



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

KARKARA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Andrea L. Zellan

Counsel for Respondent:

Marcus Joyce, UN Women

Prue Smith, UN Women

Introduction

1. The Applicant, a former Senior Advisor at the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”) in New York, at the P-5 level, contests the decision to dismiss him for serious misconduct. UN Women found that the Applicant (a) sexually harassed, exploited and abused two non-UN personnel; (b) committed harassment and abuse of authority against an intern with the United Nations; and (c) misused the United Nations Information Communication and Technology (“ICT”) resources to obtain and distribute pornography to and from his UN Women email account.

2. The Applicant submits that the facts on which the disciplinary measure was based are not established by clear and convincing evidence. The Applicant argues that the victims’ testimonies are not credible and that their allegations were fabricated with the assistance of several individuals who had serious disputes with him. The Applicant also submits that the investigation was biased and ignored exculpatory evidence and several witnesses breached the confidentiality requirement by speaking to the media, thereby undermining the integrity of the investigation.

3. The Respondent submits that based on the credible oral testimony of victims, which are further corroborated by other witnesses’ testimony and text messages and the Global Positioning System (“GPS”) records, the facts on which the disciplinary measure was based are established by clear and convincing evidence.

4. A hearing was held before the Tribunal on 20-22 July 2020 at which nine witnesses and the Applicant gave testimony.

5. For the reasons below, the Tribunal finds that the facts are established by clear and convincing evidence, that they amount to serious misconduct, and that the imposed sanction was proportionate to the offense.

Facts

6. The Applicant held various positions with the United Nations since 2000. From 2008 to 2011, the Applicant worked at the United Nations Children’s Fund (“UNICEF”) during which he was in charge of the “Junior 8 Summit”. In 2015, the Applicant was appointed as the Strategic Advisor to the Deputy Executive Director with UN Women. From 2016 until his separation in 2018, the Applicant served as a Senior Advisor, Strategic Partner and Advocacy to the Deputy Executive Director at the P-5 level.

Investigation and disciplinary process

7. On 27 June 2017, UN Women received a complaint of sexual misconduct and abuse of authority concerning the Applicant.

8. On 29 June 2017, the Office of Audit and Investigations (“OAI”), United Nations Development Programme (“UNDP”), notified the Applicant that he was subject of an OAI investigation against him regarding some allegations of sexual exploitation and abuse and abuse of authority.

9. On the same day, OAI also notified the Applicant that he was required to hand over various electronic devices to OAI, and OAI seized and searched the Applicant’s electronic devices.

10. On 8 August 2017, OAI notified the Applicant that OAI is investigating allegations of misuse of UN Women ICT resources by transmitting and storing pornographic material on UN Women ICT resources.

11. On 9 August 2017, OAI interviewed the Applicant.

12. On 7 September 2017, the Director, Division of Management and Administration, advised the Applicant that he had decided to place the Applicant on

administrative leave with pay for three months or until completion of a disciplinary process, whichever is earlier.

13. On 16 and 19 December 2017, OAI provided a draft investigation report and related exhibits for the Applicant's review and asked him to provide his comments.

14. On 17 January 2018, the Applicant provided his comments.

15. After conducting additional investigative steps, on 29 March 2018, OAI interviewed the Applicant for the second time.

16. On 2 and 6 August 2018, OAI provided an addendum to the 16 December 2017 investigation report for the Applicant's review and asked him to provide his comments.

17. On 7 August 2018, Newsweek (a weekly news magazine from the United States) reported that eight men had accused the Applicant of sexual misconduct. In this article, several of the witnesses who were interviewed by OAI were quoted in relation to allegations against the Applicant. This news was further covered by various other news outlets.

18. On 17 August 2018, the Applicant provided his comments.

19. On 23 August 2018, the Applicant received the final investigation report.

20. On 29 August 2018, the Applicant received the charge letter informing him that it was alleged that he had misused his position of authority to commit sexual exploitation and abuse, harassment, sexual harassment and abused his authority, and further misused UN Women ICT resources to obtain and distribute pornography to and from his UN Women email account.

21. On 12 September 2018, the Applicant provided his comments to the charge letter through his legal counsel.

22. On 14 September 2018, the Executive Director of UN Women notified the Applicant that she decided to impose on him the disciplinary measure of dismissal, having concluded that the established facts amount to serious misconduct. In particular, the Executive Director concluded that it had been established clearly and convincingly that the Applicant had committed sexual harassment and sexual exploitation and abuse against Mr. SL (name redacted) and Victim 2 (confidential witness), a non-UN personnel, and that he had committed harassment and abuse of authority with respect to Mr. OA (name redacted), a then intern with the United Nations. The Executive Director also concluded that the Applicant misused the United Nations ICT resources to obtain and distribute pornography to and from his UN Women email account.

23. On 18 September 2018, the Executive Director of UN Women made a public statement that a UN Women staff member was dismissed for sexual misconduct, without naming the Applicant's name.

24. The central issue to the present case is whether the facts on which the disciplinary measure was based are established by clear and convincing evidence.

The alleged transmission of pornographic images

25. During the investigation, OAI found that on three occasions in 2014, the Applicant sent images of male genitalia from his UN Women email account to his personal email account, and on one occasion in 2016, he sent images of male genitalia from his personal email account to his UN Women email account.

26. During the first interview with OAI, the Applicant stated that “[i]t is clearly a mistake of the phone” as he would never use his work email account to send those images.

27. OAI's Forensic Specialist examined the Applicant's personal and work phones. In a written statement provided to the Tribunal, OAI's Forensic Specialist explained that in the Applicant's work phone, all emails would be sent from his work email

account by default. With respect to the Applicant's personal phone, a default email account in the photo application was his personal email address whereas a default email account in the mail application was his work email address. The emails containing pornography images contained "Sent from My iPhone" signature, and OAI's Forensic Specialist explained that there was no way to determine from which device the emails were sent. Accordingly, OAI could not determine whether the Applicant transmitted pornographic images from his work phone or personal phone.

The Applicant's alleged offences against Mr. SL

28. In the 14 September 2018 sanction letter, it is stated that the following evidence, gathered during the OAI investigation, supported the findings of the Applicant's alleged offences against Mr. SL: Mr. SL's witness statements to OAI; contemporaneous WhatsApp exchanges between the Applicant and Mr. SL; GPS time and location records; a police report filed by Mr. SL; and corroborating third-party witness statements.

29. The record shows that Mr. SL, who had submitted a written complaint of sexual misconduct against the Applicant, was interviewed by OAI in June 2017. In July 2020, Mr. SL testified before the Tribunal. Throughout the investigation process, Mr. SL provided evidence in support of his written complaint, including WhatsApp messages and GPS information. Mr. SL also spoke to several individuals regarding his complaint against the Applicant, and OAI investigators interviewed those witnesses, who also testified before the Tribunal.

30. Mr. SL, who was 16 years old when he first met the Applicant, attended the Junior 8 Summit in 2009 as a member of the Canadian youth delegation. Mr. SL met the Applicant, who was working for UNICEF at the time, at the event.

31. In 2012, Mr. SL started a youth-led sustainable development non-profit organization. In 2013-14, Mr. SL got involved in the work of the United Nations and started having some interactions with the Applicant who was now working for UN

Women as a consultant. In 2016, the Applicant, who was then working with UN Women as Senior Advisor, Strategic Partner and Advocacy to the Deputy Executive Director in UN Women at the P-5 level, invited Mr. SL to a few working groups that he co-chaired and, thereafter, Mr. SL started having a close working relationship with the Applicant.

32. Mr. SL stated at the hearing that he was able to participate in working groups and had speaking opportunities at the United Nations forums, and he was made to understand by the Applicant that the Applicant gave him these opportunities. Mr. SL stated that the Applicant increasingly wielded power over him due to favors and opportunities he gave Mr. SL and demanded public praises in exchange.

33. In his written complaint, Mr. SL wrote that the Applicant repeatedly discussed what pornographic websites Mr. SL visited, what pornography Mr. SL watched, and how often Mr. SL masturbated. Mr. SL also wrote that the Applicant imitated sexual acts and made sexual noises and questioned why Mr. SL did not engage in sexual activities and jokes. During the interview with OAI, Mr. SL stated that the Applicant began joking, repeatedly, that Mr. SL should perform sexual acts in return for the Applicant's favors and asked him what pornography he watched and if he masturbated.

