the PTSD symptoms to worsen, and he was therefore reassigned to another entity, where he felt much better. When he was transferred back to the initial position, this, however, caused a serious relapse of his PTSD symptoms. Throughout the entire period, the Applicant was under the care of his psychologist, who treated the PTSD and monitored his wellbeing;
- e. On 20 January 2016, the Applicant submitted his compensation claim to the ABCC for PTSD;
- f. On 13 November 2017, the United Nations Staff Pension Committee determined that the Applicant was “incapacitated from further service” on the basis of his PTSD condition and awarded him “a disability benefit” pursuant to art. 33 of the UNJSPF Regulations.

51. Accordingly, it is very difficult to objectively determine exactly when the Applicant's PTSD symptoms were so manifest that a compensation claim to the ABCC would have been warranted in terms of establishing the four-month deadline under art. 12 of the applicable Appendix D, and even if late, if exceptional circumstances then applied. In accordance with art. 13 of the applicable Appendix D, this would entirely depend on a relevant and qualified medical assessment of the Applicant's subjective state of mind. In this regard, it is very telling that while submitting that the Applicant's compensation claim was late, the Respondent refrains from precisely stating when he should then alternatively have done so.

52. Regarding the importance and content of the MSD's report, the relevant Medical Doctor explicitly admits that he had not assessed the Applicant's condition or its cause, but rather concludes that there were significant periods of time during which the Applicant was fully fit to successfully undertake his job and that he then had the "capacity" to file a claim at that time. Also, the Medical Officer noted that the Applicant had access to appropriate care at the United Nations.

53. The Tribunal notes that the MSD thereby does not express itself regarding the Applicant's suffering from PTSD, which the Respondent otherwise appears to question, or the timing of his compensation claim. Instead, the fact that the Applicant's PTSD symptoms were at times in remission and that he was therefore "capable" of functioning normally at work would logically mean that his mental condition was at this moment so stable that he would no longer have a related compensation claim with the ABCC for PTSD. Filing a claim at that time would therefore have made little sense unless he did so with retroactive effect, in which case, following the rationale of the Respondent, he could only have done so for four months back in time.

54. The question of the Applicant's capacity for filing a compensation claim is therefore not relevant for the ABCC's determination on whether it was done in a timely manner under art. 12 of the applicable Appendix D. An appropriate reading of the MSD's

report should therefore have led the ABCC to the conclusion that the circumstances described therein were not pertinent for this purpose, also as the applicable Appendix D does not refer to any such “capacity” test. In addition, with reference to art. 13 of the applicable Appendix D, the ABCC should also have further examined the relevant MSD Medical Doctor’s credentials to ensure that he was actually “qualified” to make any medical assessment of the Applicant, also considering that he apparently never met the Applicant in person or examined him.

55. Concerning the Applicant’s psychologist, he was the only medical practitioner, who had actually monitored and cared for the Applicant in New York during the relevant time period from 2013 to 2016. In addition, his credentials indicate that he possessed adequate expertise in mental illnesses to appropriately assess the Applicant’s suffering from PTSD and therefore was also “qualified” to do so under art. 13 of the applicable Appendix D. In the psychologist’s various medical reports, his analyses and diagnoses were very detailed and based on objective and medical considerations, and nothing suggests that he had inappropriately taken on the role as a “patient’s advocate” on behalf of the Applicant.

56. The Tribunal therefore finds that the ABCC should have relied on the psychologist’s medical opinion as it was the only relevant and qualified medical assessment of the Applicant and his PTSD when determining whether his compensation claim was filed in a timely manner under art. 12 of the applicable Appendix D. According to the psychologist’s opinion, considering the Applicant’s mental condition, he could not have reasonably been expected to file his compensation claim before 20 January 2016.

57. Accordingly, the Tribunal finds that the ABCC inappropriately relied only on the medical report from MSD and not on the Applicant’s psychologist’s medical opinion.

*Remedies*

The parties' submissions

58. The Applicant's submissions may be summarized as follows:

a. In light of "the egregious failure of the ABCC to properly address the Applicant's Claim, both in terms of a request for waiver of time limits and on the substance, over three separate attempts drawn out over four and half years (and in spite of a UNDT Order), it is submitted that reconsideration by the Board is likely to be fruitless". As the Appeals Tribunal upheld in *Belkhabbaz* 2018-UNAT-873, "in some cases there comes a point when further reconsideration is a waste of time". In the present cases, "such a remand would be entirely to the detriment of the Applicant and would merely afford the ABCC further opportunity to delay, causing additional, serious harm";

b. As corroborated by evidence, "the Applicant's mental health has been repeatedly further damaged by the repeated flawed decision-making and the length of time that has passed in trying to obtain "closure" and "[f]urther delay will only cause more harm";

