



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** René M. Vargas M.

OKORO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Miryoung An, DAS/ALD/OHR, UN Secretariat  
Halil Göksan, DAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a former Humanitarian Affairs Officer at the United Nations Office for the Coordination of Humanitarian Affairs (“OCHA”), contests the disciplinary measure of separation from service with compensation in lieu of notice, and with a 25% termination indemnity.

2. For the reasons set forth below, the Tribunal rejects the application in its entirety.

## **Relevant Facts and Procedural Background**

3. On 18 January 2022, the Office of Internal Oversight Services (“OIOS”) received a report of possible unsatisfactory conduct implicating the Applicant.

4. On 8 August 2022, OIOS issued its investigation report finding that the Applicant had engaged in a number of unauthorized outside activities despite being advised multiple times that she needed to obtain authorization.

5. On 22 December 2022, the Applicant received formal allegations of misconduct against her (“Allegations Memorandum”).

6. The Applicant responded to the Allegations Memorandum on 10 March 2023 after being granted an extension of time.

7. On 27 April 2023, the Under-Secretary-General for Management, Strategy, Policy and Compliance (“USG/DMSPC”), concluded that the Applicant engaged in serious misconduct by violating staff regulations 1.2(b), 1.2(e), 1.2(f), 1.2(g), and 1.2(o), staff rules 1.2(a) and 1.2(t), and ST/AI/2000/13 (Outside activities). Consequently, the USG/DMSPC decided to impose on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice, and with a 25% termination indemnity, as per staff rule 10.2(a)(viii) (the “Sanction Letter”).

8. On 21 July 2023, the Applicant filed the instant application, which she completed on 27 October 2023.

9. On 5 December 2023, the Respondent filed his reply.
10. Between December 2023 and March 2024, the Applicant filed several statements in response to the Respondent's reply and produced additional information.
11. By Order No. 10 (GVA/2024) of 1 February 2024, the Tribunal instructed the Applicant to file a rejoinder, and the parties to explore resolving the issue amicably.
12. By email dated 5 March 2024, the Registry reminded the Applicant that she should have filed her rejoinder by 4 March 2024, and directed her to comply with Order No. 10 (GVA/2024) as soon as possible.
13. On 9 March 2024, the Applicant filed three different documents, two of which were related to informal resolution discussions with the Respondent. Only the third submission is accepted into the record and shall be considered as the Applicant's rejoinder.
14. On 11 March 2024, the Respondent informed the Tribunal that it was not possible to resolve the matter amicably.
15. By Order No. 81 (GVA/2024) of 8 July 2024, the Tribunal instructed the Applicant and the Respondent to file their closing submissions, which they did on 18 and 19 July 2024, respectively.

## **Consideration**

### *Preliminary issue: Receivability*

16. The Respondent argues that the application is not receivable with respect to the decision to place the Applicant on administrative leave with pay ("ALWP"), and any administrative decision concerning "a position in New York, which never was fulfilled". The first decision was effective on 26 January 2022—subsequently extended until 30 April 2023—and the Applicant never identified the second one.
17. The Applicant did not respond to the Respondent's challenge to the receivability of her case.

18. The Tribunal agrees with the Respondent. The current application under judicial review is only receivable and reviewable with respect to the decision that imposed a disciplinary sanction on the Applicant following a finding of misconduct. The Tribunal notes that the additional “decisions” to which the Applicant refers must be subject to a request for management evaluation, which, as per the record, the Applicant did not seek. It follows that a challenge to any other administrative decision referenced by the Applicant in her application is not receivable.

*Preliminary issue: the decision not to have a hearing*

19. As per art. 9.2 of its Statute, the Dispute Tribunal shall decide whether the personal appearance of an applicant or any other person is required at oral proceedings. Art. 9.4 provides that:

In hearing an application to appeal an administrative decision imposing a disciplinary measure, the Dispute Tribunal shall pass judgment on the application by conducting a judicial review. In conducting a judicial review, the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant’s due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence.

20. In this case, the Tribunal found that a hearing on the merits was not warranted and that the issue at stake could be decided based on the assembled record. The reason for this is threefold: the evidence that supports the finding of misconduct is all documentary; the facts on which the sanction is based are not challenged, but rather their characterization as misconduct; and the Applicant did not request a hearing at any stage of these proceedings.

