



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/011
Judgment No.: UNDT/2024/106
Date: 6 December 2024
Original: English

Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Wanda L. Carter

NGIGI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Kelvin Njuguna, TripleOKLaw Advocates LLP

Counsel for Respondent:

Sandra Lando, UNHCR

Elizabeth Brown, UNHCR

Introduction

1. The Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in the Kakuma Sub Office, Kenya, filed an application on 27 February 2024 contesting the High Commissioner’s decision to dismiss her from service pursuant to staff rule 10.2(a)(ix) (“the contested decision”).

Factual and procedural background

2. It results from the records that, between April and December 2016, the IGO received reports of fraud and corruption implicating several national staff members at UNHCR Kakuma. The Inspector General Office (“IGO”) opened seven investigations. The investigations were linked with a common primary case number (INV/2016/039E) given the alleged connections between the fraud activity and the actors involved. Several UNHCR personnel (not including Ms. Ngigi at that time) were put on administrative leave pending the outcome of the investigation and/or disciplinary proceeding. In the course of the investigations, the IGO interviewed more than 100 individuals and obtained evidence implicating Ms. Ngigi, including firsthand statements, that Ms. Ngigi solicited bribes and colluded with others to solicit bribes from persons of concern (“PoCs”) in return for access to UNHCR’s services.

3. The level of corruption and related criminal activity in Kakuma in 2016 presented a major challenge for the IGO and posed serious concerns for the safety of witnesses.

4. In accordance with the principle of do no harm and to protect individuals from retaliation, the IGO did not inform Ms. Ngigi that she was the subject of investigation INV/2016/039E, and she did not have an opportunity to respond to the allegations.

5. The IGO submitted a report in the case of INV/2016/039E to UNHCR’s Division of Human Resources (“DHR”) on 26 January 2018. However, UNHCR was unable to initiate administrative or disciplinary proceedings owing to due

process concerns and the safety of witnesses. Meanwhile, the IGO continued to liaise with the UNHCR Representation in Kenya to address security and protection concerns in respect of several witnesses.

6. In late 2019, the IGO obtained new information of relevance to INV/2016/039E. After consulting with the Legal Affairs Service (“LAS”), the IGO retracted Investigation Report INV/2016/039E and reopened the investigation under case reference INV/2020/011 (the present case) on 30 January 2020.

7. On 23 April 2022, the Applicant was placed on administrative leave with full pay (“ALWP”). On 6 May and 7 September 2022, the Applicant was interviewed as the investigation subject. On 11 and 17 November 2022, the draft investigation findings were shared with the Applicant. The Applicant submitted her comments on the investigation findings on 17 November and 16 December 2022.

8. By letter dated 23 May 2023, formal allegations of misconduct were issued against the Applicant for having unduly requested money from six refugees.

9. The Applicant provided her comments to the formal allegations of misconduct on 24, 26 and 29 May, and 24 and 31 July 2023, denying the charges.

10. On 29 November 2023, the Applicant was notified of the contested decision.

11. On 27 February 2024, the Applicant filed the application mentioned in para. 1.

12. The Respondent filed a reply to the application on 2 April 2024.

13. By Order No. 61 (NBI/2024) dated 30 May 2024, the Duty Judge instructed the Applicant to file a rejoinder and asked the parties to explore resolving the dispute amicably and revert to the Tribunal in this respect.

14. On 14 June 2024 the Applicant filed her rejoinder.

15. On 28 June 2024 the parties informed the Tribunal that they were unable to settle the dispute amicably in this case.

16. The case was assigned to the undersigned Judge on 5 August 2024.
17. By Order No. 120 (NBI/2024) dated 3 September 2024, the parties were invited to inform the Tribunal if they wished to call witnesses and to take positions on the counterparty's evidentiary requests.
18. On 6 September 2024, the Applicant requested to call two witnesses, the Applicant herself and Ms. Monica Mburu, the former Lutheran World Federation ("LWF") Peacebuilding and Conflict Resolution Officer.
19. On the same date, the Respondent submitted that it was not necessary to call any witnesses and that the case could be adequately adjudicated based on the documents in the record.
20. On 9 September 2024, the Respondent objected to the Applicant's requests to call the Applicant herself and Ms. Mburu as witnesses, finding the requested testimonies irrelevant.
21. By Order No. 130 (NBI) 2024, this Tribunal noted that the Applicant had asked to testify: on "her interactions with the persons mentioned in the IGO Report", in order to demonstrate that the claims were unfounded, based on conjecture and testimony given was motivated by factors other than honesty; on how the investigations conducted in 2016 resulted in creating an expectation that those who report incidences would receive favourable relocation outcome; on her limited role in respect to the resettlement cases that she handled and which formed the basis of the corruption allegations against her; on her spirited fight against corruption (which included applying to join the Kenya Anti-Corruption Authority, interviewing for a UNHCR position for Investigation Associate, and attending anticorruption workshops); and on the devastating effect which the termination has had on her.
22. The Tribunal also noted that the Applicant, who complained that the accusations were generic and without specific details, already gave her recollection of the facts by 71 pages, plus interviews by IGO and many emails in records, and that she also fully lodged defensive comments in the application with its annexes

and in her rejoinder. The Tribunal thus concluded that the Applicant had already provided her version of the events on several occasions, specifically taking a clear position on the investigation process, on her role in resettlement cases, and her authority to influence the cases of the refugees from whom she is accused of having solicited bribes.

23. The Tribunal further noted that the Respondent did not deny those facts, but only stressed their irrelevance with reference to the accusations. As for the Applicant's request for Ms. Mburu's testimony (on the Applicant's role in peacebuilding and on her role with LWF limited to sexual and gender-based violence ("SGBV") and Child Protection, and on how LWF Peacebuilding was working and the referral mechanisms in place), the Respondent objected to the request, saying that the Ms. Mburu's testimony would not assist the Tribunal in determining whether the relevant facts had been established.

24. The Tribunal already noted in the aforementioned order that Ms. Mburu's testimony would have been about a subject which is not connected to the facts the Applicant is accused of, and that is therefore not relevant to adjudicate the case; therefore, the Applicant's requested testimony would have been superfluous and redundant, and Ms. Mburu's requested testimony was outside the scope of the disputed matter.

25. In this situation the Tribunal reviewed the parties' submissions, and having in mind art. 19 of its Rules of Procedure, in the interests of a fair and expeditious disposal of the case, found that a hearing on the merits would not add useful material to the case and that the matter could be decided based on the documents filed. Therefore, the parties were directed to file their final submissions, addressing the points raised in each other's filings.