34. During his interview OAI, when asked by OAI's investigators if the Applicant had asked people how many times they masturbate, he responded that he "must have joked or something". When the investigators asked if the Applicant ever made any sexual jokes or gestures, he responded that he may have done that and gave an example where he made sexual gestures with one of his mentees, other than Mr. SL.

35. In June 2017, Mr. SL filed a complaint in which he detailed several allegations against the Applicant, and the Administration found that: (a) the Applicant inappropriately touched Mr. SL in Toronto in June 2016; (b) the Applicant asked for oral sex through WhatsApp messages in August 2016; (c) the Applicant asked for a real kiss through WhatsApp messages in September 2016; and (d) the Applicant inappropriately touched Mr. SL in Montreal in December 2016.

The incident in Toronto, Canada in June 2016

36. Mr. SL stated during his interview with OAI that in June 2016, the Applicant and Mr. SL attended an event in Toronto, Canada. Upon the Applicant's request, Mr. SL showed his genitals to the Applicant and allowed the Applicant to touch his genitals searching for moles in the context of an astrology reading. Mr. SL said that the Applicant sent his astrological readings to him via email thereafter.

37. Mr. SL stated that he did not mention this incident in the complaint of misconduct that he had filed in June 2017 because he did not have any evidence of this incident. He explained that he did not want to remember this incident and therefore deleted everything related to it. Mr. SL stated that he also did not include this incident in the complaint since in the end he consented to it and the Applicant did not forcefully do it.

38. After Mr. SL gave his statement to OAI, he sent screenshots of his GPS time and location on 6-7 June 2016 as shown in the Google map timeline to the OAI investigators. These showed that Mr. SL was in Toronto on those two days.

39. OAI searched the Applicant's work emails but did not find an email from the Applicant to Mr. SL regarding astrological readings. At the hearing, Mr. SL stated that he did not read any email containing astrological readings and must have deleted it.

40. During the interview with OAI investigators, the Applicant mentioned that Mr. SL came to his hotel room during the Toronto event.

41. In his comments to the draft investigation report, the Applicant stated that the incident in Toronto as described by Mr. SL never happened. At the hearing, the Applicant testified that he attended a youth event in Toronto in early June 2016, and that Mr. SL picked him up and dropped him off at the hotel where he was staying. The Applicant denied that Mr. SL came to his hotel room or that he performed an astrological reading on Mr. SL's body.

WhatsApp exchanges on 24 August 2016

42. Mr. SL claimed that, in August 2016, while the Applicant and Mr. SL were discussing setting up a meeting between the Mayor of Toronto and UN Women with respect to the Safe Cities initiative, the Applicant asked for oral sex in the following WhatsApp exchanges:

2016-08-24, 6:27 PM – [Mr. SL]: [thumbs up emoji] Toronto must declare [sic] as safe city indeed

2016-08-24, 6:43 PM – [Applicant]: Yeah man

2016-08-24, 6:43 PM - [Applicant]: Don't forget your promise

2016-08-24, 6:43 PM - [Applicant]: As you are a big man []

2016-08-24, 6:43 PM - [Applicant]: Now

2016-08-24, 8:00 PM - [Mr. SL]: Yes sir :)

2016-08-24, 8:00 PM - [Applicant]: Lol

2016-08-24, 8:00 PM - [Applicant]: Prepare

2016-08-24, 8:00 PM - [Applicant]: Lol

2016-08-24, 8:01 PM - [Applicant]: Practice

2016-08-24, 8:06 PM - [Mr. SL]: [laughing while crying emoji]

2016-08-24, 8:09 PM - [Applicant]: See videos

2016-08-24, 8:09 PM - [Applicant]: Educate see and send me Links

2016-08-24, 8:09 PM - [Applicant]: That you like

2016-08-24, 8:09 PM - [Applicant]: Lol

2016-08-24, 8:17 PM - [Mr. SL]: You know I don't watch those [smile with wink emoji]

2016-08-24, 8:19 PM - [Applicant]: Use imagination

2016-08-24, 8:19 PM - [Applicant]: Lol

43. Mr. SL stated that “don’t forget your promise”, “prepare”, and “practice” referred to an oral sex request and “videos” referred to pornographic videos.

44. During the interview, an OAI investigator commented to Mr. SL that it seemed that he was going along with the conversation. In response, Mr. SL explained that he said “Yes sir” because he initially thought that the Applicant was talking about the upcoming event. When the Applicant wrote “prepare” and “practice”, Mr. SL realized that the Applicant was referring to an oral sex request and he used crying and laughing emoji as he tried to deflect as much as he could but still going along with the joke. Mr. SL stated that he was afraid of repercussions if he directly asked the Applicant to stop.

45. At the hearing, Mr. SL stated that conversation about whether he watched pornography or not had come up before with the Applicant and that he had told the Applicant that he did not watch them due to his religious faith.

46. In his comments to the investigation report, the Applicant stated that “it is not apparent that they are talking about sexual acts at all, and even if they were, Mr. [SL]’s reply makes it abundantly clear that he was willing to go along with the same”.

47. At the hearing, the Applicant stated that he was not talking about anything sexual and that Mr. SL misunderstood the situation. The Applicant stated that when he wrote “you are a big man”, he meant that Mr. SL had lots of connections. The Applicant stated that he wrote “don’t forget your promise” in connection with the Safe Cities initiative. The Applicant said that “prepare” and “practice” referred to preparing a film. Regarding Mr. SL’s response, “You know I don't watch those”, the Applicant stated that he did not understand what Mr. SL was talking about. In response to a question as to why he was using laughing emoji if he was discussing something professional, the Applicant responded that “Lol” can be used in any setting.

WhatsApp exchanges on 6 September 2016

48. According to Mr. SL, in September 2016, the Applicant asked for a real kiss in the following WhatsApp exchanges:

2016-09-06, 10:22 PM – [Applicant]: You are super brilliant

2016-09-06, 10:26 PM - [Mr. SL]: [heart emoji]

2016-09-06, 10:28 PM - [Applicant]: Kiss

2016-09-06, 10:28 PM - [Applicant]: R u ready

2016-09-06, 10:29 PM - [Mr. SL]: [kiss emoji] your fav emoji lolllll

2016-09-06, 10:29 PM - [Applicant]: [kiss emoji]

2016-09-06, 10:29 PM - [Applicant]: We need to try real

2016-09-06, 10:29 PM - [Mr. SL]: XD

2016-09-06, 10:31 PM - [Applicant]: Lol

2016-09-06, 10:31 PM - [Applicant]: What's XD

2016-09-06, 10:35 PM - [Mr. SL]: [squinting face with stuck-out tongue emoji, laughing while crying emoji] kind of mix of these two? haha

2016-09-06, 10:36 PM - [Applicant]: Ok we need to do real

2016-09-06, 10:36 PM - [Applicant]: When we meet

2016-09-06, 10:37 PM - [Mr. SL]: I will kiss you on the cheek :)

2016-09-06, 10:37 PM - [Applicant]: Lol

2016-09-06, 10:37 PM - [Applicant]: Will Do

2016-09-06, 10:37 PM - [Applicant]: I was thinking of the hand

2016-09-06, 10:37 PM - [Applicant]: Lol

2016-09-06, 10:42 PM - [Mr. SL]: [laughing while crying emoji]

2016-09-06, 10:43 PM - [Applicant]: Joking

2016-09-06, 10:43 PM - [Mr. SL]: of course of course ;)

2016-09-06, 10:53 PM - [Applicant]: Lol

49. During the interview with OAI, Mr. SL stated that at this point the Applicant had sent him many similar messages and he found this message annoying. Mr. SL stated that he “can’t express a facial to [the Applicant] that, ‘Stop it,’ kind of picking a fight”, but also did not want the Applicant to think that he loved this exchange. Thus, he wrote “XD”, which is mix of laughing and crying. He felt that this is “as far as [he] could go without letting it go crazy”.

50. In the comments to the draft investigation report, the Applicant stated that if anything, it was Mr. SL who “initiates the alleged sexual undertones of the conversation” and the exchange shows that he clarified that he was joking about the whole situation. The Applicant also stated that Mr. SL distorted the meaning of “XD” for his benefit.