21. Considering the extensive evidence on record, the parties’ positions, and the fact that the Tribunal finds no issues requiring further fact-finding through oral evidence before it, the Tribunal decides to adjudicate the case exclusively based on the written record.

*Scope of judicial review*

22. Pursuant to the jurisprudence of the United Nations Appeals Tribunal (“UNAT”, or “Appeals Tribunal”), when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing evidence requires more than a preponderance of evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable (*Molari* 2011-UNAT-164, para. 2).

23. The Appeals Tribunal has also determined that in imposing a disciplinary sanction, decision-makers enjoy a wide discretionary area of judgment. Due deference should be given to the discretion of the decision-maker (*Cheikh Thiare* 2021-UNAT-1167, para. 33). In *Cheikh Thiare*, the Appeals Tribunal further added:

33. [...] the Administration is the best suited actor to select an adequate sanction able to fulfil the following general requirements, which include *inter alia* that the sanction imposed is within the limits stated by the respective norms, and second, the sanction must be sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity.

24. 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, nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

25. According to art. 9.4 of the Tribunal’s Statute, in hearing an application challenging an administrative decision imposing a disciplinary measure, the Dispute Tribunal shall pass judgment on the application “by conducting a judicial review”. In so doing, the Dispute Tribunal “shall consider the record assembled by the Secretary-General and may admit other evidence” to assess:

- a. Whether the facts on which the disciplinary measure was based have been established by clear and convincing evidence;
- b. Whether the established facts legally amount to misconduct;
- c. Whether the Applicant's due process rights were observed; and
- d. Whether the disciplinary measure imposed was proportionate to the offence.

26. The Tribunal will address below these issues in turn.

*Whether the facts on which the disciplinary measure was based have been established by clear and convincing evidence*

27. According to the Sanction Letter, the Applicant engaged in unauthorized outside activities by one or more of the following:

- a. "Between 2019 and 2020, posting on YouTube for electronic dissemination videos capturing [her] comments that related to the purpose, activities or interests of the United Nations";
- b. "In January 2022, giving a live-streamed video interview for electronic dissemination on a YouTube channel, "Connect Africa", in which [she] made comments that related to the purpose, activities or interests of the United Nations";
- c. "Between 2017 and 2022, posting on LinkedIn for electronic dissemination articles that related to the purpose, activities or interests of the United Nations";
- d. "In or around January 2022, giving an interview to Ethiopian News Agency (ENA) in which [she] made statements that related to the purpose, activities or interests of the United Nations; and
- e. In January 2022, posting on Facebook for electronic dissemination an article containing [her] comments that related to the purpose, activities or interests of the United Nations.

28. In support of the above, the investigation report and its supporting documentation demonstrate the following.

29. The Applicant had a YouTube channel called “CUO Making Choices”, through which she posted videos about her personal life and/or opinions on overall news concerning African countries. Many of the Applicant’s videos revealed open criticism to the international humanitarian assistance and presence in the African continent.<sup>1</sup>

30. OIOS investigation cross-referenced the Applicant’s YouTube channel to the blog [www.choiceokoro.com](http://www.choiceokoro.com). Although the blog was no longer operational at the time of the investigation report, internet archives that OIOS reviewed revealed that the Applicant operated said blog. The stated purpose of the blog was to “monitor the impact of international humanitarian action in Africa and advocate appropriate international humanitarian action in the continent”.

31. The internet archives in question further show that the Applicant posted several articles in her personal social media pages delivering critical observations on international humanitarian assistance in Africa, which are areas directly related to the official position she held (Humanitarian Officer at OCHA).

32. The assembled record also shows that the Applicant gave interviews to the press and posted several times on her personal social media pages on issues related to humanitarian aid and assistance.

33. Moreso, the record shows the Applicant publicly campaigning against humanitarian aid and the presence of international humanitarian organizations in African countries.