26. On 31 October 2024 the parties filed their closing submissions.

Parties' submissions

27. The Applicant's principal contentions are:

a. The Respondent has not discharged its burden of proof, as there exists no clear and convincing evidence against the Applicant. The IGO conducted an investigation as part of a wider network of investigations ongoing at the time. The IGO interviewed more than 100 individuals, 13 of whom claim to have given evidence against the Applicant in support of the allegations levied against her.

b. Of these 13 individuals, only six gave direct evidence – Persons A, B, D, G, L and M. None of the so-called evidence raised by these six individuals rises to the standard of being clear or convincing evidence.

c. The evidence presented is neither clear nor convincing. The supposed direct evidence from Persons A, B, D, G, L, and M is undermined by crucial inconsistencies, unreliable hearsay, and a lack of corroborative support. The witnesses' accounts are plagued by changing statements, speculative assertions that are not supported by corroborative records, and attempts to link unrelated events, which do not credibly implicate the Applicant.

d. Several testimonies rely on hearsay or are inconsistent when describing crucial details, which undermines their probative value. The reliance on absent or peripheral records and the inability of the witnesses to consistently identify the Applicant diminishes any semblance of manifest reliability or persuasiveness. In aggregate, these deficiencies mean that the evidence is not sufficient to discharge the Respondent's burden of proof.

e. Due process was not followed in the process leading to her employment termination. The Respondent outrightly, and without any justification, ignored exculpatory evidence against the Applicant.

f. The investigator absconded his duty in the present case by refusing to interview a witness who had accusations levelled against him – many of which were attributed to the Applicant despite there being no evidence to support the said connection between the two.

g. The failure to interview key individuals who were alleged to be accomplices/agents of the Applicant was a significant omission in the investigative process.

28. The Applicant seeks the following reliefs:

a. That the UNDT should conduct an independent examination of facts, including witnessing and hearing testimonies from relevant witnesses regarding the disputed matters between the parties.

b. That the decision of dismissal be revoked and replaced with the reinstatement of the Applicant to her former position.

c. In the event that reinstatement is not feasible, the Applicant seeks damages for the remaining duration of her contract period together with general damages.

d. That she be compensated for reputational damage.

e. That she be paid her accrued annual leave days dues pursuant to provisions of the Staff Regulations and Rules.

f. That she be compensated for costs of instituting this application.

29. The Respondent's principal contentions are:

a. The facts are established based on clear and convincing evidence.

b. The evidence implicating the Applicant in corruption comprises direct and indirect testimonial evidence from several refugees. Direct testimonial evidence was provided by six refugees. They each provided detailed, consistent and reliable accounts that during the period from 2010 to 2019 the

Applicant asked them for money in return for a promise of assistance for services that should have been provided without charge.

c. In addition, corroborative hearsay evidence was provided by five other refugees. Two refugees gave first-hand and hearsay accounts. Several individual accounts reflect a similar *modus operandi* where the Applicant would directly or via a broker/interpreter ask refugees for money in exchange for a promise of providing assistance. The witnesses did not all know each other, making it implausible that they colluded to provide similar evidence. There is no evidence of a conspiracy.

d. While some events described by the witnesses were corroborated by proGres entries, the absence of proGres records does not affect the credibility of the witnesses. This is because not all actions were systematically recorded in proGres.

e. The witnesses collaborated despite serious and credible threats of retaliation. They feared for their safety but did not actively request resettlement or benefits in return for their cooperation with the investigation. The witnesses who were resettled in the context of the present and linked investigations in Kakuma were supported by UNHCR on protection grounds following an assessment of their situation. Resettlement and other protection assistance were not offered in return for their cooperation with the investigation. There is no evidence of bias or ulterior motives that could question the credibility, reliability and weight of the witnesses' statements.

f. The Applicant's conduct in requesting money from refugees in exchange for a promise of assistance amounts to corruption, as per the Strategic Framework for the Prevention of Fraud and Corruption, IOM/044–FOM/044/2013 (of 8 July 2013).

g. By engaging in corruption, the Applicant breached staff rule 1.2(k) which prohibits staff members from seeking a personal benefit in exchange for performing official acts. Similarly, the Applicant attempted to use her

office for private gain, hence engaging in misuse of office and breaching staff regulation 1.2(g).

h. The exploitation of her position of power over the vulnerability of refugees seeking assistance from UNHCR strikes at the very heart of the trust and integrity that UNHCR and its staff members owe to refugees. By doing so, the Applicant also breached staff regulations 1.2(b) and (e).

i. The High Commissioner correctly determined that the Applicant's conduct constituted misconduct and a violation of her basic obligations set out in staff regulations 1.2(b), (e), and (g), staff rule 1.2(k) and the Strategic Framework for the Prevention of Fraud and Corruption.

j. The investigation and disciplinary process complied with the formal requirements set out in UNHCR/AI/2018/18/Rev.1 (UNHCR's Administrative Instruction on Misconduct and the Disciplinary Process).

k. Paragraph 30 of UNHCR/AI/2018/18/Rev.1 provides that due process rights may be restricted if required to protect the safety of witnesses. In this case, the Applicant was afforded all due process rights that the specific context of the investigation reasonably allowed. The balance between the Applicant's due process rights and the safety and security of the witnesses was carefully considered. Given the serious and tangible risks of retaliation, it was decided not to disclose to the Applicant the identity and some details of the statements of witnesses whose whereabouts are unknown, who are still in Kenya, or whose family members are in Kenya. The IGO also kept in their files some documentation that contained the private personal data of refugees.

l. The Applicant's assertion that the reopening of a closed investigation constitutes double jeopardy is without merit. It is within the IGO's mandate to reopen an investigation when additional information comes to light and to share the evidence with the Applicant when the security threats against the witnesses have been mitigated.

m. The Applicant's contention that the investigator was biased has no merit. The onus is on the Applicant to substantiate her allegations of improper motives, an onus that she has failed to discharge.

n. The Applicant's assertion that she was not allowed to cross-examine the witnesses has no merit as there is no right of cross-examination at the investigation stage.

o. The Applicant has failed to establish any grounds for reinstatement or compensation. Nevertheless, the Applicant would be entitled to a maximum of 13 months' net base salary as compensation, which corresponds to the remaining period of her contract.

p. Concerning the claim for "general damages" and "reputational damages", the Respondent submits that in the absence of a fundamental breach giving rise to moral damages and in the absence of evidence of actual prejudice, there is no basis for an award of damages.

q. The Respondent requests the Tribunal to anonymize the names and other personal data of witnesses not a party to this matter.

Consideration

Standard of review and burden of proof

30. The Tribunal's Statute, as amended on 22 December 2023, provides that in reviewing disciplinary cases:

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 (Art. 9.4).

31. The Tribunal's Statute generally reflects the jurisprudence of the United Nations Appeals Tribunal ("UNAT" or "Appeals Tribunal"). (See, e.g., AAC 2023-

UNAT-1370, para. 38; *Mizyed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024).

32. The Appeals Tribunal also observed that:

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 (*Sanwidi* 2010- UNAT-084, para. 40).

33. However, UNAT also held that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him” or otherwise “substitute its own decision for that of the Secretary-General”. In this regard, “the Tribunal is not conducting a “merit-based review, but a judicial review” explaining that a “judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision” (*Sanwidi, op. cit.*).