51. At the hearing, the Applicant stated that this conversation was a joke.

The incident in Montreal, Canada on 1 December 2016

52. On 1 December 2016, the Applicant attended an event at McGill University in Montreal. Mr. SL attended the event as well. During the interview with OAI, Mr. SL stated that after the event he and the Applicant had dinner together at the hotel where the Applicant was staying, and Mr. SL escorted the Applicant to his hotel room with his luggage. Mr. SL stated that in the hotel room, the Applicant opened pornography websites on Mr. SL’s laptop and invited Mr. SL to watch pornography with him. Mr. SL stated that he declined the invitation and took away his laptop, at which point the Applicant touched Mr. SL’s “crotch”. Mr. SL stated that he was in the hotel room for 15-20 minutes sometime between 10 p.m. and midnight, adding that he left Montreal before midnight.

53. As supporting evidence, Mr. SL sent an email to the OAI investigators containing a screenshot of GPS time and location on 1 December 2017 recorded in the Google map timeline. In the email to the OAI investigators, Mr. SL wrote that after the event at McGill University, he and the Applicant walked together to the hotel and they

had dinner together there. The GPS time and location information showed that Mr. SL was at McGill University from 7:04 p.m. to 9:15 p.m. and then walked for one minute to the hotel where the Applicant stayed. Then the GPS information shows that Mr. SL was at the hotel from 9:16 p.m. to 10:45 p.m. and drove to another city thereafter.

54. With respect to the GPS information, the Applicant submitted, as part of his comments dated 17 August 2017, a picture of himself and another person supposedly taken by Mr. SL at 9:22 p.m. The Applicant submits that this shows that Mr. SL was actually not at the hotel room with him when the Google map timeline puts him at the hotel but was in the vicinity of the hotel.

55. Subsequent to the interview, OAI investigators asked Mr. SL if they could access the laptop he used in the hotel room. Mr. SL said that this laptop was with his family who moved to another country. Later, Mr. SL informed OAI investigators that his family had thrown away his laptop.

56. During one of his interviews with OAI, the Applicant stated that Ms. MV (name redacted) organized an event in Montreal on 1 December 2016 and Mr. SL drove to the event from somewhere. After the event, the three of them, namely the Applicant, Ms. MV, and Mr. SL, tried to get together for lunch but Mr. SL had to leave to drive back “to Ottawa or something” and the Applicant came back to his hotel. The Applicant stated that he flew back to New York the next day (2 December 2016) and that this was all he remembered about the event in Montreal.

57. In the comments to the draft investigation report, the Applicant stated that the allegations concerning the Montreal event are “absurd and untrue”, and that he had “absolutely stated that no such incident has happened”.

58. At the hearing, the Applicant stated that he flew to Montreal to speak at an event as a keynote speaker. He said that it was a late afternoon event, which was attended by 400 to 500 people. He stated that he did not know that Mr. SL was also in attendance

and that Mr. SL “just showed up at the event”. The Applicant denied that Mr. SL came to his hotel room, stating that he was flying out early in the following morning.

59. The Tribunal notes that the Applicant and Mr. SL exchanged WhatsApp messages on 1 December 2016 as follows:

2016-12-01, 2:23 PM – [Applicant]: Hotel Omni Mont-Royal Pool []

2016-12-01, 3:18 PM – [Applicant]: R u coming tonight

2016-12-01, 4:54 PM – [Mr. SL]: Welcome back to Canada! CACACA

2016-12-01, 4:56 PM – [Mr. SL]: R u coming

...

2016-12-01, 5:14 PM – [Mr. SL]: Yes, but will be very late. I have other meetings in Montréal as well. I'm in a meeting right now.

2016-12-01, 5:18 PM - [Applicant]: Come fast

...

2016-12-01, 5:26 PM - [Applicant]: Over 350 students to learn SDGs

60. Shortly before filing his complaint against the Applicant with UN Women in June 2017, Mr. SL shared his complaints with several individuals, Mr. AK, Mr. JB, Ms. KG, and Ms. MS (names redacted). These witnesses were interviewed by OAI and all testified before the Tribunal.

61. Mr. AK, who is associated with the United Nations Major Group for Children and Youth (“MGCY”), stated that he had known Mr. SL since 2012. In early June 2017, he attended the Oceans Conference during which he and Mr. SL attended meetings and dinner together as part of a youth group. Mr. AK, Mr. SL, and two other youth activists had dinner together one night and they started discussing rumours about inappropriate conduct by the Applicant in the past. Then Mr. SL told the group what he experienced with the Applicant. Mr. AK heard Mr. SL saying that the Applicant told him, “I

promote you everywhere,” “I book you on panels,” and “You need to give me a blow job the next time we meet”.

62. Mr. JB was a consultant for UN Women from August to December 2016 and his supervisor was the Applicant. Mr. JB stated that he met both the Applicant and Mr. SL about the same time in March 2016. Mr. JB said that the Applicant and Mr. SL were very close to each other and he considered their relationship as mentor/mentee relationship. According to Mr. JB, the Applicant gave Mr. SL “quite a few opportunities to continue to engage his advocacy in the [United Nations] space”, and Mr. SL did “a lot of work for [the Applicant] as sort of a member of the working group”. Mr. JB gave an example of how Mr. SL supported the Applicant’s visit to Toronto by carrying his bags, calling a taxi, following him from meeting to meeting, and making introductions to people.

63. Mr. JB stated that in June 2017, Mr. SL told him that he experienced sexual harassment and abuse from the Applicant. Mr. JB stated that when he ran into Mr. SL at a coffee shop in New York City in June 2017, Mr. SL shared a bit about his complaint without providing all the details. Mr. SL told Mr. JB that he was looking into the process of reporting the Applicant’s behavior and asked if Mr. JB experienced anything like that. Mr. JB told Mr. SL that he did not.

64. Thereafter, Mr. SL and Mr. JB had several conversations and Mr. SL shared more details about his complaint. Mr. SL shared that the Applicant asked him if he watched pornography and if he masturbated. Mr. JB stated that Mr. SL also shared that in Montreal around December 2016, Mr. SL went to the Applicant’s hotel room to drop off his bags and the Applicant grabbed Mr. SL’s laptop and started looking up pornography and asked Mr. SL to watch pornography together, and then the Applicant grabbed Mr. SL’s genitals.

65. Ms. KG is a president of a private company in Canada and has been doing philanthropic work. At the hearing, Ms. KG stated that the Applicant reached out to her for advice on liaising with the Canadian government and she started getting

involved in the work of UN Women. Over time, Ms. KG had several disputes with the Applicant and their relationship got strained. Ms. KG added that it was the Applicant who introduced her to Mr. SL.

66. In late May 2017, Ms. KG hosted an event called “Not Yet for the Dress” in Canada which Mr. SL attended. Ms. KG stated during her interview with OAI that this is where Mr. SL shared his complaint about the Applicant, and they discussed this matter several times afterwards. During their first conversation, Ms. KG stated that she invited Ms. MS, an international human rights activist based in the United Kingdom, mainly focused on gender-based violence and violence against women, to their conversation due to Ms. MS’s experience in supporting victims. Mr. SL told them that the Applicant sexually harassed him at every private interaction. Mr. SL told Ms. KG and Ms. MS that the Applicant asked him if he watched pornography, what he did when watching pornography, and inquired about Mr. SL’s sexual proclivities. Ms. KG asked Mr. SL if it ever “got physical” and Mr. SL said yes and told her that the Applicant grabbed his genitals and tried to make him watch pornography in person.

67. Ms. MS stated during her interview with OAI that in June 2016, she attended an event organized by UN Women where she spoke about violence against women and she met several UN Women personnel including the Applicant. Ms. MS stated that her relationship with the Applicant became strained as she called him out once for his impolite behavior.

68. With regard to Mr. SL, Ms. MS stated that she first met Mr. SL at the Commission on the Status of Women (“CSW”) event held in March 2017. At a later event in May 2017, Mr. SL informed her of his complaint regarding the Applicant. Mr. SL told Ms. MS over the phone that the Applicant was asking him to watch pornography and if he ever had had sex with a man. Ms. MS did not ask for more details but advised Mr. SL to gather evidence, put everything in writing and report these behaviors to the police, UN Women, etc.

The Applicant's alleged offenses against Victim 2

69. In the 14 September 2018 sanction letter, it is stated that Victim 2's witness statement gathered during the OAI investigation supported the findings of the Applicant's alleged offenses against Victim 2.

70. Victim 2, a non-UN personnel, was interviewed by OAI via telephone in March 2018 regarding his complaint against the Applicant. Mr. SL told OAI investigators that Victim 2 was also subjected to "abuse of authority" by the Applicant, and Mr. AK, who provided a statement regarding Mr. SL's complaints, referred Victim 2 to the OAI investigators. While agreeing to be interviewed, Victim 2 chose to remain anonymous. At the interview, Victim 2 mentioned that he is involved in the youth issues and works on volunteer advocacy or resource mobilization. He was first introduced to the Applicant in 2015 as they were both involved in youth issues, and he worked together with the Applicant's team for the CSW event in March 2016.