---

<sup>1</sup> E.g., “sexual abuse in international humanitarian presence in Africa, who is to blame?”, “Africa will not be rated by agencies that do not serve its interest”, “Aid to Africa: much is said than given”, “Ending Aid Dependency in Nigeria”, “Ending Aid Dependency in Africa”, and “The bloated aid industry will not let Africa go without a fight says Alex Perry”.

34. The Tribunal first notes that the Applicant admits the social media posts and articles brought forth by the investigation, the aforementioned blog and YouTube channel, and giving interviews. She stated in her rejoinder, *inter alia*:

34. The respondents took statements from my personal social media space and inferred it was against staff rules without evidence on why and how these out of context references violated the UN staff rules.

[...]

37. Reference was made to my comment on an oiled machine promoting international humanitarian action in Africa, this is true. So why is it against the UN mandate. If as the respondents allege that because it is known that I am an OCHA staff why are the respondent inferring that this is misconduct. I did not mention OCHA but what I said is the truth. Honesty and integrity are the first require of UN staff.

38. What has OCHA done wrong that it is protecting? I know what I said and I stand by them. The United Nations stand for maintaining ineffective international humanitarian action and presence in Africa. We've had over three decades to know that it is ineffective.

[...]

41. Yes I stated that there is an oiled machine promoting Africa as an international humanitarian nutcase for keeping international humanitarian organizations in business.

[...]

43. Reference was made to my comments on the Democratic Republic of Congo. I stand by this. It is shameful that we promote humanitarian presence in DRC without looking at the natural resource exploitation/theft unleashed in the country. I refuse to participate in an international humanitarian life.

[...]

72. I rejected a request to bring my social media platform to OCHA HQ. I requested samples of how other OCHA staff sought and received permission to post on social media, none was provided. In the spirit of good will, I pulled down my social media and was told by OCHA of HR that I should not have pulled down my social media.



73. This leads me to state here that the issue was not my personal social media presence but I was challenging the misinformation and misappropriation of international humanitarian presence in Africa, and especially in Ethiopia. Abuse of authority was carried out by Catherine Pollard of DMSPC and Helena Lopez of DMSPC. I have not been abused by the United Nations Secretary General: Antonio Guterres.

[...]

77. I stand fully behind what I say on my social media handles which are personal, and which is the same with thousands of United Nations staff, quoting what I have said must be supported by content related United Nations mandate.

78. Reference to staff rules alluded to by the respondents is deliberately used to distract from the issue. The respondents must explain why my calling for peaceful resolution to political dissent in Africa is a violation of the United Nations staff rules and staff conduct.

[...]

86. Calling attention to ending protracted ineffective international humanitarian presence in Africa should not be defined as a crisis by any part of the UN. I have not doubted that I said what I said in my personal social media space which the UN guidelines on personal use of social media protects and encourages.

91. The respondents have been dodgy by avoiding the content of my case. Quoting dates I made statements is not the issue, the respondents have failed to explain why the out of context quotes they have referenced are violation of the United Nations' staff rules. Why would calling for peaceful resolution to conflict in Africa a violation of the United Nations' staff rules from 2020 to 2022 How did I violate the United Nations staff rules on personal use of social media from 2020 - 2022 The respondents response to my case is a disgrace to what the UN stands. It reflects that the quality of employees in the UN needs to be checked.

35. The documentary evidence supports the findings of the investigation report, and the Applicant's submissions in these proceedings, exemplified by the excerpts above, demonstrate a clear admission to the facts as described in the Sanction Letter.

36. It is, therefore, undisputed and established by clear and convincing evidence that the Applicant engaged in the activities described at para. 27 above. It is further undisputed that the Applicant was advised to seek authorization for her online activities.

37. In the Tribunal's view, therefore, the Applicant's challenge is limited to the characterization of the above as outside activities and, consequently, as misconduct. It is through this lens that the Tribunal notes the following.

38. An email dated 1 December 2020 from the Chief of Human Resources Section ("CHRS"), OCHA, informed the Applicant that "if you want to post in social medial articles or videos that are related to the purpose or interest of the United Nations, requires prior authorization, unless you are OCHA's social media assignee, which I am not aware of". The Applicant responded on the same day stating:

Thanks for this. As I mentioned before, I am not engaged in any outside activity. My only place of employment is the UN/OCHA.