Whether the facts on which the disciplinary measure was based were established by clear and convincing evidence

34. In disciplinary cases “when termination is a possible outcome”, UNAT has held that the evidentiary standard is that the Administration must establish the alleged misconduct by “clear and convincing evidence”, which “means that the truth of the facts asserted is highly probable” (*Negussie* 2020-UNAT-1033, para. 45). UNAT clarified that clear and convincing evidence can either be “direct evidence of events” or may “be of evidential inferences that can be properly drawn from other direct evidence”.

35. In *Jafar Hilmi Wakid* (2022-UNAT-1194 para. 66) UNAT opined on what could be considered clear and convincing evidence: “This imports two high evidential standards: “clear” evidence is that the evidence of misconduct must be unequivocal and manifest and “convincing” requires that this clear evidence must

be persuasive to a high degree, appropriate to the gravity of the allegation against the staff member and in light of the severity of the consequence of its acceptance”.

36. The Respondent bears the burden of proof, as expressed by UNAT in *Turkey* (2019-UNAT-955, para 32: “the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred”).

37. Ms. Ngigi was a Protection Associate, UNHCR Kakuma. She joined UNHCR Kakuma in 2009 as an RSD4 Assistant (G-6 grade). According to her performance assessment, from August 2010, she was doing protection work and no longer involved in refugee status determination (“RSD”). In January 2012, her contract was terminated. She was rehired by UNHCR in May 2012 as a Legal Associate (SGBV coordination) in Kakuma. Ms. Ngigi was appointed to her current position as a Protection Associate (G-6 grade) on 1 January 2014. She held a fixed-term contract of long duration (“FTL”), which was due to expire on 31 December 2024.

38. From the IGO’s report, it results that many people accused the Applicant of having asked for money in return for services from her office which were free of charge.

39. In particular, it results as follows.

Person A

40. During an interview with the IGO, Person A said:

Dorcus [Ms. Tioko] and Priscilla [the Applicant] were together and Priscilla told me [that she and her acquaintance could provide assistance] if I paid 100,000 Ksh [Kenya Shillings]. I didn’t pay because I didn’t have money.

Priscilla said the 100,000 Ksh [Kenyan Shillings] would go to [her acquaintance] and I would have to pay another amount for her and Dorcus. She didn’t mention how much I would pay. I was supposed to pay the money directly to her. We were all in the office and we were sitting discussing together. She asked me for the money face to face.

41. In addition to the above first-hand evidence, Person A also provided hearsay evidence about the Applicant's involvement in acts of corruption. Person A stated that the Applicant was known for requesting bribes from refugees and was "*one of the dangerous ones*". Person A added that the Applicant requested money from refugees via her broker and "*right hand*", Mr. Abdikadir Hurush, Community Mobilizer at the LWF, a UNHCR partner at the time. Person A added that Mr. Hurush was known for requesting sexual favours from refugee women in exchange for promising to provide them with assistance.

42. It is worth recalling the investigation report in the relevant part:

Person A: I have never worked with her [Ms. Ngigi], but I know someone who is her broker and I have his telephone number. And I have a lot of information about her. She is one of the people who receives a lot of money from refugees. I don't have any evidence. She is one of the people who has received money from refugees. She [is] one of the dangerous ones.

If you want, I can get people who have gone through [t]his process of paying money through brokers who went abroad, and they can tell you. He also does sexual harassment to the ladies that approach to him – on top of the money he also gets – he sleeps with them, and forcefully. To convince him, first they must sleep with him and he can do that. He is the right hand of Priscilla [Ms. Ngigi]. Our religion doesn't allow us to tell some evil things and share with somebody else, but I feel I need to tell you this, what is happening.

He [Hurush] first meets with refugees and passes them to Wakesa [...] who then does a referral to Priscilla [Ms. Ngigi]. The money they normally collect, the minimum they collect from the refugees, is 1000 [US Dollars]. Wakesa doesn't know about the 1000. He normally gets about 10,000 [Kenya Shillings].

43. Person A gave a consistent statement to the IGO on 4 April 2017. Person A explained that Ms. Ngigi requested KES 100,000 and that Person A would have to pay an additional amount to Ms. Ngigi and Ms. Tioko.

Person A: Dorcus [Ms. Tioko] and Priscilla [Ms. Ngigi] were together and Priscilla told me if I paid 100,000 ksh [Kenya Shillings]. I didn't pay because I didn't have money.

44. Person A also informed the IGO that Persons B, C, D, E and F were potential witnesses in the investigation. Person A's knowledge of events in respect of Persons B, C and D was roughly consistent with the statements they provided to the IGO.

Person A: She [Person B] was instructed to go to Hurush and he will do the registration and so they can talk about; he can only support the case when Hurush brings the case to her. When she went to Hurush, he said 'Priscilla [Ms. Ngigi] didn't send you with empty hands' – she is expecting money. And you have to bring, 1,500 US dollars. And then she said that she can't get that money and then he [Hurush] said, 'Ok. Then get 1,000 US dollars.' There are also some other people who wanted to talk to you at the beginning, but now they decided not to do that. Some of those people have already paid money. ... She [Person B] went to Priscilla [Ms. Ngigi] and explained the case. Priscilla asked for money and sent her to Hurush. He told her nothing would go forward unless she paid money. When [Person B] told the story, I was not surprised. She didn't pay money because she doesn't have enough to eat. She doesn't have anyone abroad who can help her. This was in 2016.

45. As to person C, Person A stated:

I don't know much. [Person C] has a disabled kid at home. Whenever he goes to school, the kids are bullying him. He went to the field post where Priscilla [Ms. Ngigi] is. He explained the case to Priscilla and he explained to her many times. Whenever he complained to her, she referred him to Hurush. Priscilla told him that he should go to Hurush; [s]he sent him [Person C] to give him [Hurush] money for her. It was in 2016. ... In my knowledge, he didn't give any money [to Hurush] because Person C didn't have any money.

46. Person A's credibility is supported by the fact that their statement that Ms. Tioko was complicit in the request for money is consistent with the IGO's findings that Ms. Tioko was involved in multiple acts of corruption and is supported by similar fact evidence provided by Person I and Person L.

Person B

47. She is a female refugee who was living in Kakuma and was resettled to a third country on grounds of legal and physical protection. Person B stated to the IGO that the Applicant was known for "selling cases" and that she personally asked her for money. Person B explained that she met the Applicant only once, in 2010 at the

field post in Kakuma 3 zone 1, where she went to complain about her resettlement case that had been placed on hold. She explained:

I went to complain why I had stayed longer on that card, which was a 200[x] [card]. Then, she [the Applicant] said that we will handle your complaint - wait. I went out [of the office]. Then, Priscilla [the Applicant] sent the interpreter to call me. He came after me and said I have been called. Then we went back into the room. We were three: me, Priscilla and the interpreter. Then the interpreter said that 'Priscilla is telling you that that [sic] if you want me [the Applicant] to help you to remove your card from the holding or the pending you have to pay 500 Dollars.' That is how the conversation came. That is how he said.