71. Victim 2 stated that the Applicant sent him WhatsApp messages of sexual nature, such as the Applicant's picture in a bath and pornographic contents and asked him to send "a picture of dick". Victim 2 stated that he received these messages before he changed his phone and that he therefore no longer had these records.

72. Victim 2 also stated during the interview with OAI that either on the CSW Youth Forum day or the following day in 2016, both the Applicant and he attended some workshops. During a break in one of them, Victim 2 went to a restroom and the Applicant followed him. Victim 2 does not know if the Applicant deliberately followed him or not, but the Applicant came to him and told him, "okay, show me" and commented "you have smaller one", which made Victim 2 uncomfortable. Victim 2 understood that the Applicant asked him to show his genitals. There was nobody else in the restroom when this incident happened. Victim 2 stated that this incident happened in a building that is also occupied by offices of the United Nations, which is located on the Second Avenue. He stated that he does not remember the name of the

building. He further clarified that this building was located outside the United Nations premises.

73. Victim 2 further stated that, other than the incidents he described, the Applicant was not a bad person to him in other ways.

74. During one of his interviews with OAI, the Applicant denied that he sent his picture in a bath or requested anyone to send him “a picture of dick”. Regarding the incident at the restroom, the Applicant denied the allegations and stated that the event was held at the Salvation Army building, and he does not even remember going to the restroom. He further suggested that the OAI investigators go to the site and check the restrooms as they are normally dividers between the urinals.

75. OAI’s search of the Applicant’s phones did not find any private WhatsApp communication between Victim 2 and the Applicant nor any pornographic messages sent from the Applicant to Victim 2. OAI only discovered that both the Applicant and Victim 2 were part of a group chat consisting of 240 members and call records showed that they had phone conversations. OAI further contacted Victim 2 in an attempt to obtain his WhatsApp records but did not receive any response from him.

76. Regarding the restroom incident, OAI confirmed that the CSW Youth Forum was held at the Salvation Army building, which is located between the Third Avenue and Lexington Avenue, on 11 March 2016 as well as at the Conference Building of the United Nations on 12 March 2016. OAI conducted a site visit to a men’s restroom located in the basement of the Salvation Army building, which was used by the event participants according to a building staff. The said building staff told OAI investigators that there was only one toilet urinal for men that was functional during the CSW event in March 2016 as another urinal was out of order at the time. OAI also visited the men’s restrooms near conference rooms in the Conference Building of the United Nations where the CSW Youth Forum was held on 12 March 2016 and found that there were side-by-side urinals in the restrooms with no dividers.

77. In the comments to the draft investigation report, the Applicant denied the allegations by Victim 2 and pointed out that the alleged incident could not have happened as described by Victim 2 due to the set-up of the urinal stalls at the men's restroom at the Salvation Army building. At the hearing, the Applicant again denied the allegations by Victim 2.

The Applicant's alleged offenses against Mr. OA

78. The 14 September 2018 sanction letter states that a witness statement from Mr. OA and a corroborating statement from a third-party witness, gathered during the OAI investigation, supported the findings of the Applicant's alleged offenses against Mr. OA.

79. Mr. OA, a then intern with the United Nations, was interviewed by OAI in August 2017 regarding his complaint against the Applicant, and, in July 2020, he testified before the Tribunal. Mr. OA confided his complaint against the Applicant to another intern, Ms. MP, during his internship. Ms. MP was interviewed by OAI and testified before the Tribunal.

80. A few days before the hearing, Mr. OA submitted a written statement to the Tribunal which included additional allegations against the Applicant, and Mr. OA also gave testimony regarding this new matter. However, since the new allegations were not part of the investigation nor did it form a factual basis of the disciplinary measure imposed on the Applicant, the Tribunal will not consider them in this judgment.

81. During the interview with OAI, Mr. OA stated that he worked at the United Nations Human Settlement Programme ("UN-Habitat") as an intern for four months between May and August 2016. While attending meetings held at UN Women, he got acquainted with the Applicant, who took his number, became his mentor, assisted him in improving his social media profiles and provided him with information about the United Nations and its career opportunities. Mr. OA stated that the Applicant is "a very good guy" but that sometimes he made inappropriate remarks, such as messaging him

at night to have conversation and asking him to take his pictures. At the Applicant's request, Mr. OA sent the Applicant a picture of himself doing laundry and of another one eating with the family. Mr. OA stated that it was "nothing really inappropriate", but he found this kind of conversation "odd".

82. In a written statement to OAI dated 7 July 2020, Mr. OA stated that the Applicant asked, "at like 9:00 PM", what he was doing and asked for his picture. Since Mr. OA felt that the Applicant was nice, "never really came [across] as a bad person", Mr. OA sent a picture of himself or what he was working on to the Applicant. Mr. OA felt that "it was weird" when the Applicant would "get moody" after Mr. OA did not respond to the Applicant's texts. Mr. OA showed these messages to Ms. MP during his internship and asked her "is this normal, is this actually my fault or is he just weird?". At the beginning, Mr. OA was more confused than uncomfortable, but the more it happened the more uncomfortable he became. At the hearing, Mr. OA confirmed his statement to OAI during his interview as well as what his written statement of 7 July 2020.

83. Ms. MP, a former UN-Habitat intern who worked with Mr. OA, was also interviewed by OAI in August 2017, and in July 2020, she testified before the Tribunal.

84. During the interview with OAI, Ms. MP stated that she knew and spoke to the Applicant several times throughout her internship with UN-Habitat. Ms. MP stated that Mr. OA showed her texts he received from the Applicant late at night, such as "why don't you ever message me?" or asking him to send his pictures. Mr. OA asked her, "Is this normal? Why is he sending me this? I don't get it, like, this is weird, right?". Ms. MP stated that she spoke with Mr. OA about this matter multiple times between June and August 2016. At the hearing, Ms. MP confirmed her statement to OAI. With regard to the relationship between Mr. OA and the Applicant, Ms. MP considered that Mr. OA being a young man, his relationship with the Applicant, who was his superior, was inappropriate. However, she testified before the Tribunal that Mr. OA did not interpret it that way.

85. At the hearing, the Applicant stated that Mr. OA was very bright and he had given advice to Mr. OA. With respect to pictures the Applicant requested from Mr. OA, the Applicant testified that it must have been related to the UN Women's social media campaign encouraging young men to do un-stereotypical activities. He further stated that Mr. OA was an active member of that campaign. The Applicant denied having sent the texts described by Mr. OA.

Consideration

Standard of review in disciplinary cases

86. The general standard of judicial review in disciplinary cases requires the Dispute Tribunal to ascertain: (a) whether the facts on which the disciplinary measure was based have been established; (b) whether the established facts legally amount to misconduct; and (c) whether the disciplinary measure applied was proportionate to the offence (see, for example, *Abu Hamda* 2010-UNAT-022, *Haniya* 2010-UNAT-024, *Portillo Moya* 2015-UNAT-523, *Wishah* 2015-UNAT-537, *Turkey* 2019-UNAT-955, *Ladu* 2019-UNAT-956, *Nyawa* 2020-UNAT-1024). When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (see, for instance, *Molari* 2011-UNAT-164, and *Ibrahim* 2017-UNAT-776).

87. In *Negussie* 2020-UNAT-1033, at paras. 45-46, the Appeals Tribunal explained what the clear and convincing evidence means:

... Clear and convincing evidence of misconduct, including as here, serious misconduct, imports two high evidential standards. The first ("clear") is that the evidence of misconduct must be unequivocal and manifest. Separately, the second standard ("convincing") requires that this clear evidence must be persuasive to a high standard appropriate to the gravity of the allegation against the staff member and in light of the severity of the consequence of its acceptance. Evidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn from other direct evidence.

... In determining whether these evidential standards have been established in any case, the [Dispute Tribunal] must consider and weigh not only the evidence put forward by witnesses produced for the Secretary-General, but also any countervailing evidence adduced for the staff member, and any relevant and probative documentary evidence which may either corroborate or cast doubt on the recollections of witnesses.