c. The "most appropriate remedy" would be to "declare the decision unlawful". This would mean to (i) "[o]rder its rescission under Article 10.5 of the Statute, and that the Respondent to compensate the Applicant as if the ABCC had found in his favour"; (ii) "[c]ompensate the Application with 3 months' salary for harm caused by the delay and other procedural irregularities (moral damages) in relation to each of the unlawful decisions (totaling 9 months' salary), such harm having been evidenced by the plain facts of the case and supported by the medical report of [the psychologist] dated 3 June 2020";

d. Alternatively, the case should be remanded to the ABCC, “subject to the consent of the Secretary-General, with orders that: (i) “[a] new Panel be convoked with the Secretary to the ABCC expressly excluded from any advisory or other role in the decision-making process”; (ii) “[t]he Panel properly and fairly examine the issue of whether or not exceptional circumstances exist in this case and merit a waiver of the time limit for filing claims under the pre-2017 Appendix D, taking into account all the circumstances of the case, not merely the reason for the delay; (iii) “[i]n accordance with the principle of *audi alterem partem*, the Applicant be afforded [an] opportunity to comment on the material considered by the ABCC”.

e. The case “in its entirety” should be referred to the Secretary-General for “possible action to enforce accountability” under art. 10.8 of the Dispute Tribunal’s Statute. There being no definition of “possible action” in the Statute, and “along with an appropriate moral damages”, this “might be the most forceful means by which the Tribunal could indicate to the Secretary-General that the ABCC and its Secretariat are not fulfilling the oft-stated but little enforced requirement that the Administration ‘adheres to the highest standards of care and due diligence’ in its dealings with staff”.

59. The Respondent’s submissions may be summarized as follows:

a. No basis exists for the Dispute Tribunal “to award compensation equivalent to what the Applicant would have been paid had the ABCC considered his claim and found it substantiated”. The latter would “require the Dispute Tribunal’s own assessment of the Applicant’s claim, including medical findings, for which it is not equipped”. The Applicant’s “reliance on *Belkhabbaz*, which dealt with completely different factual and legal issues, involving the investigation of alleged staff misconduct, is misplaced”;

b. There is “no purpose in remanding the matter to the ABCC for a reassessment of the Applicant’s claim”. Were the Tribunal to order such a remand,

“it should do so to the ABCC as currently composed in line with Appendix D of the Staff Regulations”, and “[t]he Respondent is required to comply with this provision and the Tribunal does not have the power to change it”. Further, in the event of a remand, the Dispute Tribunal “should specify the criteria that the ABCC should apply in determining whether there are exceptional circumstances justifying a waiver of the deadline in this particular case”;

c. With respect to Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032, the Applicant has “failed to demonstrate that he suffered any actual harm because of the delay in rendering the decisions in these two cases”. Should the Dispute Tribunal “be minded to ordering any compensation for delay, it should account for only the period between the date the Applicant submitted the claim to the ABCC and the date the Secretary to the ABCC first dismissed the Applicant’s claim”.

d. No “procedural irregularity” was made “with respect to the contested decision in Case No. UNDT/2020/008”. The Applicant “has failed to provide sufficient evidence to support this claim”, and his “[p]sychologist’s report dated 2 June 2020 is vague as regards timing and premised on an alleged ‘four-year delay’ that is the purported cause of harm to the Applicant”. In any event, “compensation should be limited to the period following the expiration of the three months ordered by the Dispute Tribunal in Judgement No. UNDT/2019/098 (29 August 2019) and the date that the ABCC considered the Applicant’s claim (11 December 2019)”.

#### The legal framework for remedies

60. The Tribunal notes that, as relevant to the present case, art. 10.5 of the Dispute Tribunal’s Statute delimits that remedies that the Tribunal may order to: (a) “[r]escission of the contested administrative decision or specific performance”; and (b) “[c]ompensation for harm, supported by evidence”.

Remand for the ABCC's reconsideration

61. The Tribunal notes that the contested administrative decision in the present cases is the ABCC's decision to reject the Applicant's compensation for being time-barred. At most, the Tribunal can reverse this decision and declare that the compensation claim timely pursuant to art. 10.5(a) of its Statute—it does not have the jurisdiction to assess the merits of his claim and, as relevant, set a corresponding compensation amount.

62. Accordingly, the Applicant's compensation claim is remanded to the ABCC for a consideration of its merits based on the applicable (former pre-2017) Appendix D, which the parties agree should have been the legal basis for assessing the compensation. It is for the ABCC to constitute itself under its rules and regulations in a manner that complies with all relevant due process safeguards.