[...] I never went back to her [the Applicant], because she wanted money and I did not have the money. I just give up.

48. Person B also stated that the Applicant referred her to Mr. Hurush. On that same day, Person B told Mr. Hurush that her case was pending and that she did not have money to pay the Applicant. Mr. Hurush responded that if she did not have money, she could pay him with sexual favours.

49. Person B's credibility is supported by the fact that Person A's statement to the IGO that the Applicant asked Person B for money and sent her to Mr. Hurush. Person B's statement that Mr. Hurush requested sexual favours from her in exchange for the promise of services is corroborated by the similar fact evidence provided by Persons A, C, D and E.

Persons C and D

50. They are Somali refugees who were married and lived in Kakuma. In 2019, they were relocated from Kakuma to Nairobi and placed in a witness protection programme. In May 2021, they were resettled to a third country. Only in 2019 (and not before), during her resettlement process, Person D detailed how she and her husband were requested by several individuals to pay money in order to receive assistance (in or around 2016), in the office at the UNHCR field post in Kakuma. The Applicant told Person C something to the effect that she could receive assistance if she paid and that her UNHCR case was not "moving" because she was not paying. In 2016, Person D met with the Applicant, who she refers to as "Brazil"

at the field post in Kakuma. During the meeting, the Applicant made it clear that she had to pay if she wanted her case to proceed. The Applicant told her that her case was not moving because she was not paying, and she referred her to Mr. Hurush. Person D met with Mr. Hurush, who she identified as the “personal assistant” of the Applicant. Mr. Hurush requested money and sexual favours in exchange for access to the Applicant.

51. It was noted that Person D and her husband were not fully transparent during their previous interview with the IGO in 2017, which was done when they were not in the witness protection programme. Person D explained that her lack of transparency was driven by fear for her safety and that of her family. She and her husband had been subjected to threats and attacks and were forced to flee due to their cooperation with the IGO investigations. Person D identified those who threatened her as individuals associated with Mr. Hurush and the Applicant. Considering these serious and compelling motives, Person D’s 2019 statements made at a time she was under witness protection programme are highly credible and probative. This results from the investigation report in the relevant part.

52. Person D admitted to paying money to UNHCR staff and others as part of the corruption scheme in Kakuma. Person D paid the money because she was desperate to obtain help for her children, one who is deaf and the other who has asthma, problems with his left eye and ongoing issues as a consequence of being burnt in 2008.

53. Person D was told she would not receive help if she did not pay money, and after receiving no assistance for a number of years, including sitting outside of a field post for months watching others who did pay money being helped, she decided to pay the money that was asked of her.

54. Person D paid KES15,000 to Mr. Shidad. He told her that he would keep KES5,000 for himself, which included KES 2,000 for transport, that he would give KES10,000 to another man who worked with Brazil (Ms. Ngigi), that this other man would take KES 5,000 and give the remaining KES 5000 to Brazil (Ms. Ngigi).

55. Person D stated: *He [Mr. Shidad] told me Brazil [Ms. Ngigi] don't help the people without paying the huge money, but he said I have a good case because I have medical documents, so he would beg for me to accept this small amount of money.*

56. Person D's credibility is supported by the fact that her statement that the Applicant requested money from her and referred her to Mr. Hurush is corroborated by the hearsay evidence of Person A; her statement that Mr. Hurush also requested money from her is corroborated by similar factual evidence provided by Persons A, B, F, and G. In addition, the Tribunal notes that Person D identified the Applicant as the woman accused of the above-mentioned facts: when shown a photo array of different UNHCR staff members, Person D recognised Ms. Ngigi's photograph in the array.

Person E

57. She is a female refugee who was living in Kakuma. She told the IGO that Mr. Hurush asked her for sexual favours in return for providing her with assistance. Furthermore, at the end of 2014 or early 2015, Person E tried to meet with the Applicant at Field Post 1. At that time, a Somali Bantu man told her that the Applicant was taking money in return for assistance and that it would cost about USD4,000. The following is an extract from the interview:

[...] When I went to that, to the Field Post 1, Field Post 1, I saw this young guy who was there, and then I asked him, 'Is today the offices are open?' He said, 'Yes, what do you want?' I told him, 'I want to protection. I have these problems and I want to meet the one, the person who is there. So, will you help me to translate?' He said, 'No, the officers are there, but that lady of protection is not, she is not around, but do you have money? That lady, she takes money. If you have money, then your case will be listen.' [...] 'If you don't have money she won't listen your case, or she won't, she won't give you the protection.'

[...] I ask him, 'How much do they take?' because I was just trying to figure out how it is, and he told me, 'They take [USD] \$4,000', and then I said, 'Wow, if I have [USD] \$4,000 I couldn't come with Boda here'.

Person F

58. Person F is a refugee who was living in Kakuma. Person F informed the IGO that in 2011, at the field post in Kakuma 3, Mr. Hurush told Person F that refugees needed to pay the Applicant to receive UNHCR services. During Person F's second interview with the IGO, Person F clarified that, although they had heard within the refugee community that the Applicant asked for money, the Applicant did not request money from Person F directly. Person F specified that it was an interpreter who worked for the Applicant who asked Person F for money.

59. Person F informed the IGO that

he met "Aldidiah Aldikader Hrush" (Mr. Abdikadir Hurush), who was nicknamed "Hrush" or "Hurush", in 2011 at the field post in Kakuma 3. According to him, Mr. Hurush worked for LWF and was supervised by a woman at UNHCR, who he heard was "Pricilla" (*sic*) [Ms. Ngigi] and who Person F saw on multiple occasions supervising Mr. Hurush. Mr. Hurush told Person F that "refugees need to pay this woman [Ms. Ngigi] for any services to be provided by UNHCR" and that "This woman wants money". Person F positively identified Ms. Ngigi in a photo array (photograph number 3 in the array) as "the person who was [allegedly] demanding money via the broker 'Hrush' [Mr. Hurush].

60. When interviewed on 21 September 2017, Person F informed the IGO that, in 2013 or 2014, an interpreter, named Shidad, who worked for a female UNHCR officer (name unknown), took USD200 from him. Person F paid USD200 to Mr. Shidad on the understanding that "the lady who was there would process my forms and my case".

Person G

61. Person G is a refugee who was living in Kakuma. In December 2017, the family, who had been in hiding with Person G, reported to the IGO that Person G had disappeared after leaving to purchase food. It results from the records that, in or around April 2016, in the Applicant's UNHCR office, via the interpretation of Mr. Hurush, the Applicant solicited KES200,000 (approximately USD2,000) (which was then reduced to KES150,000, approx. USD1,500) from Person G in return for promising to assist with moving Person G's case forward for resettlement.