Whether the facts on which the disciplinary measure was based have been established

88. In this case, the sanction letter concluded that the Applicant committed (a) sexual exploitation and abuse as well as sexual harassment against Mr. SL, (b) sexual exploitation and abuse against Victim 2, and (c) harassment and abuse of authority against Mr. OA. The sanction letter also concluded that the Applicant misused UN Women ICT resources to obtain and distribute pornography to and from his UN Women email account. The Administration reached these conclusions based on witness statement from Mr. SL, Victim 2 and Mr. OA, WhatsApp exchanges between Mr. SL and the Applicant, GPS time and location information relating to the incidents of sexual abuse, corroborating statement from third-party witnesses, and a forensic review of the Applicant's work email account.

89. In the examination of the evidence of sexual misconduct, the Tribunals provided the following guidance in *Hallal* UNDT/2011/046, para. 55 (affirmed by *Hallal* 2012-UNAT-207):

... [...] [I]n sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required ... It is not always the situation in sexual harassment cases that corroboration exists in the form of notebook entries, email communications, or other similar documentary evidence, and the absence of such documents should not automatically render a complaining victim's version as being weak or meaningless. As is always the case, any witness testimony should be evaluated to determine whether it is believable and should be credited as establishing the true facts in a case.

90. The Appeals Tribunal affirmed the Dispute Tribunal's finding and added that the applicant "failed to present any evidence that contradicted the [complainant]'s

evidence or that showed that it was unreasonable to accept her evidence in light of other evidence” (*Hallal* 2012-UNAT-2007, para. 30).

91. Based on the record on file and the oral evidence provided at the hearing held on 20-22 July 2020, the Tribunal will examine whether the facts on which the disciplinary measure was based were established by clear and convincing evidence.

The transmission of pornographic images

92. The evidence shows that pornographic images were transmitted between the Applicant’s work and personal email address in 2014 and 2016. The Applicant does not dispute this fact, but only submits that he never intentionally transmitted pornographic images using his work email address and that it must have occurred inadvertently due to the setting of his phones where he had access to both email accounts. However, the Applicant does not deny that this is still a technical violation of UN Women’s ICT policy. OAI’s forensic investigation shows that the transmission of the images could possibly have been caused by the default setting of the Applicant’s phones, which could have been set to transmit emails from his work email account by default.

93. Regardless of the Applicant’s intent, the Tribunal finds that it is established by clear and convincing evidence that he transmitted pornographic images (images of male genitalia) to and from his UN Women email account.

Mr. SL

94. In relation to Mr. SL, there are four incidents which formed the basis of the disciplinary measure against the Applicant.

95. The first incident occurred in Toronto, Canada in June 2016. Mr. SL stated that he allowed the Applicant to touch his genitals searching for moles in the context of an astrology reading in a hotel room where the Applicant was staying. The Applicant denied the allegations.

96. Considering the entire evidence, the Tribunal finds Mr. SL's accounts credible and notes that they are further corroborated by other evidence. Mr. SL submitted GPS information which shows that he was in Toronto in June 2016 and stated that he went to the Applicant's hotel room where he was staying. The Applicant confirmed that he attended the event in Toronto in June 2016 and Mr. SL picked him up and dropped him off at the hotel where he was staying. While the Applicant denied at the hearing that Mr. SL came to his hotel room, during the interview with OAI, the Applicant mentioned that Mr. SL came to his hotel room in Toronto. Therefore, the Tribunal finds that Mr. SL indeed came to the Applicant's hotel room in Toronto.

97. Further, Mr. SL's accounts contain specific details of the incident which are partly corroborated by other evidence. Mr. SL stated that he allowed the Applicant to touch his genitals searching for moles in the context of an astrology reading. Indeed, during the interview, the Applicant stated that astrology readings could be performed by looking for moles in the body parts, such as hand, face, back, or chest, and he has done astrology readings for his close friends and family members when requested.

98. Mr. SL stated that the Applicant sent him astrological readings by email thereafter but did not produce such email because he stated that he did not want to remember this incident and deleted everything related to it. This email was also not found in the Applicant's electronic devices.

99. At the hearing, the Applicant stated that his colleagues and two of his cousins were at the hotel as his cousins came to see him. The Applicant stated that after attending the event in Toronto, he went to another city in Canada to visit his cousin. When questioned if his colleagues or cousins could be called as witnesses, the Applicant stated that he could provide full names of these potential witnesses, but he never did.

100. While the email containing astrological reading was not produced, considering that Mr. SL's accounts are corroborated by other evidence, including GPS information, the Applicant's own admission that Mr. SL drove him to his hotel and came to his hotel

room, and the fact that the Applicant conducted astrological readings for his friends and family by looking at the moles in the body parts, the Tribunal finds that Mr. SL's accounts with regard to the Toronto incident are credible and established by clear and convincing evidence.

101. The second incident concerns WhatsApp exchanges between the Applicant and Mr. SL in August 2016. Mr. SL stated that in this exchange, "don't forget your promise", "prepare", and "practice" referred to a request for oral sex and "videos" referred to pornographic videos.

102. The Applicant does not dispute the authenticity of these exchanges; the question is whether Mr. SL's explanation regarding this exchange is credible.

103. At the hearing, the Applicant stated that he was not talking about anything sexual and that Mr. SL misunderstood. Instead, he gave his interpretation of the exchanges in question. Specifically, the Applicant stated that he wrote "don't forget your promise" in connection with the Safe Cities initiative, and his "prepare" and "practice" comments were regarding the preparation of a film. In response to his comments "see videos" and "educate see and send me [l]inks [t]hat you like", Mr. SL responded that "[y]ou know I don't watch those". Regarding this last comment, the Applicant testified that he did not understand what Mr. SL was talking about. However, in the written exchanges, the Applicant responded "[u]se imagination Lol". Contrary to the Applicant's testimony, this written exchange shows that the Applicant understood Mr. SL's comments. The Tribunal also notes that the tone of the exchange clearly denotes a personal rather than professional relationship between the Applicant and Mr. SL, which is in line with the other overly sexual messages exchanged between them (see below) as well as the Applicant's admission that he had made sexual jokes in the past.

104. Therefore, the Tribunal is not convinced by the Applicant's explanation and finds that Mr. SL's accounts relating to this exchange are credible and established by clear and convincing evidence.

105. The third incident concerns WhatsApp exchanges on 6 September 2016. The Applicant does not dispute the authenticity of this exchange in which he tells Mr. SL that they need to try kiss for real when they meet. In response, Mr. SL replies that he will kiss the Applicant on the cheek and the Applicant responded that he was joking and thinking of the hand.

106. At the hearing, the Applicant stated that this conversation was a joke.

107. Since the authenticity of this exchange is not disputed and the meaning of this exchange is plain, the Tribunal finds that it has been demonstrated by clear and convincing evidence that they had this conversation as described by Mr. SL.

108. The fourth incident occurred in Montreal in December 2016. Mr. SL stated that he escorted the Applicant to his hotel room with his luggage where the Applicant grabbed Mr. SL's laptop, opened pornography websites and invited Mr. SL to watch pornography with him. When Mr. SL declined that invitation and took away his laptop, the Applicant touched Mr. SL's "crotch". Mr. SL stated that he stayed in the hotel room for 15-20 minutes between 10 p.m. and midnight.

109. Mr. SL submitted the screenshot of GPS time and location on Google map timeline, which shows that he was at McGill University from 7:04 p.m. to 9:15 p.m., walked over to the hotel for one minute, which is located right across McGill University, and Mr. SL was at the hotel from 9:16 p.m. to 10:45 p.m.

110. The Applicant denied the allegations. Initially, during the interview with OAI, the Applicant stated after the event, Ms. MV, Mr. SL and himself tried to get together for lunch but Mr. SL had to leave to drive back and the Applicant came back to the hotel. The Applicant later submitted a picture of himself and Ms. MV taken by Mr. SL at 9:22 p.m. on the street. The exact location where the picture is taken is not clear; it shows that the picture was taken in downtown Montreal. Since the picture was taken only a few minutes after Mr. SL arrived at the hotel, which is also located in downtown Montreal, this picture alone does not refute the GPS information, especially since Mr.

SL stated that he was in the Applicant's hotel room for 15-20 minutes after 10:00 p.m. Rather, this evidence corroborates Mr. SL's account regarding the timeline and contradicts the Applicant's testimony that they were trying to have lunch after the event but that Mr. SL left to drive back.