Compensation

63. The Tribunal notes that any compensation set out in the present Judgment is to be awarded under art. 10.5(b) of the Statute and not art. 10.4 as the cases by this Judgment are closed for further consideration by the Dispute Tribunal.

64. In *Kebede* 2018-UNAT-274, the Appeals Tribunal outlines the three basic prerequisites for compensation, namely harm, illegality and nexus, as follows (see para. 20):

... It is universally accepted that compensation for harm shall be supported by three elements: the harm itself; an illegality; and a nexus between both. It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien.<sup>11</sup> If one of these three elements is not established, compensation cannot be awarded. Our case law requires that the harm be shown to be directly caused by the administrative decision in question

65. As evidence for the Applicant's harm, he submits a medical certificate from his psychologist dated 2 June 2020:

[The Applicant] recounts that there have been long delays between his making a compensation claim and any decision. Furthermore, on more than one occasion between January 2016 (when he filed his first compensation claim) to date, he reports that his case has been wrongly thrown out by the Claims Board and that he has had to pursue litigation repeatedly to obtain a proper evaluation of his claim.

The long delays contribute to [the Applicant's] belief that he will never be able to put an end to this chapter of his life and continue causing him mental anguish and suffering.

The four-year delay in resolving his compensation claim has contributed to the ongoing acuteness of [the Applicant's] PTSD diagnosis. Every time a negative decision has been issued and [the Applicant] has had to seek further redress, [the Applicant] has been thrown into depression, profound anxiety, symptoms of dissociation, derealization, vertigo, suicidal thoughts, recurrent nightmares that impair his sleep, and intrusive experiences from the past. This not only serves to impede his recovery but is a retraumatization delaying progress, keeping his past alive in the present and impeding his ability to put these traumatic events in their proper perspective and from moving on in life.

66. The Respondent has not intended to disprove this medical certificate, but rather submits that it is too "vague" to establish compensable harm. The Tribunal disagrees with the Respondent and finds that it is exactly on point and relevant to the consideration of the issue of compensation under art. 10.5(b) of the Statute of the Dispute Tribunal. Accordingly, the psychologist's findings are accepted in full.

67. Consequently, the reference to the Tribunal's findings on liability and the Appeals Tribunal in *Kebede*, the ABCC and its Secretariat are indeed responsible for the undue delays in considering the Applicant's compensation claim, which was submitted on 20 January 2016—approximately 4½ years ago. In addition, these delays have been aggravated by: (a) the ABCC's Secretary's undue intervention in the ABCC's deliberations (Case No. UNDT/NY/2018/032), as also previously admitted by the Respondent proceedings; (b) the late scheduling of the ABCC's latest consideration of



Applicant's compensation claim (Case No. UNDT/NY/2020/008) as per the Dispute Tribunal's orders in Judgment No. UNDT/2019/098; and (c) the Respondent's disorderly handling of the present proceedings.

68. Taking into account, the severity of the Applicant's suffering as described in the psychologist's medical certificate and that these sufferings were by no means self-inflicted, the Tribunal finds the compensation award for non-pecuniary damages (or moral damages) should be set according to the highest levels (see, for instance, *Kallon* 2017-UNAT-742).

69. With reference to Judgment No. UNDT/2019/098 and the findings made therein on art. 10.4 of the Dispute Tribunal and the Applicant's submissions, the Tribunal finds that the Applicant is to be awarded three-months net-base salary in compensation for procedural delays, once for the three cases. Under art. 10.5(b) of the Dispute Tribunal's Statute, for the Applicant's additional harm, the Tribunal will separately award the Applicant USD20,000.

#### Reference to the Secretary-General for accountability

70. The Applicant also requests that the entire case file be submitted to the Secretary-General to enforce accountability under art. 10.8 of the Dispute Tribunal's Statute. The Tribunal, however, finds that its findings in this Judgment appropriately highlight its concerns with the Respondent's handling of the Applicant and the proceedings of the present cases and therefore sees no reason to do so.

#### **Conclusion**

71. In light of the foregoing, the Tribunal DECIDES that:

- a. The ABCC's decision that the Applicant's compensation claim for PTSD was time-barred is rescinded and—as soon as possible—the ABCC is to consider

the Applicant's claim on its merits under the applicable Appendix D from before 2017;

b. The Applicant is to be awarded three months of net-base salary in compensation under art. 10.4 of the Dispute Tribunal's Statute, and an additional USD20,000 in compensation under art. 10.5(b) of the Dispute Tribunal's Statute;

c. The compensation amount shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable.

*(Signed)*

Judge Joelle Adda

Dated this 10<sup>th</sup> day of July 2020

Entered in the Register on this 10<sup>th</sup> day of July 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York