Furthermore, in or around 2017, the Applicant and Mr. Hassan Bashir, a refugee interpreter, met Person G in Kakuma and solicited USD2,000 from Person G in return for promising to assist with moving Person G's case forward for resettlement. In particular, in statements to the IGO, Person G said:

I met Priscilla [the Applicant] at the field post. She was with a Somali translator (interpreter) called Ghurush [Mr. Hurush]. Priscilla gave me a note to go and meet with her in her office at the UNHCR with Ghurush. The next day Ghurush and I went to the UNHCR office to meet with Priscilla and she interviewed me. She explained that she had written my case in order to forward it to the relevant persons, however, she added that before she would forward it she needed some money amounting to Kenya Shillings 200,000.

[...] I told her that I was not about to pay the Kenya shillings 200,000 or equivalent \$2000. The interpreter briefly conversed with Priscilla and he said that I could bring \$1500 or equivalent Kenya Shillings 150,000. The interpreter urged that I should seek the money from my relatives living in the country or abroad. Otherwise, I would stay in the refugee in the camp or repatriate to my country or origin and my case would not move forward for resettlement.

62. According to Person G, in February 2017, during the IGO investigations in Kakuma, Mr. Hurush issued a threat to Person G, "*apparently from Priscilla*" (Ms. Ngigi), to keep his/her mouth shut and not to tell the IGO investigators what he/she knew about Ms. Ngigi asking for money.

In February 2017, I got a call from Ghurush [Mr. Hurush] who reminded me of his interpretation for my case with Priscilla [Ms. Ngigi]. He explained that there were people / investigators who had come to the camp to follow up some matters and some staff members had been dismissed from work. He warned me that if I mentioned that issue where I was asked for money I would not be able to live in the refugee camp.

The warning was apparently from Priscilla [Ms. Ngigi], and Ghurush had been asked to warn me 'not to open my mouth'. I felt threatened and since then I am afraid.

63. Person G also informed the IGO that, in March 2017, he/she tried to follow up on his/her case with a female staff member at LWF Peacebuilding, named Fardowsa who requested USD2,000 to link Person G up with the Applicant.

64. Person G reported that s/he was accused of cooperating with the IGO investigation resulting in UNHCR staff members losing their jobs. And s/he was reportedly tortured. The physical and psychological harm of the alleged torture were evident when the IGO interviewed Person G on 13 November 2017. During the interview on 13 November 2017, the IGO showed Person G a photo array and Person G identified Ms. Ngigi.

65. The IGO noted that the physical harm Person G reportedly experienced in Kakuma was evidently connected to cooperation with the IGO and evidence provided as a witness in a separate investigation. The IGO found Person G's statements coherent, consistent and credible.

66. The IGO found that the alleged role played by Mr. Hurush, the sum of money requested and the suggestion that Person G obtain the money from relatives abroad reflected a similar pattern to the witness accounts from Persons D, L and M. The IGO noted that Mr. Hurush reportedly threatened Person G in February 2017 not to speak with the IGO investigators in Kakuma; *"He warned me that if I mentioned the issue where I was asked for money I would not be able to live in the refugee camp"*. It was apparent to Person G that the warning came from Ms. Ngigi.

67. Person G's credibility is supported by G's statement to the Kenyan police dated November 2017. In this statement, Person G detailed multiples instances of corruption involving various individuals, including the Applicant. Person G indicated having met with the Applicant in 2017 to seek assistance. A sum of USD2,000 was requested by them to aid in Person G's resettlement case. Person G also reported having been subjected to torture and accused of collaborating with IGO investigations. Person G's statement that people met a specific UNHCR staff member (SM-A) in July 2015 is consistent with proGres records. Person G's statement that s/he had been tortured and accused of cooperating with the IGO investigation is corroborated by the investigator who interviewed Person G on 13 November 2017 and attested by the physical and psychological harm done to Person G; Person G's statement that s/he was threatened is supported by the fact that s/he disappeared and was never found.

Person I

68. Person I is a refugee who was living in Kakuma. Person I told the IGO that three staff members at UNHCR Kakuma were known to solicit bribes from refugees: the Applicant, Ms. Tioko, and Mr. Johnfan Ekutu, Senior Resettlement Assistant, UNHCR Kakuma. According to Person I, these three worked with agents or brokers who were refugees, and who would refer other refugees to them. In 2017, the IGO made a finding that the evidence substantiated allegations that Ms. Tioko and Mr. Ekutu had requested money from refugees and issued threats. Person I added that Ms. Ngigi was at the top in the hierarchy since she was a lawyer.

69. Person I further explained that Ms. Ngigi did not get herself involved directly with the refugees; however, she was in charge and would allegedly get a portion of the bribes from the cases referred by the brokers to the other staff members. The cases referred to Mr. Ekutu and Ms. Tioko were channelled to Ms. Ngigi and the cases would not move forward without the latter's involvement and approval.

Person J

70. Person J is a refugee who was living in Kakuma. Person J wrote to the IGO that a family of refugees told Person J that in 2013, the Applicant took KES100,000 from them, in exchange for a promise of assistance that the Applicant did not deliver. More recently, Person J wrote to the IGO that the Applicant received money from refugees from "2012 up to 2014 up to now for the promise of assistance". Person J knew individuals who paid money to the Applicant and her broker using cash and M-Pesa money transfers. According to Person J, the refugees paid the Applicant but did not receive any assistance. On 30 January 2018, Person J sent an email to the IGO alleging that Ms. Ngigi was involved in soliciting payments from refugees in return for services. Person J wrote:

From my continued investigations to help you uncover the network involving Pricilla [Ms. Ngigi] of UNHCR in Kakuma, I got a family which told me that Pricilla [Ms. Ngigi] took their money, 100,000 Ksh in 2013, on promises of assistance and they have not received the promised assistance to date.

The person who linked them to her is who has already been resettled, by the help of Pricilla [Ms. Ngigi]. Another person is , he too has gone . According to what they say, they did not get the assistance because they were meant to add more money. Their financier has refused to give them more money and has cut communication with them.

Person L

71. Person L is a refugee who was living in Kakuma (registered PoC). In February 2019, Person L sent emails to the IGO about allegations of corruption. In February 2019, Person L sent a first email to the IGO indicating that a UNHCR officer in charge of their case requested money in exchange for providing services. Person L indicated: *“When I refused to give her the money, keeping in mind that all the UNHCR services are free of charge, she openly confessed that I shall remain helpless”*. When asked to clarify, Person L reported that it was the Applicant who solicited money. In a subsequent email, Person L detailed their protection needs and explained:

One month after [i.e. late June 2015], I was visited by Priscilla Ngigi [the Applicant] an officer of UNHCR [...] but no help was offered. After a while Priscilla Ngigi sent her broker [...] to tell me that Priscilla Ngigi ... (OMISSIS the Applicant’s official mobile number] wanted to help me.