111. At the hearing, the Applicant stated that he did not know that Mr. SL was coming to the event and that Mr. SL "just showed up". He again denied that Mr. SL came to his hotel room. However, the Tribunal notes that in the WhatsApp messages exchanged on the day of the event, the Applicant gave the hotel name to Mr. SL and repeatedly asked Mr. SL if he was coming. Mr. SL responded that he had other meetings in Montreal and thus he would be late. The Applicant then responded, "Come fast". This exchange entirely contradicts the Applicant's testimony that he did not know that Mr. SL was coming and that Mr. SL just "showed up". The Tribunal finds that this contradiction undermines the Applicant's credibility.

112. The Applicant submits that Mr. SL's evidence is not credible because Mr. SL failed to submit his laptop as evidence and let his family destroy this important piece of evidence. While it is regrettable that this evidence was not made available to OAI investigators, it does not in itself undermine Mr. SL's credibility.

113. Considering that Mr. SL's accounts are consistent with and corroborated by GPS location and time evidence and a picture submitted by the Applicant and that the Applicant's accounts lack credibility due to contradictions and inconsistencies, the Tribunal finds that Mr. SL's accounts are credible and thus are established by clear and convincing evidence.

114. The Tribunal will then address the Applicant's main argument to challenge Mr. SL's credibility. The Applicant questions Mr. SL's credibility since Mr. SL kept contact with the Applicant even after the alleged abuse occurred repeatedly in June, August, September and December 2016. In particular, the Applicant points out that even after the time when Mr. SL claims that the Applicant touched him inappropriately in June 2016 and sent him inappropriate messages in August and September 2016, Mr.

SL volunteered to pick up the Applicant at the Toronto airport on 8 September 2016. The Applicant also points out that Mr. SL sat alone with the Applicant for two hours as he drove the Applicant to a conference in mid-January 2017 in Waterloo, Canada. The Applicant further points out that Mr. SL gave him a surprise award at a brown bag dialogue in May 2017. The Applicant submits that these conducts show that Mr. SL was never uncomfortable with the Applicant and that he fabricated allegations against him only after he told Mr. SL to stop collecting fees at events the Applicant attended and to stop misusing UN Women's logo to promote events that UN Women was not sponsoring.

115. Mr. SL stated at the hearing that he continued to stay in touch with the Applicant because, based on his past experience with the Applicant, he did not want to make the Applicant unhappy which could lead to "disadvantages" for him. He said that he wanted to maintain the "*status quo*" as it would be "foolish to suggest that he was to do something about" the Applicant's behavior.

116. In October 2016, when Mr. SL wrote that he was thrilled to announce that 156 people were trained as United Nations Sustainable Development Goals Advocates, the Applicant responded, "Shocking that you don't [mention] me or thank me". Mr. SL responded, "I thanked you on emails, Twitter, Facebook, organization newsletter, WhatsApp groups - and even that post had a picture of you right at the centre, top, right, bottom :)". The Applicant wrote back that Mr. SL left out his name in the message and demanded to repost the message with his name since he does not "want [Mr. SL] to be seen as selfish". Mr. SL reposted the message and apologized to the Applicant.

117. On 13 December 2016, the Applicant wrote to Mr. SL, "Dude you never acknowledge the support that we have been giving and projection" and "[s]ad how [p]eople forget". Mr. SL then responded, "Of course I acknowledge! In order to acknowledge it well on all that I do, I even paid a designer to come up with our working group logo!".

118. On 30 January 2017, the Applicant wrote to Mr. SL, “Dude it’s such a pity that [y]ou don’t try to [m]ake any contact since you have come[.] The last thing I expected was you to change[.] Since you have[,], I will too”. Mr. SL then responded that he was at a forum and he planned to visit the Applicant after the forum.

119. As already concluded above, the evidence corroborates Mr. SL’s accounts of the events and his conduct after the facts does not disprove it. Moreover, given the Applicant’s position of authority, Mr. SL’s fear of retaliation seems a plausible explanation. The above exchanges between Mr. SL and the Applicant further show that it was reasonable for Mr. SL to fear that any change to his behavior towards the Applicant could have jeopardized their relationship and caused negative impact on him. Thus, the Tribunal finds that Mr. SL’s fear and reason for keeping in touch with the Applicant after the incidents are reasonable and credible.

120. The Applicant also argues that Mr. AK, Ms. KG, and Ms. MS all had serious unrelated disputes with him and thus they conspired with Mr. SL to fabricate allegations against him.

121. The Applicant points out inconsistencies among the accounts given by Mr. SL, Ms. KG, and Ms. MS regarding their interactions. In particular, the Applicant argues that they provided inconsistent accounts about when exactly Mr. SL shared the details of his complaint and whether he shared a written report with Ms. KG and Ms. MS. The Applicant also states that they provided different accounts concerning their conduct relating to the August 2018 media stories. The Applicant argues that these inconsistencies show that either Mr. SL told different stories to different people or that they cannot keep their fabrications straight. With regard to Mr. AK, the Applicant argues that his statements to OAI investigators and testimonies should be viewed with skepticism since he made a lot of unproven claims about the Applicant’s conduct to OAI investigators. Further, the Applicant argues that Mr. SL’s election to a high-level MGCY position after he filed a complaint against the Applicant suggests that Mr. AK

could have encouraged Mr. SL to fabricate his allegations and rewarded him with a high-level MGCY position.

122. It is evident that the Applicant had various disputes with these individuals and that Mr. AK, Ms. KG, and Ms. MS all had animosity toward the Applicant. However, given that these testimonies provide some corroboration to Mr. SL's accounts, which the Tribunal already found to be supported by other evidence, such as WhatsApp messages and GPS information, the fact that these individuals may have harboured animosity toward the Applicant does not discredit Mr. SL's accounts. Further, Mr. JB, who is not claimed to bear any ill will against the Applicant, also corroborated Mr. SL's accounts.

123. It is possible that Mr. AK, Ms. KG, and Ms. MS were motivated by their animosity toward the Applicant when they assisted Mr. SL in filing his complaint against the Applicant. However, this alone does not prove that Mr. SL's complaints were fabricated with the assistance of these individuals.

124. Regarding Mr. SL's election to a MGCY position, the evidence shows that Mr. SL had been already involved in youth advocacy work and had worked with Mr. AK previously. There is no evidence to support a claim that Mr. SL fabricated allegations to get a position with MGCY.

125. Therefore, the Applicant's claims of conspiracy against him are without merit.

Victim 2

126. Victim 2 stated during the interview with OAI that the Applicant sent him inappropriate text messages of sexual nature and that the Applicant followed him to the men's restroom and saw and commented on his genitalia. The Applicant denies all the allegations.

127. While Victim 2 stated that the Applicant sent him inappropriate text messages, he was not able to produce these messages. OAI conducted a forensic review of the

Applicant's electronic devices and did not discover any of these text messages. Therefore, this allegation is not corroborated by any other evidence.

128. OAI investigators stated in the investigation report that they found the Victim 2's account credible as he was able to plausibly describe the nature of the pictures and videos that were sent to him which was consistent with the testimonies of other victims. However, since Victim 2 remained anonymous throughout the proceedings, including before the Tribunal, the Tribunal was not able to examine the credibility of Victim 2 nor did the Applicant have an opportunity to cross-examine him.

129. Considering that Victim 2's account in this regard is not otherwise corroborated and that the Applicant denies the allegations, the Tribunal finds that these allegations were not established by clear and convincing evidence.

130. Regarding the alleged incident at a men's restroom during the CSW Youth Forum in 2016, there is noticeable discrepancy between Victim 2's account and other evidence. In particular, Victim 2 stated that this incident occurred at the building outside the United Nations premises, and OAI investigators discovered that due to the set-up of the men's restroom used by the event participants at the Salvation Army building, where the CSW Youth Forum was held, it was not possible for the incident to have occurred as described by Victim 2. Nevertheless, OAI investigators concluded that the incident must have occurred at the Conference Building of the United Nations, stating that Victim 2's testimony should be weighed against the fact that Victim 2 only visited New York to participate in the event and was not entirely sure where the incident occurred.

131. However, it is the Administration who bears the burden of establishing the factual basis of the disciplinary measures by clear and convincing evidence. Considering that this discrepancy could not be resolved due to the fact that Victim 2 remained anonymous and therefore could not be further examined at the hearing, the Tribunal finds that this allegation is not established by clear and convincing evidence.