Please do let me know if more staff have raised concerns with you since November 25 Wednesday when you called me.

I am present in social media just like all other OCHA staff.

39. On 2 December 2022, the CHRS, OCHA, further developed and reiterated the matter to the Applicant, stating: (emphasis added)

Allow me to attempt, yet one more time, to clarify that **an outside activity does not need to be an employment and includes unremunerated activities**. I have explained this to you a few times and I am yet to understand the difficulty of you understanding the same.

Please review the guidance I have shared with you. It is very clearly articulated that **an outside activity may include electronic dissemination of material, including through social media**. For your reference, I am again sharing the relevant policy guidance below.

I reiterate that **publishing material that relates to the purpose, activities or interests of the UN on public websites requires the prior authorization of the UN**. This is because publicly available

statements of United Nations officials, even in their private capacity, may have a significant impact on the image and reputation of the Organization. You can submit requests for prior authorization of an outside activity (including social media posts that relate to the purpose, activities or interests of the UN) as per the steps outlined in the S.O.P that I have shared with you.

**I do implore you to understand that we are sharing this information to guide you and help you understand the requirements.** However, the **failure of any staff member to comply with their obligations** under the Staff Regulations and Rules and other administrative issuances, **and the failure to observe the standards of conduct expected of an international civil servant is treated as a serious issue.** Such issues are handled under the policy ST/AI/2017 on Unsatisfactory Conduct, Investigations and the Disciplinary Process.

Reference to the posts you shared with me from other OCHA staff members, specifically the OCHA Head of ROCEA, I would like to remind you that in the official capacity as such, the responsibilities include representational roles and communication on behalf of. You will have noted that the individual has identified the role in OCHA and is communicating the messages on behalf of OCHA and as part of his/her daily responsibilities.

You, on the other side, have neither identified yourself as an official of OCHA, nor it is in your responsibility to speak on behalf of OCHA.

Lastly, and for your information, we have approached the UN Ethics Office for advise on the next steps, considering we have continuously informed you of the need to request permission before engaging in postings in social media. Yet, you continue to do so despite the numerous reminders of the requirements, sent and conveyed to you, as recently as 25 November 2020.

40. The Applicant replied to the above saying that she would follow these guidelines should she decide to pursue an outside activity.

41. The CHRS, OCHA, followed up again on 11 December 2020. She acknowledged that the Applicant's posts in question may have been removed, provided the Applicant with more information on the reason why those posts were "unacceptable", and reiterated to the Applicant that any further unauthorized activities would be treated as possible unsatisfactory conduct and referred to OIOS.

42. The Applicant was informed that her posts touched upon a very sensitive issue for the United Nations in respect to a Member State, had problematic language and went against the official statements on the matter. Furthermore, it was brought to the Applicant's attention that the posts could present a risk to the UN, especially because the Applicant had been a communications officer in Ethiopia, and might be known in the media, as someone who has communicated on behalf of OCHA. The posts were furthermore found not to "live up to the duty to be, and appear to be, independent and impartial".

43. Finally, the Applicant was advised that "while personal views and convictions remain inviolable, staff members must ensure that such views and convictions do not adversely affect their official duties or the interests of the United Nations nor do they call into question a staff member's loyalty and responsibility to the Organization. For this reason, posts that openly criticize or go against the Organization, its positions, policies or procedures are not acceptable and will not be given authorization".

44. After seeking clarification on what further action she needed to take beyond taking down the posts, the Applicant was told to bear in mind the ongoing expectation that she will request prior authorization before making any future social media posts that relate to the purpose, operations or interest of the United Nations.

45. As the evidence shows, however, the Applicant did not seek prior authorization for the subsequent posts, videos and interviews she did after the above exchanges of 2020.

46. The Applicant's LinkedIn history shows numerous posts on issues related to the purpose, interests and activities of the United Nations in general and, more specifically, related to the work of international humanitarian organizations in Africa. In her LinkedIn, the Applicant also advertised her YouTube channel, where she posted videos, *inter alia*, on the same subject.

47. The Tribunal notes that one of the LinkedIn posts showed the Applicant affirming that she had received inquiries on why she works in the international humanitarian field considering all that she says is wrong with it. This post suggests

that the Applicant was intentional with her overt criticism of international humanitarian assistance organizations in Africa, and that she was aware that this criticism showcased an apparent contradiction with her own position and that of her employer.