We then organize to meet and talk about [sic]. That was in May 2016. [The alleged broker], [...] and I went to meet Priscilla in the morning, on a [specific day of the week], no[t] far to the camp manager office in Kakuma town. We found Dorcas [Ms. Tioko], Priscilla and [UNHCR staff member] at [specific location]. Priscilla introduced us to her colleagues and they told me that they wanted to help me from getting the recognition [sic] letter and problem but I had to give them a hundred and fifty thousand [Kenya Shillings]. I replied that I wouldn't get the money as I was not working and needed [...]. Priscilla replied that it would be difficult for her to help me and we went back home. In July 2017, Priscilla called me again in her office and asked me if I already had what she had asked for before so as Priscilla would help but I told her that I hadn't gotten it and she said again that she don't [know] how I will be helped. After passing through this, I haven't been at peace because of threats and menaces.

72. The Respondent stressed on this point that, even though the exact location of the May 2016 meeting was not disclosed to the Applicant, the Applicant admitted

in an email to the IGO dated 16 December 2022, that the meeting took place at Ms. Tioko's place. This reference that the meeting was at Ms. Tioko's place is an admission that the Applicant knew about the meeting with Person L.

73. Person L's statement that Ms. Tioko was complicit in acts of corruption is consistent with the IGO's findings that Ms. Tioko was involved in multiple acts of corruption and is supported by similar fact evidence provided by Person A and Person I.

74. Person L's statement is corroborated by the proGres legacy events showing that the Applicant entered an event into proGres in mid-2015 related to Person L's protection needs and met Person L in person in UNHCR's office in mid-2017.

75. UNHCR tried to contact Person L by email and phone on several occasions in early to mid-2019 without success. UNHCR proGres records show that Person L's registration in Kakuma was inactivated in August 2019 for reason of "no contact".

Person M

76. Person M is an Ethiopian refugee who was living in Kakuma. In March 2022, M was resettled to a third country. It is worth recalling the investigation report in the relevant part:

On 18 December 2019, Person M, a PoC in Kakuma [...], sent an email to the IGO stating that Ms. Ngigi had asked him for money, and that (SM-B) colluded with the Congolese and Oromo refugee communities in corrupt ways.

On 13 January 2020, in response to an IGO request for additional information, Person M explained that, on 23 May 2019, at Field Post 1, Kakuma, Ms. Ngigi asked him to pay KES 10,000 in return for an RSD decision letter.

The IGO interviewed Person M on 5 February 2020 by WhatsApp. Person M stated that he registered at the Kakuma refugee camp in November 2011. His RSD interview took place on 8 September 2013, after which he was required to wait for a government decision on his refugee status. In 2014, the office required him to attend another interview before issuing an RSD [Refugee Status Determination] decision.

Person M informed the IGO that he called the UNHCR Helpline to complain about the delay in the decision on his refugee status. Finally, in 2019, Ms. Ngigi, who he referred to as “Priscilla” and described as a “Kenyan Protection Officer”, contacted him from her mobile phone. On 28 February 2020, Person M provided the IGO with Ms. Ngigi’s phone number, ... which the IGO confirmed against the UNHCR Kakuma staff directory. On 17 July 2020, Person M provided the IGO with a photograph of Ms. Ngigi.

The IGO notes that Ms. Ngigi’s official phone records confirm that she called Person M on his mobile number ... on 18 January 2019 at 11:41 hours (call duration: 2 minutes 18 seconds) and on 22 January 2019 at 9:17 hours (call duration: 14 seconds). There was also indication that Ms. Ngigi sent a text message to Person M on 23 January 2019 at 13:58 hours. It was further found that Ms. Ngigi phoned Person M on 6 February 2019 at 10:43 hours (call duration of 29 seconds).

According to Person M, when Ms. Ngigi called him on or around February 2019, she said, “I’m calling you from the Protection Office” and asked him to meet her the next day. The following day, Person M met Ms. Ngigi at the UNHCR office. She told him, “Let’s help you.” Person M asked her why the decision on his refugee status eligibility was taking so long. Ms. Ngigi explained that the reason was because he was from the Amhara tribe and that “We only process mostly Oromo cases”. She asked Person M, “What else can we do for you?” Person M replied that he wanted to know the result of his RSD eligibility and that he deserved to have the same opportunity as everybody else for resettlement. Ms. Ngigi responded, “I’ve already explained to you that the [re]settlement is only for the Oromos and the Congolese right now”. According to Person M, Ms. Ngigi then told him:

This is a lottery, like this is pure luck, and – but if you have the capacity, maybe I can help you. [...] As you can see it, people coming from your country, Ethiopians, are going to Canada, and the fee is 6,000 dollars.

Person M informed the IGO that he told Ms. Ngigi that “I just don’t have that capacity” and Ms. Ngigi responded:

You guys always help each other, you have family or church helping you on personal basis, funding you on personal cases. And I’m sure all of you have families abroad. Either call family members or friends abroad and you can make it happen if you really want to be resettled, and it’s not that hard. You just need to find a way to get it together.

[...] If you get me the money, I will guarantee you the resettlement. I will write you a better case, and [SM-B] will give you an identification certificate.

Person M presumed that Ms. Ngigi was aware that many people who get private sponsors for resettlement to Canada talk about paying USD 6,000. He told Ms. Ngigi that he did not have that capacity and that he did not have enough money to sustain himself. According to Person M, it was clear that Ms. Ngigi was asking him to give her USD 6,000 and that SM-B would then give him a temporary mandate (i.e. UNHCR letter / certificate of temporary refugee status recognition under UNHCR's mandate).

Person M clarified that Ms. Ngigi first asked for USD 1,000 (to write him a better case) and then KES 10,000 for the mandate letter. He explained that Ms. Ngigi requested cash, USD 1,000 or KES 100,000. He explained that another way was to send the money using M-Pesa, but Ms. Ngigi said *"I will not take through M-Pesa. I want cash."*

According to Person M, Ms. Ngigi indicated that she would be happy to help him get a signed RSD document from the Government of Kenya. However, she added, *"you guys [Ethiopians] normally go to Canada through a private sponsorship approach [...] And the person who facilitates this within UNHCR is a colleague."* She told Person M that SM-B was the colleague who normally facilitates these things for Ethiopians. Ms. Ngigi further explained to Person M that RSD decisions *"are not like a requirement for people to go to Canada through private sponsorship", and that "you guys [Ethiopians] going to Canada through this private sponsorship arrangement normally pay 5,000 to 6,000 US dollar[s]."* Person M stated:

And then, she [Ms. Ngigi] told me [Person M] that, 'If you give me 1,000 USD cash, not through M-Pesa, I'll give you a paper that will help you to get [re]settlement to a third country.' [...] And she said, 'Your case is an old one. It has been in the system for a long time.'

Person M told Ms. Ngigi that he did not have money and that *"You are a humanitarian worker. You should assist someone like me."* He also told Ms. Ngigi that he thought the Helpline gave his mobile number to her in order for her to follow-up on his case and that she phoned him because she wanted to assist him. According to Person M, Ms. Ngigi said she did not care about that. She added, *"You Ethiopians support each other very well and you must have some cash. So, if you're ready, call me anytime and I'll be more than happy to assist you"*.