132. The Tribunal finds that all the allegations by Victim 2 are not established by clear and convincing evidence.

Mr. OA

133. During the interview and at the hearing, Mr. OA testified that the Applicant sent him messages at night to have a conversation and asked him to take and send pictures of himself, which he did. Mr. OA's testimony is corroborated by Ms. MP's testimony. Mr. OA confided the Applicant's behavior to Ms. MP contemporaneously as he found it to be "weird".

134. The Applicant does not categorically deny that he asked for Mr. OA's pictures. During the interview, the Applicant admitted that he sometimes asked other people to send their "selfies". But he states that it must have been related to social campaign. He denies all the other allegations.

135. Having heard Mr. OA at the hearing and having reviewed the entire evidence, the Tribunal finds Mr. OA's testimony credible. While the text messages in question were not produced, the evidence shows that Mr. OA shared his concerns about the Applicant's behavior with Ms. MP when these incidents occurred. During the interview and at the hearing, Ms. MP testified that Mr. OA showed messages and shared his concerns multiple times throughout their internship and she recollected the specific details of these messages.

136. There is no evidence, nor is it suggested that Mr. OA had any interest in making false statements against the Applicant.

137. In light of the above, the Tribunal finds that Mr. OA's accounts are credible and established by clear and convincing evidence.

Whether the established facts legally amount to misconduct

138. The Tribunal found that the following facts are established by clear and convincing evidence: (a) the Applicant transmitted pornographic images using his work email account; (b) the Applicant inappropriately touched Mr. SL in Toronto and Montreal and sent WhatsApp messages asking for oral sex and kisses; (c) the Applicant sent Mr. OA messages at night to have a conversation and asked Mr. OA to take and send pictures of himself. The Tribunal will consider whether the established facts legally amount to misconduct. As the Tribunal found that the allegations by Victim 2 are not established by clear and convincing evidence, this part will not be further examined.

139. The sanction letter states that the established facts legally amount to misconduct as the Applicant's actions violated staff regulations 1.2(a) and (b), staff rule 1.2(e), ST/SGB/2003/13 (Special Measures for Protection from Sexual Exploitation and Sexual Abuse), UN Women Policy on Workplace Harassment and Abuse of Authority, and UN Women Standard on Acceptable Usage of Information and Communication Technology Resources and Data.

140. Staff regulations 1.2(a) and (b), which are applicable to all the misconduct charges, provide as follows:

(a) Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them;

(b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status;

Does the transmission of pornographic images amount to misuse of ICT resources?

141. Under the UN Women Standard on Acceptable Usage of Information and Communication Technology Resources and Data, authorized users are permitted

limited personal use of ICT resources provided that such use is “consistent with the highest standard of conduct for international civil servants (among the uses which would clearly not meet this standard are use of ICT resources for purposes of obtaining or distributing pornography)” (see sec. 2.3.1(a)).

142. In this case, the transmission of pornographic images to and from the Applicant’s work email account cannot be considered permitted personal use of ICT resources and therefore the established facts amount to misuse of ICT resources.

Does the Applicant’s conduct against Mr. SL amount to sexual exploitation and abuse and sexual harassment?

143. Staff rule 1.2(e) provides as follows:

(e) Sexual exploitation and abuse is prohibited. Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or the age of consent locally, except where a staff member is legally married to a person who is under the age of 18 but over the age of majority or consent in his or her country of citizenship. Mistaken belief in the age of a child is not a defence. The exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. United Nations staff members are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse.

144. ST/SGB/2003/13 provides as follows:

Section 1

Definitions

For the purposes of the present bulletin, the term “sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term “sexual

abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

...

Section 3

Prohibition of sexual exploitation and sexual abuse

3.2 ...

(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;

145. The UN Women Policy on Workplace Harassment and Abuse of Authority defines sexual harassment as follows:

5. Sexual Harassment, as one form of workplace harassment, is understood as any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature (including pornography, sexually-colored remarks) that has or that might reasonably be expected or be perceived to cause offense or humiliation to another.

6. Sexual harassment may occur when it interferes with work, is made a condition of employment or when it creates an intimidating, hostile or offensive environment. Sexual harassment normally implies a series of incidents. However, a one-time incident could fall within the definition of sexual harassment if it has an unambiguously offensive sexual character. Sexual harassment may be present regardless of the intent of the alleged offender. Both male and female staff members can be either the injured party or the offender.

146. The Tribunal finds that the Applicant’s conduct against Mr. SL amount to sexual exploitation and abuse as well as sexual harassment.

147. The Applicant was a senior staff member at the United Nations, and he provided mentorship and guidance to Mr. SL who was a young individual leading a non-profit organization he founded. Mr. SL stated at the hearing that the Applicant made him understand that the Applicant gave him opportunities to participate in working groups and to have speaking opportunities at the United Nations forums. Mr. SL also stated

that the Applicant increasingly wielded power over him due to favors and opportunities he gave Mr. SL and demanded public praises.

148. During one of his interviews with OAI, the Applicant stated that he always demanded loyalty from members of a youth group who he mentored. He explained that this means he expected these young people to retweet his tweets, to invite him to events as a speaker, and do various things he asked for in relation to youth and gender equality issues. He gave an example as Mr. SL to whom he asked to create self-advertisement materials for him and to provide him with technological support.

149. In written exchanges between the Applicant and Mr. SL, the Applicant asked for public acknowledgement and praises for support he gave to Mr. SL, and even threatened that he would change his behavior toward Mr. SL when he felt that Mr. SL was not acting toward him in the way he expected.

150. In light of the above, the Tribunal finds that Mr. SL was clearly in a position of differential power and vulnerability. The Applicant then exploited this position for sexual purposes when he inappropriately touched Mr. SL in Toronto and Montreal and made sexual jokes. The Applicant's conduct toward Mr. SL caused offense and humiliation to Mr. SL. Even if Mr. SL did not clearly express his discomfort and it appeared that he went along with the Applicant's sexual jokes and physical touching, the Applicant should have realized that his conduct might reasonably be expected or be perceived to cause offense and humiliation to Mr. SL.

151. Therefore, the Tribunal concludes that the Applicant's conduct against Mr. SL violated staff rule 1.2(e), ST/SGB/2003/13, and The UN Women Policy on Workplace Harassment and Abuse of Authority.

Does the Applicant's conduct against Mr. OA amount to harassment and abuse of authority?

152. In accordance with the UN Women Policy on Workplace Harassment and Abuse of Authority, harassment and abuse of authority are defined as follows:

Workplace Harassment

2. Workplace harassment is any improper and unwelcome conduct by a staff member or non-staff personnel against another staff member or non-staff personnel or a group thereof that has or that might reasonably be expected or be perceived to cause offence or humiliation to another.

3. Harassment may be present in the form of words, gestures, electronic communication forms, or other actions that annoy, alarm, abuse, demean, intimidate, belittle, or cause personal humiliation or embarrassment to another, or cause an intimidating, hostile or offensive work environment. It includes harassment based on any grounds, such as race, religion, color, creed, ethnic origin, physical attributes, gender or sexual orientation. Harassment may be deliberate, unsolicited, and coercive. It will often consist of a series of incidents, but it may be brought about by a single incident only. Harassment may be present regardless of the intent of the alleged offender.

...

Abuse of Authority

7. The abuse of authority is the improper use of a position of influence, power or authority by a staff member or non-staff personnel against another staff member or non-staff personnel or a group thereof. This is particularly serious when the person in question uses his or her influence, power or authority to arbitrarily influence the career or employment conditions (including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion) of another staff member or non-staff personnel.

8. Abuse of authority can include a one-time incident or a series of incidents. It may also consist of conduct that creates a hostile or offensive work environment, which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion.

153. The Tribunal is satisfied that the Applicant's conduct against Mr. OA is "improper and unwelcome conduct" that "has or [] might reasonably be expected or be perceived to cause offence or humiliation to another" and "that annoy, alarm, abuse,

demean, intimidate, belittle, or cause personal humiliation or embarrassment to another, or cause an intimidating, hostile or offensive work environment”.

154. Mr. OA did not consider the Applicant’s behavior “really inappropriate”, but he considered the Applicant’s behavior towards him “odd”, “weird”, “confusing”, and he increasingly became uncomfortable. The Applicant’s behavior made him uncomfortable enough that he confided in Ms. MP several times during his internship and asked questions, such as “Is this normal” and “I don’t get it, like, this is weird, right”. Ms. MP also stated that she considered that a young man, Mr. OA, was inappropriately engaged by a superior.