48. The email interaction from December 2020 demonstrates that the Applicant had been clearly asked to abide by the rules on seeking prior authorization for outside activities. The Organization explained to the Applicant in detail why her social media presence and the language she used was problematic, how it could affect the interests of the Organization, and what she could do to mitigate any problems (i.e., seek prior approval). The Applicant was further assured that the posts flagged in 2020 would not have been authorized had she requested authorization.

49. With all of the foregoing in mind, it is clear to this Tribunal that the Applicant was aware that her online activities constituted outside activities for the purpose of staff rule 1.2(t), and that the Administration thoroughly and properly advised her on the matter.

50. In other words, even if it were to be accepted that the Applicant did not know of the rules on outside activities prior to 25 November 2020, which would not be a legal excuse for her actions, she was certainly made aware of them by December 2020. If the Applicant did not know that the content of her posts and videos was problematic, she was certainly aware of it after the email exchanges of December 2020.

51. Instead, the Applicant chose not to abide by the rules on outside activities and resumed her social media presence and interviews with the press in connection with matters related to the purpose, activities, and interests of the Organization without requiring prior authorization.

52. The Tribunal is of the view that this was so because the Applicant was convinced that speaking on the matters in question in the manner that she did were not an outside activity and, more importantly, should not be perceived as detrimental or against the interests of the Organization. Instead, the Applicant

claims that the posts, videos and articles in her social media highlighted issues of public knowledge and that are in accordance with the UN Charter and her obligations as an international civil servant.

53. The Tribunal disagrees.

54. The Applicant used the knowledge gained from her official functions to intensely criticize the international humanitarian aid/coordination system, of which the Organization she works for is part of. She essentially vilified the entire international humanitarian assistance/aid system by portraying it as a corrupt neo-colonial business designed to exploit African countries and trap them into dependency. She also criticized the State Parties who are part of the system, whether as donors or beneficiaries. The way the Applicant expressed herself was not in accord with the impartiality and independence required of an international civil servant.

55. The Applicant's behaviour, therefore, cannot be disassociated from her official position at OCHA, and is blatantly against the interests of the Organization as a whole.

56. Her actions were intentional. She knew she had to seek authorization for outside activities, and she was briefed on the reason why her posts were problematic and on why they constituted an outside activity. Despite having been notified of the issue and agreeing to take some posts and videos down in 2020, the Applicant subsequently blatantly disregarded the rules and resumed her unauthorized activities.

57. It is the Tribunal's findings, therefore, that the facts that base the disciplinary measure under challenge are established by clear and convincing evidence.

*Whether the established facts legally amount to misconduct*

58. Under staff regulation 10.1 and staff rule 10.1 (ST/SGB/2018/1/Rev.1), as well as paras. 3.4 and 3.5(a) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), the Secretary-General has the

discretionary authority to impose disciplinary measures on any staff member who has committed misconduct:

**Regulation 10.1**

(a) The Secretary-General may impose disciplinary measures on staff members who engage in misconduct.

**Rule 10.1  
Misconduct**

(a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

...

(c) The decision to investigate allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

**Misconduct (ST/AI/2017/1)**

3.4 Staff rule 10.1 (a) provides that “failure by a staff member to comply with [the staff member’s] obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct”.

3.5 Misconduct for which disciplinary measures may be imposed includes, but is not limited to:

(a) Acts or omissions in conflict with the general obligations of staff members set forth in article 1 of the Staff Regulations and the rules and instructions implementing it.

59. Staff rules 1.2(s), and (t), staff regulations 1.2(b), (e), (f), (g), and (o), as well as ST/AI/2000/13 describe the basic rights and obligations of staff members, regulate outside employment and activities, and define the specific instances of prohibited conduct as follows:

**Rule 1.2**  
**Basic rights and obligations of staff**

**Outside employment and activities**

(s) Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General.

(t) Staff members shall not, except in the normal course of official duties or with the prior approval of the Secretary-General, engage in any outside activities that relate to the purpose, activities or interests of the United Nations. Outside activities include but are not limited to:

- (i) Issuing statements to the press, radio or other agencies of public information;
- (ii) Accepting speaking engagements;
- (iii) Taking part in film, theatre, radio or television productions;
- (iv) Submitting articles, books or other material for publication, or for any electronic dissemination.

Approval may be granted in accordance with staff regulation 1.2 (p).

**Regulation 1.2**  
**Basic rights and obligations of staff**  
Core values

(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;

**General rights and obligations**

(e) By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants;

(f) While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the



interests of the United Nations. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

(g) Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour;

#### **Outside employment and activities**

(o) Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General;

#### **Section 4 (ST/AI/2000/13)**

##### **Activities related to the United Nations**

3.1 Under staff regulation 1.2 (o), a staff member shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General. For the purposes of the present instruction, the expression “occupation” shall include the exercise of a profession, whether as an employee or an independent contractor.

4.1 Under staff rules 101.2 (p), 201.2 (p) and 301.3 (p), except in the normal course of official duties, prior authorization is required to engage in any of the following acts, if such act relates to the purpose, activities or interests of the United Nations:

(a) Issuance of statements to the press, radio or other agencies of public information;

(b) Acceptance of speaking engagements;

(c) Taking part in film, theatre, radio or television productions;

(d) Submitting articles, books or other material for publication.

4.2 Outside activities that are of benefit to the Organization or the achievement of its goals and/or contribute to the development of professional skills of staff members are usually not only permitted but encouraged, provided staff members exercise the utmost discretion with regard to all matters of official business and avoid any public statement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

5.1 Private non-remunerated activities for social or charitable purposes which have no relation to the staff member's official functions or to the Organization, and take place outside working hours or while the staff member is on leave, may be engaged in at the staff member's discretion. Staff members shall in every instance ensure that the activity is and remains compatible with their status as international civil servants.

60. Furthermore, the Standards of Conduct for the International Civil Service stipulate under para. 9 that (emphasis added):

Impartiality implies tolerance and restraint, particularly in dealing with political or religious convictions. **While their personal views remain inviolate, international civil servants do not have the freedom of private persons to take sides or to express their convictions publicly on controversial matters, either individually or as members of a group, irrespective of the medium used.** This can mean that, in certain situations, personal views should be expressed only with tact and discretion.

61. The foregoing indicates that even though a prohibition against speaking to the media does not exist, staff members are not allowed to engage publicly without prior approval of the Secretary-General.

62. In addition, while staff members' personal views and convictions remain inviolable, they shall ensure that those views do not adversely affect their official duties or the interests of the United Nations. Staff members must also avoid any action, including public pronouncements, that may adversely reflect on their status, or on the integrity, independence and impartiality that their status requires.

63. The Applicant, however, instead of avoiding public pronouncements that could adversely reflect on her status actually sought them. Instead of ensuring that her online activities did not affect the interests of the United Nations, she

intentionally connected the two. Disguising her online activities as “personal opinions”, the Applicant blatantly violated her obligations as an international civil servant and the foregoing Staff Regulations and Rules.

64. The Applicant’s assertion that her actions in social media were actually promoting the United Nations’ mandate and in line with her duties as a staff member is unreasonable. Not only she did not act with the impartiality and independence required of her, she also did not follow tact, discretion, care and good judgment when using personal social media.

65. Contrary to the Applicant’s assertion, her conduct did not fall under the exceptions stipulated under secs. 4.2 and 5.1 of ST/AI/2000/13.

66. The Tribunal further recalls that it is not up to the Applicant to determine whether her activities are in the interest of the Organization or are serving the United Nations’ mandate. That is for the Organization to decide upon request from a staff member. Thus, her assertion that the activities under examination were in par with the Organization’s interest and mandate is untenable.

67. Moreover, the Applicant cannot claim to have been unaware of the foregoing because, for one, ignorance of the law does not justify its breaking and, for another, the Applicant was made aware that she needed to seek prior approval of the Secretary-General for any outside activity involving the interests of the United Nations, which included the type of content she was disbursing through her personal social media.

68. Finally, the Applicant’s contention that she was targeted by the Organization and the subject of bias and racism lacks clarity, specifics, and support. The evidence on record shows that the Organization not only acted in accordance with the applicable rules when dealing with the Applicant’s conduct, but also “went the extra mile” in trying to advise the Applicant to correct her behaviour.

69. It is thus established that the Applicant violated staff regulation 1.2(o), staff rules 1.2(s) and (t), and secs. 3.1 and 4.1 of ST/AI/2000/13, by knowingly and

intently engaging in unauthorized outside activities through her social media presence concerning matters related to the official activities of the Organization.

70. Furthermore, the Applicant violated staff regulations 1.2(b), (e), (f), (g) and (o) by engaging in actions that adversely affected the interests of the United Nations, and that were incompatible with her status as international civil servant.

71. The Applicant's overall conduct was fundamentally incompatible and irreconcilable with the proper discharge of her duties with the United Nations.

72. Based on the foregoing, the Tribunal finds that the established facts legally amount to serious misconduct under the applicable rules and regulations.

*Whether the disciplinary measure applied is proportionate to the offence*

73. Staff rule 10.2 provides the following:

**Disciplinary measures**

- (a) Disciplinary measures may take one or more of the following forms only:
  - (i) Written censure;
  - (ii) Loss of one or more steps in grade;
  - (iii) Deferment, for a specified period, of eligibility for salary increment;
  - (iv) Suspension without pay for a specified period;
  - (v) Fine;
  - (vi) Deferment, for a specified period, of eligibility for consideration for promotion;
  - (vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;
  - (viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;
  - (ix) Dismissal.

74. In its seminal Judgment *Sanwidi* 2010-UNAT-084, the Appeals Tribunal held that:

39. In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective. This entails examining the balance struck by the decision-maker between competing considerations and priorities in deciding what action to take. However, courts also recognize that decision-makers have some latitude or margin of discretion to make legitimate choices between competing considerations and priorities in exercising their judgment about what action to take.

40. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But 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. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

...

42. In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate.

75. In *Cheikh-Thiare* 2021-UNAT-1167 (para. 33), the Appeals Tribunal held that:

The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the specific actions and conduct of the staff member involved. [...] [T]ribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the

respective norms, excessive, abusive, discriminatory or absurd in its severity.

76. The Applicant's intentional actions reverberated to an unknown number of people on social media, potentially damaging the Organization's reputation.

77. The Tribunal finds that the way the Applicant conducted herself supports the conclusion that she systematically, knowingly, and wilfully intended to damage the reputation and the programmatic capacity of the Organization.

78. Furthermore, the Tribunal notes that several aggravating and mitigating factors were taken into consideration. Namely, as aggravating, the Applicant's continued misconduct despite repeated warnings over a period of time, which involved multiple violations of the Staff Regulations and Rules and multiple attacks to the integrity of the Organization.

79. As mitigating, the Administration considered that the Applicant's conduct encompassed the peak period of the global pandemic and her personal challenges due to the loss of a family member. Her 15 years of service were not considered as mitigation because the Administration found that the Applicant took advantage of her service at OCHA.

80. In the face of all of the above, the Tribunal finds that it was reasonable for the decision-maker to consider that the Applicant's actions were so damaging to the employment relationship of mutual trust between the Applicant and the Organization, that it became untenable to continue it.

81. Based on the foregoing, the Tribunal finds that the sanction imposed is reasonable, lawful, and proportionate to the misconduct.

*Whether the Applicant's due process rights were respected*

82. The Tribunal finds that the Applicant's procedural rights were respected throughout the investigation and disciplinary process. Namely, the Applicant was interviewed and asked about material aspects of the matter; she was provided with all supporting documentation in the Allegations Memorandum; she was informed

of her right to seek counsel; she was given the opportunity to comment on the allegations of misconduct against her; and she was afforded an extension of time to submit her comments, which were duly considered in the Sanction Letter.

83. Therefore, the Tribunal finds that the Applicant's due process rights were observed.

### **Conclusion**

84. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

*(Signed)*

Judge Sun Xiangzhuang

Dated this 1<sup>st</sup> day of November 2024

Entered in the Register on this 1<sup>st</sup> day of November 2024

*(Signed)*

René M. Vargas M., Registrar, Geneva