Mr. Person M informed the IGO that Ms. Ngigi told him that *"resettlement is not a right" and "as the Head of the Protection – as one of the Protection staff in the field, I will write you a very good recommendation that will help you get [re]settlement to a third country."* Ms. Ngigi also told him, *"If you are willing to do this, you can approach me anytime. I know that you come to the Field Post"*

every day. So you know where I am. When you're ready, you can just approach me." As they did not reach an agreement, Ms. Ngigi asked the security guard to escort Person M out of the field post compound.

Later, Person M made an appointment through the UNHCR online system and had an opportunity to meet Ms. Ngigi again. At the meeting, which was in 2019 (he could not recall the date), Ms. Ngigi again requested him to pay money. When he told her that he did not have the money she was requesting, Ms. Ngigi got disappointed; she took his phone from him and threw it [to the ground]; "*She took the phone and broke it.*" The security guards then escorted Person M out of the compound. According to Person M, he was later denied access to the online appointment system.

77. IGO's report analysis of the finding stressed that a number of individual accounts reflect a similar *modus operandi*, whereby – although none of the witnesses paid money to Ms. Ngigi, and hence no proof of payment exists - Ms. Ngigi allegedly solicited bribes during one-to-one meetings with the PoCs, sometimes in the presence of Mr. Hurush, who acted as interpreter and broker. According to the firsthand witness statements, the sum of money requested by Ms. Ngigi ranged from USD500 to USD2,000, depending on the case and the service offered. The sum ranged from USD1,000 to USD5,000 according to hearsay reports.

78. The Applicant solicited bribes in return for assurances of assistance, not only in relation to resettlement; indeed, witnesses gave firsthand accounts that Ms. Ngigi solicited bribes in return for services not related to resettlement, such as in the case of Persons B, L and M, the latter two involved the issuance of a UNHCR mandate letter. In other cases (Persons A, G and M), it would be reasonable to infer that the service was to facilitate access to resettlement consideration, such as an internal referral. The IGO further noted that UNHCR protection staff in Kakuma were well placed to make referrals for resettlement consideration, which did not require their direct role in resettlement.

79. The evidence collected by IGO consists of a plurality of accusations from several independent sources. Some of them provided direct first-hand evidence. The evidence that the Applicant engaged in corruption is extensive, specific, and corroborated by multiple independent sources. Six refugees – Persons A, B, D, G,

L, and M – provided direct first-hand evidence, each offering detailed, consistent, and reliable accounts that the Applicant solicited money from them in exchange for promises of assistance from 2010 to 2019. The first-hand evidence was corroborated by documentary evidence, namely proGres records, KASI system records (an online short message system which enables PoCs to make appointments with UNHCR and the Department of Refugee Services), a written statement to the Kenyan police, emails, photographs, and phone records; additionally, corroborative hearsay evidence was provided by other refugees (notably, Persons E, F, I, and J).

80. There is no evidence that the said witnesses knew each other, making it implausible that they colluded to provide similar evidence.

81. From the statement above it results that the Applicant repeatedly engaged in attempt of corruption by requesting money from at least six refugees in exchange for promising UNHCR services that should have been provided without charge.

82. As a consequence, the decision to dismiss the Applicant was lawful and shall stand. The Tribunal is of the view that not only is the employer's trust in his employee over and that the working relationship is compromised, but also that the facts which the Applicant is accused of have been proved in a consistent and unequivocal manner, and that the Respondent fulfilled his burden to prove that the Applicant took bribes from some refugees, or at least that she asked for them.

83. The Tribunal stresses that the disciplinary measure was not based solely on anonymous statements and that the statements by identified witnesses are sufficient to substantiate the accusations against the Applicant. Indeed, some witnesses have been clearly identified, and their testimony would suffice to ground the accusations in the case.

84. Moreover, the Tribunal notes that the Applicant does not question the use of anonymous witness statements in the accusation, but rather contests their evidentiary value against her.

85. In any case, the Tribunal is aware that the situation in Kakuma and the risks to the witnesses' security and physical integrity fully justified the use and reliance on anonymous statements.

86. In *Liyanarachchige* (2010-UNAT-087, paras. 19-20), the UNAT determined that anonymous statements may be used as evidence in disciplinary matters in exceptional cases: the use of statements gathered in the course of the investigation from witnesses who remained anonymous throughout the proceedings, including before the Tribunal, cannot be excluded as a matter of principle from disciplinary matters, even though anonymity does not permit confrontation with the witnesses themselves but only with the person who recorded the statements of the latter.

87. Similarly, in *Asgedom* (UNDT/2023/050, para. 120), this Tribunal held that not disclosing the identity of a witness was a reasonable measure to protect the witness, a vulnerable refugee, in accordance with paragraph 7.4(c) of UNHCR/AI/2018/18/Rev.1.

88. In the case at hand, the multiple instances of corruption committed by the Applicant are seriously prejudicial to UNHCR's work and reputation, and anonymity was necessary to ensure the safety of the witnesses.

89. The Applicant's defence is grounded on her lack of responsibility in the resettlement unit, the lack of many registered events entered by the Applicant herself in the ProGres legacy data, the lack of physical recognition in photograph, the inconsistencies or genericity of some testimonies, the possibility of resettlement as a reward for the testimony of the refugees and the lack of consideration of her defence.

90. All these defences are not decisive and are not able to contrast the evidence collected by the Administration.

91. From the file it results coherent evidence pointing to a pattern of behaviour, properly corroborated by multiple statements.

92. Indeed, the Applicant's lack of responsibility in the resettlement unit was probably not known by the victims and is in any case was non-decisive to exclude a request by the Applicant, being this possible independently of what concretely the staff member can offer as a consideration. Also, even with the check procedures in place, the opportunity to solicit bribes exists where vulnerable PoCs are misled to believe that their case can be assisted, especially when the staff member is perceived to be in a position of power or authority and claims assistance can be provided in return for payment, even if the factual ability of the staff member to influence the process is limited.

93. While some events described by the witnesses were corroborated by proGres entries, the absence of proGres records does not affect the credibility of the witnesses. This is because not all actions were systematically recorded in proGres. The lack of registered events entered by the Applicant herself in the ProGres legacy data cannot exclude that some meeting happened that were not recorded.

94. The lack of physical recognition of the Applicant in photograph by one the victims is counterbalanced by the recognition made by some others.

95. The inconsistencies or genericity of some testimonies can be explained with the fear felt in the first period and with the time elapsed between facts and their recollection for the last statements.

96. In this regard, the case against the Applicant, which took place in the context of several investigations into a broader corruption network in Kakuma, was handled with utmost care due to the real threats of physical harm faced by witnesses and their families. The witnesses who had the courage to denounce the Kakuma corruption network faced severe human rights violations, including threats, physical abuse, torture, kidnapping, and murder (Annex R2, para. 4). With respect to the witnesses who specifically testified against the Applicant, two of them (Persons G and L) disappeared, one was tortured (Person G), and most were threatened and had to be relocated and/or placed in a witness protection programme.