155. However, the Tribunal is not satisfied that the Applicant’s behavior towards Mr. OA amounts to abuse of authority. While the Applicant was a senior staff member and Mr. OA an intern and they met at a work setting, they belonged to different organizations and were not in any direct supervisor-supervisee relationship. While the Applicant provided advice and assistance to Mr. OA, there is no evidence that the Applicant improperly used his position of influence, power or authority toward Mr. OA in his engagement with Mr. OA. Mr. OA does not suggest that he felt compelled to respond to the Applicant’s messages due to his position.

156. Therefore, the Tribunal finds that the Applicant’s behavior towards Mr. OA amounts to harassment, but not abuse of authority.

Whether the disciplinary measure applied was proportionate to the offence

157. The principle of proportionality in a disciplinary matter is set forth in the staff rule 10.3(b), which provides that “[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct”.

158. The Administration has discretion to impose the disciplinary measure that it considers adequate to the circumstances of a case and to the actions and behavior of the staff member involved, and the Tribunal should not interfere with administrative

discretion unless “the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity” (*Portillo Moya* 2015-UNAT-523, paras. 19-21; see also *Sall* 2018-UNAT-889, *Nyawa* 2020-UNAT-1024). The Appeals Tribunal has further stated, “But due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair”. The Appeals Tribunal has further explained that this means that the Dispute Tribunal should “objectively assess the basis, purpose and effects of any relevant administrative decision” (*Samandarov* 2018-UNAT-859, para. 24).

159. The Tribunal will accordingly determine whether in light of all the circumstances, the sanction of dismissal was proportionate to the established misconduct.

160. The Administration in this case imposed a sanction of dismissal considering that cases involving sexual exploitation and abuse are regarded very seriously by the Organization and normally result in the cessation of employment relationship. Additionally, the Administration considered the fact that the Applicant committed misconduct while he was employed at UN Women and held a position of authority in relation to the youth he worked with including the victims.

161. As discussed above, the alleged misconduct concerning Victim 2 was not established by clear and convincing evidence and the Tribunal is not satisfied that the Applicant’s conduct against Mr. OA amounts to abuse of authority. Nevertheless, the Tribunal finds the sanction was adequate and proportionate to the gravity of the offense considering the seriousness of the Applicant’s conduct toward Mr. OA and Mr. SL. As the Administration noted in the sanction letter, sexual misconduct including sexual exploitation and abuse and sexual harassment are considered serious misconduct by the Organization and under the jurisprudence of the Appeals Tribunal (see, for example,

Hallal 2012-UNAT-207, *Massah* 2012-UNAT-274, *Applicant* 2013-UNAT-302, *Mbaigolmem* 2018-UNAT-819, *Nadasan* 2019-UNAT-918).

162. Therefore, the Tribunal finds that the Administration properly exercised its discretion when imposing the sanction of dismissal on the Applicant.

Whether the staff member's due process rights have been respected

163. It is not disputed that the Applicant was notified of the formal allegations of misconduct, was given the opportunity to respond to those allegations, and was informed of the right to seek the assistance of counsel in his defense, as required under staff rule 10.3(a). However, the Applicant raises other issues in relation to the investigation and the disciplinary process:

- a. OAI investigators failed to conduct investigations in an objective manner and presumed that the Applicant was guilty from the beginning of their investigation;
- b. Four witnesses breached the confidentiality requirements despite OAI's instructions to keep confidentiality, which undermined the integrity of the investigation and compromised his due process rights.

164. Before addressing the Applicant's claims of procedural irregularities, it is important to note that the Appeals Tribunal held in *Sall* 2018-UNAT-889, paras. 33 and 39, that "only substantial procedural irregularities will render a disciplinary measure unlawful":

... [...] under our consistent jurisprudence, only substantial procedural irregularities will render a disciplinary measure unlawful. Even a very severe disciplinary measure like separation from service can be regarded as lawful if, despite some procedural irregularities, there is clear and convincing evidence of grave misconduct, especially if the misconduct consists of a physical or sexual assault.

... Irrespective of any irregularities, the [Dispute Tribunal] should have conducted a further review of the disciplinary measure ... Save exceptional cases involving major violations of due process rights, it is not sufficient for [the Dispute Tribunal] to find procedural errors in a disciplinary process but, where necessary, it has to conduct a de novo review of the facts and a judicial review of the remaining aspects of the case. [...]

165. In this case, the applicable Investigation Guidelines provide that “Objectivity, impartiality and fairness should be maintained throughout the investigative process” (Investigation Standards, sec. 4, para. 13).

166. The Applicant submits that OAI investigators demonstrated bias when questioning witnesses including himself. The Tribunal carefully reviewed the interview records and agrees that some of the questions asked by OAI investigators were inappropriate and left the impression that OAI investigators were not objective or impartial toward the Applicant.

167. For example, when the Applicant denied one of the allegations, an OAI investigator commented, “Okay. Obviously we had to ask you about this and we have the evidence anyway”. In another situation, when the Applicant stated that he did not remember, an OAI investigator commented, “It’s so convenient for you that you don’t remember but you were there only one night”, and, “There’s no point in continuing that way. I have no more questions”. When the Applicant stated that he did not remember, an OAI investigator commented, “Okay, it’s up to you. I mean we are giving you the chance to fully cooperate here which [] would be in your best interest. We are giving you that chance and you are refusing to do it”. An OAI investigator further commented, “You keep refusing. You say I don’t remember, it must be a technical glitch, it’s not normal that this happened. They are all excuses. Instead of coming forward and giving an honest answer to us, you keep searching for excuses. That’s what you are doing so it’s up to you. That’s a decision you have taken, it’s up to you. You will have to live up to it”.

168. Regarding the confidentiality of the investigative process, the applicable Investigation Guidelines provide that “Confidentiality is required for the investigative process to be effective in cases of alleged misconduct. Confidentiality is in the interest of the Organization, the investigation participants and the subject of the investigation. The requirement for confidentiality extends equally to all UNDP personnel ... and to third parties involved in the investigation”. It further provides “OAI investigators will take reasonable measures to protect as confidential any non-public information associated with an investigation throughout the investigative process” (see sec. 5 Confidentiality).

169. Further, during the interviews, OAI investigators cautioned the interviewees, including Mr. SL, Mr. AK, Ms. KG, and Ms. MS, that investigations are strictly confidential and that interview participants should not discuss this interview or subject matter with any third parties. However, these four individuals spoke to the news media and discussed the subject matter of this investigation.

170. The Applicant submits that the confidentiality requirement is in place to protect the integrity of the investigation and to prevent undue influences from impacting the investigators’ work. The Applicant argues that these four witnesses’ decision to speak to the media undermined the integrity of the investigation and compromised due process. The Applicant points out that Mr. SL himself admitted at the hearing that he was concerned that the investigation was taking too long and that no action would be taken against the Applicant and therefore decided to speak to the media. The Applicant states that Mr. SL deliberately turned to the media in an attempt to manipulate OAI and UN Women to impose a severe disciplinary measure upon the Applicant.

171. The Tribunal agrees that the four witnesses violated the confidentiality requirement under the Investigation Guidelines when they spoke to the media.

172. However, the Tribunal does not find that these procedural irregularities impacted the outcome of the investigation.

173. Despite OAI investigators' inappropriate comments, they otherwise conducted a thorough and fair investigation by interviewing additional witnesses identified by the Applicant, performing site visits as suggested by the Applicant, and exploring all other issues raised by the Applicant. The Applicant questions OAI investigators' objectivity based on some of their findings, but even if the Tribunal was not persuaded by some of the conclusions of the investigation, that does not mean that OAI investigators were not objective.

174. Regarding the breach of confidentiality requirements, the Tribunal notes that before the first media report was published in August 2018, the investigators had already completed the investigation and provided draft investigation reports to the Applicant for his comments. As the evidence shows, Mr. SL had already discussed his complaint with several individuals before filing his complaint, and this matter was widely discussed at a youth meeting before the investigation even began. As a result, there was already widespread discussion and interest about the investigation. However, the Tribunal does not find any evidence that the media reports unduly influenced and compromised the investigation and disciplinary process.

175. Despite procedural issues discussed above, this is the case where there is clear and convincing evidence of grave misconduct, and the Tribunal considers that any procedural issues were rectified by the Tribunal's *de novo* review of all the facts and a judicial review of all the aspects of the case.

176. In light of the above, the Tribunal upholds the disciplinary measure imposed on the Applicant.

Conclusion

177. In light of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Joelle Adda

Dated this 5th day of November 2020

Entered in the Register on this 5th day of November 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York