97. The situation in Kakuma and the risks to the witnesses' security and physical integrity thus not only fully justified the use and reliance on anonymous statements, but also justified generic and not brave testimonies.

98. The possibility – alleged by the Applicant - of a resettlement as a reward for the testimony of the refugees remain unsubstantiated, while the Applicant didn't explain why the false testimony (which is a crime) could have been solicited by inspectors. In the absence of evidence indicating that the witnesses colluded and provided false statements, the United Nations Appeal Tribunal has consistently refrained from presuming dishonesty (*Siddiqi* 2019-UNAT-913, para. 30; *Majut* 2018-UNAT-862, para. 80; *Mbaigolmem* 2018-UNAT-819, para. 31; and *Aghadiuno* 2018-UNAT-811, para. 96). Nothing in the file can suggest that resettlement and other protection assistance were offered in return for the witnesses' cooperation with the investigations. There is no evidence of conspiracy or improper motives that could undermine the credibility, reliability, and weight of their statements (*Muteeganda* UNDT/2020/050, para. 43).

Whether these facts amount to misconduct.

99. Article 101, paragraph 3 of the United Nations Charter provides as follows:

The paramount consideration in the employment of staff and the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity.

100. Pursuant to staff regulations 1.1(a) and (b),

Staff members are international civil servants. Their responsibilities as staff members are not national but exclusively international.

Staff members shall make the following written declaration witnessed by the Secretary-General or his or her authorized representative:

“I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the

performance of my duties from any Government or other source external to the Organization.

I also solemnly declare and promise to respect the obligations incumbent upon me as set out in the Staff Regulations and Rules.”

101. Staff regulation 1.2 (a) stipulates that,

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.

102. Pursuant to staff regulations 1.2(b) and (g),

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.

and

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.

103. Staff rule 1.2(k) provides as follows:

Staff members shall neither offer nor promise any favour, gift, remuneration or any other personal benefit to another staff member or to any third party with a view to causing him or her to perform, fail to perform or delay the performance of any official act. Similarly, staff members shall neither seek nor accept any favour, gift, remuneration or any other personal benefit from another staff member or from any third party in exchange for performing, failing to perform or delaying the performance of any official act.

104. Also relevant is UNHCR’s Strategic Framework for the Prevention of Fraud and Corruption. The Framework states that fraudulent acts constitute serious acts of misconduct. The Framework defines fraud and corruption, as follows:

- Fraud – Any act or omission, including misrepresentation or concealment of a material fact, that knowingly or intentionally misleads, or attempts to mislead, a party to obtain a benefit, whether directly or indirectly, whether for oneself or for a third party. Fraud could involve misappropriation of cash (such as fraudulent claims/disbursements) or other assets (such as fraudulent shipments, falsifying inventory records), or fraudulent statements (purposefully misreporting or omitting information).
- Corruption – The offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party. Corruption may take the form of an undisclosed conflict of interest, unauthorized acceptance of honours, gifts or remuneration, bribery (including kickbacks), illegal gratuities or economic extortion.

105. The following principles in the UNHCR Code of Conduct are also of relevance:

Principle 3: Perform my official duties and conduct my private affairs in a manner that avoids conflicts of interest, thereby preserving and enhancing public confidence in UNHCR.

Principle 7: Prevent, oppose and combat all exploitation and abuse of refugees and other persons of concern.

Principle 8: Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of UNHCR.

106. In this legal framework, very clear and serious, the above-mentioned facts constitute misconduct.

107. The Applicant's conduct in requesting money from refugees in exchange for a promise of assistance amounts to corruption, even if money has not been paid, as per UNHCR's Strategic Framework for the Prevention of Fraud and Corruption. By engaging in corruption, the Applicant breached staff rule 1.2 (k) which prohibits staff members from seeking a personal benefit in exchange for performing official acts. Similarly, the Applicant attempted to use her office for private gain, hence engaging in misuse of office and breaching staff regulation 1.2 (g). Finally, the exploitation of her position of power over the vulnerability of refugees seeking assistance from UNHCR strikes at the very heart of the trust and integrity that UNHCR and its staff members owe to refugees. By doing so, the Applicant also breached staff regulation 1.2 (b).

Whether the sanction is proportionate to the offence.

108. The Tribunal considers that the facts the Applicant is accused of are extremely serious and totally incompatible with the position of a staff member of an international organization. A consideration of the facts in their repetition during years justifies a strong reaction by the organization with the most severe disciplinary sanction.

109. The Tribunal stresses also that each of the established facts are misconduct and would have been sufficient, on its own, to justify the Applicant's dismissal.

Whether the Applicant's due process rights were respected

110. The investigation and disciplinary process complied with the formal requirements set out in the Administrative Instruction on Conducting Investigations in UNHCR (UNHCR/AI/2019/15) and UNHCR/AI/2018/18/Rev.1.

111. Notably, the IGO informed the Applicant to an adequate extent of the allegations against her; the Applicant was repeatedly heard on her defence and the interviews were recorded and shared with her for her comments and signature; the draft investigation findings were shared with the Applicant on two occasions, and she was allowed to provide her comments and countervailing information; finally, exculpatory evidence was considered and the Applicant's comments on the allegations of misconduct were considered during the disciplinary process.

112. Therefore, the Applicant's due process rights were fully respected.

113. The Applicant's assertion that the reopening of a closed investigation constitutes double jeopardy is without merit. Indeed, it is within the IGO's mandate to reopen an investigation when additional information comes to light (paragraph 94 of the AI on Investigation).

114. As to the issue of anonymous witnesses, already addressed in the previous paragraphs of this judgment, it has to be here added that paragraph 30 of the said AI provides that due process rights may be restricted if required to protect the safety of witnesses.

115. The Applicant's claim about the lack of collection of evidence from some people (notably, Mr. Hurush) is meritless. Indeed, on the one hand, the investigator's decision not to interview Mr. Hurush was a reasonable and lawful exercise of his discretion to decide what is relevant for the purposes of the investigation (*Pappachan* UNDT/2019/118, para. 93 and *Beda* UNDT/2021/057, para. 98, affirmed by 2022-UNAT-1260), considering specifically that Mr. Hurush was implicated in the misconduct and was not a UNHCR staff member, therefore under no legal obligation to cooperate with the investigation or tell the truth. On the other hand, any investigative gap can have a remedy only in the judicial proceedings, while the Applicant did not ask for Mr. Hurush's testimony in the proceeding.

116. Also, the Applicant's assertion that she was not allowed to cross-examine the witnesses has no merit as there is no right of cross-examination at the investigation stage (*Khan* 2014-UNAT-486, para. 52) and no witnesses were called to testify during the judicial proceedings.

Conclusion

117. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

(Signed)

Judge Francesco Buffa

Dated this 6th day of December 2024

Entered in the Register on this 6th day of December 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi