



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/013
Judgment No.: UNDT/2024/107
Date: 6 December 2024
English
Original: French

Before: Judge Joelle Adda
Registry: New York
Registrar: Isaac Endeley

KOUROUMA
v.
SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Víctor Rodríguez

Counsel for Respondent:
Sandra Lando, UNHCR
Francisco Navarro, UNHCR

Introduction

1. The Applicant, a former staff member with the Office of the United Nations High Commissioner for Refugees (“UNHCR”), based in Niamey, the Niger, filed an application on 16 May 2023 challenging the disciplinary measure of summary dismissal imposed on him pursuant to rule 10.2(a)(ix) of the Staff Rules of the United Nations.
2. On 15 June 2023, the Respondent filed a reply submitting that the application was without merit and that the contested decision was based on facts established by clear and convincing evidence.
3. A hearing was held from 4 to 6 March 2024, at which the Applicant, and the three complainants, namely “MW”, “JL” and “GR1” provided testimony before the Tribunal. Given the sensitive nature of their testimony, the hearing was held in closed session, using the Microsoft Teams platform.
4. For the reasons set out below, the Tribunal rejects the application.

Factual background

5. As the Appeals Tribunal stated in *Ogorodnikov* 2015-UNAT-549, when “the parties have agreed to and identified the facts ... it is not open to [the Dispute Tribunal] to conduct its own evaluation and then to substitute its view for that of the parties”. Thus, in the present case, in response to Order No. 075 (NY/2023) of 23 August 2023, the parties provided a chronology of agreed facts (*italics in the original*):

On 9 June 1997, the Applicant began his career at UNHCR as a Senior Protection Clerk in Nzérékoré, Guinea.

As from 29 July 2018, the Applicant was the Deputy Representative for UNHCR operations in the Niger at the P5 level, holding an indefinite appointment. The Applicant was the second highest-ranking UNHCR official in the Niger.

From 25 November to 1 December 2018, [“MW”, name redacted for privacy reasons], Senior Programme Monitoring Officer with UNHCR in [Libya] (but based in Tunis, Tunisia), went on mission to the Niger. It was during that mission that the Applicant and [MW] met for the first time.

On Friday 30 November 2018, the Applicant met [MW] in his office to brief him on her mission. [“BM”, name redacted for privacy reasons], Senior Inter-Agency

Coordination Officer in Niamey, joined them but left before the end of the meeting. It was at the end of this meeting that the Applicant embraced [MW].

In December 2018, the Applicant sent an email to [MW] in response to her mission report: “Hello [MW], How are you doing, already in Tunis. Just saying hi. Best regards [Applicant]”.

[MW] informed the Inspector General’s Office that she found this email inappropriate after what the Applicant had done to her in his office [...]. She stated that she no longer remembered if she had replied to the Applicant but, after her interview on 9 November 2021, she transmitted to the Inspector General’s Office, by email, the reply she had sent to the Applicant:

Hello (Applicant), I am currently in Geneva and will then be going on holiday in the Swiss mountains (where I come from). It was hard to return to Tunis after a very interesting time in Niamey. The EUTF ETM contract has been signed and, together with [names redacted for privacy reasons] we have allocated EUR 30m (EUR 26m for the Niger and EUR 4m for Burkina Faso). In the event that Burkina Faso does not agree to an ETM, the EUR 4m will be added to the allocation for the Niger. Meanwhile, I have messaged HQ several times to inform them that we need to do more fundraising for the ETM in the Niger - in January I'm going to discuss with Vincent C. how we can help you. Best wishes for the New Year for you and your family, Bye for now, [MW]

In September 2019, [“JL”, name redacted for privacy reasons], joined the UNHCR office in Niamey as an associate staff member, working as a Refugee Status Determination Expert. It was her first international post with UNHCR. [JL] and the Applicant did not work in the same building.

From 1 to 7 February 2020, [MW] undertook another mission to the Niger. During this mission, [MW] and the Applicant met for the second and last time. At the end of the mission, the Applicant invited [MW] to his office to brief him on her mission.

In February 2021, [“GR1”, name redacted for privacy reasons] joined the UNHCR office in Niamey as an Associate External Relations Officer, her first post as an international civil servant with UNHCR. For part of 2021, when [GR1]’s supervisor was absent, she was supervised directly by the Applicant.

On 1 October 2021, the Inspector General’s Office received an allegation of misconduct made against the Applicant. It was specifically reported by [MW] that the Applicant behaved inappropriately with her on two different occasions in November 2018 and February 2020.

On 25 October 2021, the Inspector General’s Office opened investigation No. INV/2021/0091 and it was during that investigation that information regarding other potential victims was reported to the Office. Those allegations were added to the open investigation.

Between 9 November 2021 and 4 March 2022, nine individuals, including the Applicant and the three complainants, were interviewed by the Inspector General's Office via Teams, without travelling to the Niger. Two individuals, [BM] and ["SC", name redacted for privacy reasons], a former UNHCR staff member, were not called or interviewed between 9 November [2021] and 4 March 2022. [MW] stated that [SC] was the first person that [MW] met after the first incident in November 2018. [SC] is not mentioned in the report of the Inspector General's Office.

On 9 November 2021, [MW] was interviewed by the Inspector General's Office.

In November 2021, the Applicant and [GR1] had a workplace dispute relating to a meeting with the representative of the World Bank in the Niger, who had asked to have a discussion with UNHCR about one of the projects supported by UNHCR and financed by the World Bank. [GR1] was to prepare the necessary documents for the Applicant.

On 2 December 2021, during the investigation by the Inspector General's Office, the Applicant entered the office of one of the staff members under his supervision, ["MV", name redacted for privacy reasons], (Mental Health and Psychosocial Support Officer in Niamey), while [MV] and [JL] were having lunch there. The Applicant sat down with [JL] and [MV] to talk. It was the first time that the Applicant had spoken to [JL].

In December 2021, a refresher session on the UNHCR Code of Conduct was held for colleagues working in Niamey.

On 14 December 2021, [JL] filed a complaint with the Inspector General's Office regarding an incident that occurred on 2 December 2021.

On 17 January [2022], [JL] was interviewed by the Inspector General's Office.

On 11 February 2022, [GR1] reported to the Inspector General's Office conduct by the Applicant that she considered inappropriate.

On 24 February 2022, [GR1] was interviewed by the Inspector General's Office.
On 3 March 2022, the Applicant was placed on administrative leave with full pay.

On 4 March 2022, the Applicant was interviewed as the investigation subject. During the interview, which was held in French, the interviewer, whose mother tongue is French, asked the Applicant numerous times to speak more slowly.

On 14 March 2022, the Representative in Niamey sent an email to staff working in the Niger to inform them that the Applicant had been placed on administrative leave owing to allegations made against him. The Representative did not disclose any details of the allegations. He stated that the administrative leave was a temporary measure and that it was not a disciplinary measure. He invited staff not

to gossip or engage in speculation. The Representative announced in detail the measures taken to ensure continuity during the Applicant's absence. He also stated that ["AM", name redacted for privacy reasons] was the investigation specialist who could be contacted in the event of any concerns related to the investigation being conducted by the Inspector General's Office.

On 16 March 2022, the Applicant sent an email to the Inspector General's Office, in which he raised concerns about his placement on administrative leave and the breach of confidentiality regarding the investigation. The Inspector General's Office informed the Applicant that his concerns should be handled by the Director of the Division of Human Resources and shared his email with her. On 24 March 2022, the Director of the Division of Human Resources replied to the Applicant, explaining as follows:

As regards the email from the Representative, considering your functions and seniority as Deputy Representative, I think that it was reasonable for the Representative to inform colleagues of your absence from the office and the interim arrangements to ensure continuity. Using measured and respectful language, the Representative made it clear that you had not been sanctioned, did not reveal any facts or the nature of the allegations, and explicitly asked colleagues not to speculate or gossip.

On 17 March 2022, the investigator at the Inspector General's Office wrote to the Applicant regarding, inter alia, the Applicant's proposed amendments to the record of his interview. The investigator sent him the Word document of the interview record, specifying that:

I have sent you the Word document so that you can fill in - in one or two words - the parts marked "inaudible" but not for you to change the meaning and the content of your responses under any circumstances. Please sign the attached document (in PDF format), which is a verbatim record of our interview, prepared to the best of my ability bearing in mind the speed at which you spoke during the interview, which meant you were sometimes difficult to understand (I have indicated where it was inaudible) and send me, by email or in a separate Word document, the corrections or additions that you would like to make to your responses in the interview. This is in accordance with paragraph 29(e) of the Administrative Instruction on Conducting Investigations in UNHCR (UNHCR/AI/2019/15 of 9 December 2019), which reads as follows: "Right to review the written record of interview: The subject has the right to see the written record of their interview and to make corrections if needed. This is an opportunity to correct inaccuracies or incomplete information in the record of interview based on what was actually said during the interview. It is not an opportunity to reconsider or change the answers given at the interview." I cannot therefore accept your proposed changes to the record of your interview.

The Applicant signed the record of his interview the same day (see annex 12 of the investigation report) and wrote to the investigator:

However, I must clarify that it is virtually impossible to accurately fill in the inaudible parts that you have indicated given that, when I was speaking, I had clear ideas and there were also emotions involved.¹ But several days later, we cannot say exactly what was intended. I do understand that the text of an interview cannot be amended since it is based on a recording, I also wish to reiterate that I provided you with my inputs in case they were useful, since it is clear that your text contains a lot of typos, repetitions and even misinterpretations. We should be grateful if you could take into account my inputs, the original of which I will retain for future use.

On 24 March 2022, the Applicant sent by email an amended and signed record of interview, in which he had added information and amended some of his responses (annex 16 of the investigation report).

On 28 March 2022, the Inspector General's Office sent the preliminary investigation report to the Applicant and gave him the opportunity to comment on it.

On 5 April 2022, the Applicant provided the Inspector General's Office with his comments on the preliminary investigation report.

On 7 April 2022, the Inspector General's Office concluded its investigation No. INV/2021/0091 and sent the investigation report and its annexes to the Director of the Division of Human Resources.

On 8 July 2022, the Director of the Division of Human Resources sent the Applicant the investigation report prepared by the Inspector General's Office concerning the allegations of misconduct made against him and the decision to initiate disciplinary proceedings against him with regard to the following allegations:

- (i) In November 2018, you allegedly engaged in sexual harassment by attempting to kiss [MW] on the mouth without her consent while saying goodbye after a meeting and then by rubbing your penis against [MW's] lower abdomen;
- (ii) In February 2020, you allegedly engaged in sexual harassment by showing your genitals to [MW] during a meeting;
- (iii) In December 2021, you allegedly engaged in sexual harassment by massaging [JL's] shoulder, staring at her with a sexually suggestive look and stroking her hand; and

¹ Translator's note: Two typos are preserved in the French original – “om” (“on”) and “émorions” (“émotions”).

- (iv) On several occasions in 2021, you allegedly engaged in sexual harassment by massaging [GR1's] shoulder, stroking her hair and back, repeatedly embracing her in a way that made her uncomfortable, patting her buttocks and regularly calling her "darling".

The Director of the Division of Human Resources invited the Applicant to respond to the allegations and informed him of his right to be assisted by a lawyer.

On 9 September 2022, after an extension of the deadline, the Applicant (assisted by his lawyer) responded to the allegations, including by suggesting that two additional individuals, namely [BM] and [SC], a former UNHCR staff member, should have been interviewed (the Applicant did not expressly ask for them to be interviewed, contrary to what is stated in paragraph 12 of his response).

On 4 October 2022, the Inspector General's Office interviewed [BM] and contacted [SC]; however, [SC] decided not to participate in the interview on 10 October 2022.

On 31 October 2022, the Division of Human Resources notified the decision of the Inspector General's Office to interview [BM] and [SC] and sent to the Applicant by email the record of the interview with [BM] and the correspondence between the Inspector General's Office and [SC].

On 5 December 2022, after an extension of the deadline, the Applicant (assisted by his lawyer) submitted his comments on the documents that had been shared with him on 31 October 2022.

On 26 January 2023, after the Applicant's administrative leave had been extended several times, he received a letter from the Division of Human Resources, entitled "Extension of Administrative Leave With Full Pay":

I refer to my letter of 23 December 2022 extending your administrative leave with full pay until 31 January 2023. Please be advised that this administrative leave is extended from 1 February until 28 February 2023, or until the completion of the disciplinary process, whichever is earlier, at which point the matter will be revisited.

On 15 February 2023, the Applicant was informed of the High Commissioner's decision to impose on him the disciplinary measure of dismissal pursuant to rule 10.2(a)(ix) of the Staff Rules of the United Nations. The High Commissioner found the following facts to have been established in accordance with the standard of clear and convincing evidence:

- (i) In November 2018, the Applicant engaged in sexual harassment by attempting to kiss [MW] on the mouth without her consent

while saying goodbye after a meeting and then by rubbing his penis against [MW's] lower abdomen;

- (ii) In December 2021, the Applicant engaged in sexual harassment by massaging [JL's] shoulder, staring at her with a suggestive look that a reasonable person would understand as being of a sexual nature and stroking her hand; and
- (iii) On several occasions in 2021, the Applicant engaged in sexual harassment by patting [GR1's] buttocks, stroking her hair and back, and repeatedly embracing her in a way that made her uncomfortable.

With regard to the allegation that, in February 2020, the Applicant engaged in sexual harassment by showing his genitals to [MW] during a meeting, the Applicant's explanation, indicating that it was impossible for [MW] to have seen his penis directly because he was wearing trousers under his robe, was found by the High Commissioner to be reasonable. The High Commissioner found that the allegation was not established to the required level of proof, because it was not clear from [MW's] statement whether she had directly seen the Applicant's penis, and the Inspector General's Office had not clarified that information with [MW].

The parties' submissions

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

- a. The disciplinary proceedings against the Applicant were instituted on 1 October 2021 following receipt of the complaint by MW, three years after the alleged incidents. As the Applicant only met MW on two occasions, namely in November 2018 and February 2020, it is inconceivable that he could have conducted himself like a mentally ill person with someone he did not know.
- b. The Applicant completely rejects the allegations contained in the sanction letter, disputes the facts presented by the Respondent and asserts that there is other clear and convincing evidence that demonstrates that the allegations against him have no basis in fact and that his actions in no way constitute sexual harassment.
- c. Although the Applicant does not understand what might have prompted MW to file a complaint against him, the fact that she waited three years to report such acts

raises questions about her credibility. MW's strange comment drawing a connection with vaccination against coronavirus disease (COVID-19) is equally difficult to understand. Under applicable law, including the UNHCR policy on sexual harassment, a complaint must be filed within one year of the incident. The Inspector General's Office may agree to investigate complaints made after this time frame only in exceptional circumstances. In other words, the Inspector General's Office must establish the existence of exceptional circumstances before opening an investigation three years after the incidents took place.

d. Instead, the Inspector General's Office shared its analysis and stated that MW's explanations are plausible only at the very end of the investigation report. It is also stated in the sanction letter that the Inspector General's Office routinely overrides the "suggested" time limit in sexual harassment cases, especially considering that the Applicant was a senior official. This is manifestly illegal and contrary to the principle of legal certainty.

e. The Applicant believes that there are also a number of inconsistencies between some of the witness accounts provided in support of MW's complaint. In the investigation report, for example, BM states that MW informed him immediately after the first incident in November 2018. However, during her interview with the Inspector General's Office, MW had clearly stated that she had not discussed the incident with BM. Likewise, the Inspector General's Office did not interview SC, even though MW had stated that she had discussed the first incident with SC. In addition, MW stated that she could not recall whether she had spoken with "LB" [name redacted for privacy reasons], but LB stated that MW did not discuss an incident with her until October 2021, just before filing the complaint. Moreover, contrary to MW's assertions, "GR2" [name redacted for privacy reasons] was not aware of the incident at the time it occurred. Furthermore, "LD" [name redacted for privacy reasons], the first person interviewed by the Inspector General's Office after the complaint was filed, had no knowledge of any incident involving the Applicant and MW. These contradictions and errors call into question the integrity of the investigation conducted

by the Inspector General's Office.

f. The entire case against the Applicant is founded on MW's absurd allegations, which led to a veritable "fishing expedition" against the Applicant in Niamey and the addition by the Inspector General's Office of two other allegations involving two other "victims". The Inspector General's Office also states in its report, without any basis in fact, that other women might have filed complaints had it not been for the environment of fear resulting from the Applicant's rank and seniority at UNHCR.

g. The second allegation of sexual harassment was filed by JL following an incident that occurred in December 2021, when the Applicant was already under investigation. JL and MV provided conflicting accounts of the incident, even though MV was interviewed by the Inspector General's Office barely a month after the incident. The details of this allegation reveal significant cultural differences, as both JL and MV interpreted the Applicant's innocuous gestures as being of a sexual nature and therefore constituting sexual harassment.

h. The third and final allegation of sexual harassment against the Applicant was filed by GR1 and concerns several incidents that occurred in 2021. However, the real explanation for GR1's animosity towards the Applicant is a recent workplace dispute between them. Moreover, GR1 seems to have been encouraged to make the allegation by "YM" [name redacted for privacy reasons], who has long been very critical of the Applicant.

i. The Administration violated the Applicant's right to the presumption of innocence and failed in its obligation to establish the facts on which the disciplinary measure is based.

j. The incidents of which he is accused do not in any way constitute sexual harassment.

k. In any event, the disciplinary measure is completely disproportionate.

7. The Respondent's submissions may be summarized as follows:

a. The Applicant was disciplined for attempting to kiss MW on the mouth without her consent and for rubbing his genitals against her lower abdomen while saying goodbye after a meeting in the Applicant's office in November 2018. MW presented a detailed and coherent account of the incident. Testifying under oath, she was precise in placing the events in time and space, gave specific details of the context in which they occurred and described exactly what had happened. MW is a credible and reliable witness. She is a senior official at UNHCR who worked in another country and only met the Applicant during two missions to the Niger. MW had no motive for, and nothing to gain by, fabricating these allegations. As this Tribunal has stated in the past, in cases of sexual harassment, it is important to take into account the victims' accounts, as they do not take these situations lightly. MW also reported the incident to three other UNHCR staff members, namely BM, GR2 and LB. These reports constitute previous consistent statements of considerable evidentiary weight.

b. JL and GR1 have also made allegations of sexual harassment by the Applicant, and numerous witnesses stated that the Applicant behaved inappropriately and made female staff feel uncomfortable. Such statements have been made by GR2, LD and YM. These witness statements constitute similar facts evidence that indicates a propensity on the part of the Applicant to conduct himself in a particular manner.

c. The Applicant has presented no evidence of bias or ulterior motive that would call into question the credibility, reliability and merits of MW's testimony or the additional supporting evidence. The Applicant's argument that the fact that MW did not file her complaint until 2021 undermines her credibility is unfounded. MW has convincingly explained that in the summer of 2021, she was troubled by the fact that some people were refusing to be vaccinated against COVID-19. Realizing that her behaviour was similar in that she expected other victims to report the Applicant, she decided that it was her duty to do so herself. MW's credible testimony is supported by abundant, consistent and reliable evidence. On this basis, the High Commissioner rightly considered that the allegations made by MW were well founded.

d. As regards the allegations made by JL, the evidence consists of credible, reliable and consistent testimony, and similar facts evidence from several witnesses demonstrates the Applicant's propensity to conduct himself towards his female colleagues in the alleged manner. Even though the Applicant did not harass JL physically or in an overtly sexual manner, JL still felt that the Applicant's conduct was inappropriate. Similarly, with regard to GR1, there is ample evidence that the Applicant repeatedly subjected her to sexual harassment at various times in 2021. GR1 provided detailed, coherent and consistent testimony that is corroborated by other witnesses.

e. In accordance with the applicable legal rules, the determination that a given behaviour is of a sexual nature does not depend on the intentions of the perpetrator, but on the circumstances in which that behaviour occurred, the type of behaviour that is the subject of the complaint, the relational dynamics between the aggrieved individual and the perpetrator, the institutional culture and the perception of the behaviour by the aggrieved individual. In the present case, in view of the circumstances taken as a whole, the established facts amount to misconduct. The Applicant's assertion that certain aggrieved individuals or witnesses may have misunderstood his behaviour owing to cultural differences is unfounded. Indeed, with regard to his behaviour, a reasonable person in a multicultural environment might conclude that the Applicant had engaged in sexual harassment.

f. The disciplinary measure imposed on the Applicant was proportionate to the misconduct committed. Although the High Commissioner has a broad degree of discretion in determining the most appropriate disciplinary measure, the Tribunal's intervention is justified when the sanction imposed is blatantly illegal, arbitrary, excessive, abusive, discriminatory or absurd in its severity. Where dismissal could be the disciplinary measure imposed, the question to be asked is whether the conduct of the staff member involved has caused the working relationship, normally based on mutual trust, to be so seriously damaged that its continuation becomes intolerable. In this case, the High Commissioner examined the seriousness of the Applicant's

conduct, the aggravating and mitigating circumstances, and the disciplinary measures imposed in similar cases of sexual harassment. Given the facts of the case, the High Commissioner was of the view that each of the instances of sexual harassment committed by the Applicant was sufficiently serious on its own to justify the disciplinary measure.

g. The Applicant's argument that his due process rights were violated when the Inspector General's Office accepted and investigated MW's complaint, filed three years after the incidents, is unfounded. There is no legal time limit for reporting sexual harassment or similar misconduct. On the contrary, sexual harassment is a serious violation of the dignity and rights of staff members and runs counter to the fundamental values of the United Nations. The Organization therefore has a legitimate interest in investigating allegations of sexual harassment to ensure that justice is done and perpetrators are held accountable.

h. Although it is clear that the Applicant speaks very quickly, his assertion that the investigator for the Inspector General's Office, herself a native French speaker, did not understand him during the interview is unfounded. Furthermore, it is appropriate and entirely legitimate for an investigator to ask witnesses whether they are aware of any other allegations; the Inspector General's Office did not violate the presumption of innocence by seeking other relevant evidence. UNHCR rules require the Inspector General's Office to make every reasonable effort to uncover and obtain all relevant inculpatory and exculpatory evidence. Lastly, the Applicant has failed to demonstrate any substantial procedural irregularity that could render the decision unlawful.

Considerations

Disciplinary measure

8. As stated in the sanction letter of 14 February 2023, "[the] High Commissioner is satisfied that the following alleged facts have been established in accordance with the standard

of clear and convincing evidence”:

- a. In November 2018, [the Applicant] engaged in sexual harassment when he attempted to kiss [MW] on the mouth without her consent while saying goodbye after a meeting and then rubbed [his] penis against [MW’s lower abdomen];
- b. In December 2021, [the Applicant] engaged in sexual harassment when he massaged [JL’s] shoulder, stared at her with a suggestive look that a reasonable person would understand as being of a sexual nature, and stroked her hand; and
- c. On several occasions in 2021, [the Applicant] engaged in sexual harassment when he patted [GR1]’s buttocks, stroked her hair and back, and repeatedly embraced her in a way that made her uncomfortable.

9. Consequently, the High Commissioner decided to impose on the Applicant the disciplinary measure of dismissal pursuant to rule 10.2(a)(ix) of the Staff Rules of the United Nations.

10. The Tribunal notes that a second allegation made by MW concerning an incident that occurred during another mission to Niamey in February 2020 was deemed unfounded and is not addressed in the sanction letter. Consequently, the Tribunal will not examine that allegation.

Relevant legal framework

11. The Tribunal recalls that staff rule 10.2(a), under which the disciplinary measure was imposed, provides for a number of disciplinary measures of which dismissal is the most severe.

12. Moreover, according to staff regulation 10.1(b), “[s]exual exploitation and sexual abuse constitute serious misconduct”.

Limits on judicial review in disciplinary cases

13. In accordance with article 9.4 of the Statute of the Dispute Tribunal, when conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine (a) whether the facts on which the disciplinary measure is based have been established by evidence; (b) whether the established facts legally amount to misconduct; (c) whether the disciplinary

measure imposed is proportionate to the offence; and (d) whether the staff member's due process rights were observed. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (see *Karkara* 2021-UNAT-1172, para. 51; *Modey-Ebi* 2021-UNAT-1177, para. 34; *Wakid* 2022-UNAT-1194, para. 58; and *Bamba* 2022-UNAT-1259, para. 37).

14. The United Nations Appeals Tribunal has also explained that clear and convincing evidence requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – it means that the truth of the facts asserted is highly probable (see *Molari* 2011-UNAT-164, para. 30). In this regard, the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred (see *Turkey* 2019-UNAT-955, para. 32).

15. However, the Appeals Tribunal underlined that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General (see *Sanwidi* 2010-UNAT-084, para. 40). The Appeals Tribunal also noted that during this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review, and 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 (see *Sanwidi*, para. 42).

16. With regard to evaluating evidence of sexual misconduct in particular, the Dispute Tribunal stated in *Hallal* UNDT/2011/046, para. 55 (as reaffirmed by the Appeals Tribunal in *Hallal* 2012-UNAT-207) that “in sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required”, because “ [i]t is not always the situation in sexual harassment cases that corroboration exists in the form of notebook entries, email communications, or other similar documentary evidence, and the absence of such documents should not automatically render a complaining victim's version as being weak or meaningless”. The Dispute Tribunal also underscored that “[a]s is always the case, any witness testimony should be evaluated to determine whether it is believable and should be credited as establishing the true facts in a

case”.

17. Consequently, the Administration is responsible for establishing that the misconduct occurred, and the misconduct must be established by clear and convincing evidence, meaning that the truth of the facts asserted is highly probable.

18. It should be noted that three different complainants (MW, JL and GR1) have filed separate and specific complaints against the Applicant. The Tribunal will therefore now proceed to examine, in the light of the aforementioned standard, the allegations, the testimony and the submissions of the parties.

Have the facts on which the disciplinary measure was based been established by evidence?

19. The Tribunal took note of the fact that the Applicant was ill during the hearing and had great difficulty expressing himself intelligibly. Nonetheless, as he had been the one to request the hearing, the proceedings went forward, and he was given the opportunity to clarify his testimony throughout.

Complaint by MW

a. The Applicant’s oral evidence

20. The Applicant testified before the Tribunal that during his 25-year career with UNHCR, no one had ever filed a complaint concerning his conduct towards his female colleagues and that he had never been subject to investigation prior to his interview with the Inspector General’s Office on 4 March 2022. He explained that as UNHCR operations and projects in the Niger were in urgent need of funding, and as MW managed [the funds provided by] the European Union Trust Fund from her office in Tunis, he had fought for her to visit the Niger so that she could assess their funding needs and help with fundraising. He had never met MW before her arrival on mission in Niamey in November 2018.

21. The Applicant denied the allegation that, when saying goodbye to MW at the end of their debriefing meeting, he embraced her tightly, kissed her on the mouth and said in English

“Let’s wiggle a bit”. He said that everyone knows that he is not bilingual and could not have made such a comment in English. He also denied touching her in a sexual manner or rubbing his penis against her lower abdomen. He stated that, as a Muslim, he could not have engaged in such acts.

22. The Applicant claimed that, at the end of their meeting, he embraced MW cordially, as he would any colleague, and they said goodbye. Even after MW’s departure from Niamey, they continued to communicate by email, and MW confirmed that the visit had gone very well.

23. The Applicant testified that he did not know MW before she came on mission to Niamey. During his interview with the Inspector General’s Office, he had stated that he had only met her once, but on cross-examination before the Tribunal, he admitted to having met her twice, first in November 2018 and then in February 2020.

24. The Applicant claimed that the investigation against him was initiated following the arrival of a new UNHCR Representative in Niamey in May 2021. However, he denied the claim that, although he had a reputation as a “predator”, he had been protected by the previous UNHCR Representative.

b. MW’s oral evidence

25. The Applicant was the Deputy Representative of UNHCR in Niamey, while MW was working for UNHCR in Tunis at the time. MW was on mission in Niamey from 25 November to 1 December 2018 and met the Applicant for the first time on this occasion. At the end of a meeting at the end of the mission, as MW tried to leave, the Applicant embraced her very tightly, placing his arms around her upper body and his chest against hers, and tried to kiss her on the mouth, but she turned her head away, so he kissed her on the cheek. Noting her displeasure, he said in English “Let’s wiggle a bit” and rubbed his penis against her lower abdomen.

26. At the hearing, MW stated that the debriefing meeting with the Applicant was purely professional in that it related to her mission and did not concern private matters. The door to the Applicant’s office was open throughout their conversation, but the office was configured

in such a way that no one else could see or hear their interactions from the outside.

27. MW also stated that she had been shocked by the Applicant's conduct and that she still felt very uncomfortable because of the incident, as it was the first time she had had such an experience. She stepped away from him and went to a small office she used during her mission. She informed SC that the Applicant had behaved inappropriately towards her but gave no further details. SC stated that the Applicant acted in this way with everyone. MW was horrified but did not want to create a scene and was not sure what to do since it was the first time this had happened to her. She was disappointed that this misconduct was apparently well known and that no one was doing anything about it.

28. Immediately after the incident, MW spoke about it with SC; during her next mission to Niamey, she also informed other colleagues (e.g., GR2 and LB). She had also told her husband about it, but she does not remember when exactly she informed BM or LB of the incident.

29. On 1 October 2021, MW filed a complaint with the Inspector General's Office alleging sexual harassment by the Applicant. She stated before the Tribunal that she had found the Applicant's conduct highly inappropriate and that she had mentioned the incident to several colleagues (SC, BM, GR2 and LB), but that she had not filed a formal complaint of sexual harassment in 2018. She was prompted to file the complaint three years later because in 2021, during the COVID-19 pandemic, she became upset that some people refused to be vaccinated but expected others to bear responsibility for all of society. This made her think about her own situation and the way she had not reported the Applicant's misconduct but expected other female staff members to do it.

30. MW and the Applicant were next in contact by email after she submitted her mission report. He contacted her and she replied, referring to her "interesting" field visit and not to any personal contact with him. He also contacted her about a year later by WhatsApp message, but she lost that message after switching mobile phones.

31. MW returned to Niamey in 2019 and 2020. The 2020 mission took place in February,

a few weeks before the COVID-19 lockdown. She had several interactions with the Applicant during this mission. At the end of the mission, she had another one-on-one debriefing meeting with him in his office. She said that she was very frightened at the idea of being alone with him. Therefore, before the meeting, she asked her colleague LB to enter the Applicant's office after a few minutes to say that there was an urgent telephone call for MW. This would give her an opportunity to escape.

32. MW explained to the Tribunal that after the incident with the Applicant in November 2018, when she had mentioned it to SC and SC had said that the Applicant behaved in this manner towards everyone, MW had thought that someone else was likely to report the misconduct. However, in late 2021, during the COVID-19 pandemic, when the first vaccines became available, MW became upset that some people refused to get vaccinated because they expected others to get vaccinated and help their community. She felt guilty for having behaved in the same way by not reporting the Applicant's misconduct.

33. She spoke English with the Applicant most of the time. She also stated that the debriefing and the presentation of her reports were mostly conducted in English. MW stated that the Applicant had a good command of English. It was therefore not unusual that the Applicant said in English: "Let's wiggle a bit".

34. MW stated that the Applicant's misconduct continued to have an impact on her and that she was still in disbelief that it had happened to her and was still upset. She does not know which other staff members have filed complaints against the Applicant.

c. The Tribunal's findings

35. The evidence relating to the Applicant's conduct in connection with this first allegation is the credible testimony by MW, the corroborating testimony of three staff members to whom MW reported the incident, and ample similar facts evidence that demonstrates the same type of conduct on the part of the Applicant.

36. MW presented a detailed, coherent and consistent account of the incident. She was precise in placing the events in time and space, provided specific details of the context in which

they occurred and described exactly what had happened. In this regard, MW stated under oath that she first met the Applicant while she was on mission in Niamey in November 2018. On the last day of her mission, the Applicant asked MW to come to his office. At the end of their conversation, as they were saying goodbye, the Applicant wrapped his arms around MW and tried to kiss her on the mouth. As she turned her face away and tried to push him away, he kissed her on the cheek instead. The Applicant then said in French something like “Ah, don’t you want to be kissed?” or “Don’t you like it?”, and added in English, “Just let’s wiggle a little bit” as he embraced her tightly and rubbed his penis against her lower abdomen. MW then immediately left the Applicant’s office. She reported being very shocked.

37. The Tribunal considers MW to be a credible and reliable witness. She is a senior UNHCR official who was working in another country and had only met the Applicant during two missions to the Niger. MW had no motive for, and nothing to gain by, fabricating these allegations. On the contrary, as the Dispute Tribunal underlined in *Applicant* UNDT/2022/071, paras. 76–77, in cases of sexual harassment due regard should be given to the victims’ accounts as they do not face these situations lightly. In fact, due to the sensitive nature of the matter at stake in most cases, it is extremely difficult for the victims to make a formal complaint and go through a formal procedure.

38. Furthermore, MW told other UNHCR staff members, namely SC, BM, GR2 and LB, about the incident.

39. BM told the Inspector General’s Office that while MW was on mission in Niamey, she came out of the Applicant’s office and told him that the Applicant had tried to kiss and touch her. BM also said that MW had told him about the incident immediately after it happened and that she was angry and shocked.

40. GR2 told the Inspector General’s Office that MW had told her that she had felt uncomfortable at a meeting with the Applicant. GR2 added that MW did not provide any details but said that something inappropriate and physical had upset her.

41. LB also told the Inspector General’s Office that MW had told her that the Applicant

had behaved inappropriately towards her and made her feel uncomfortable. LB stated that, although she did not remember the details, the acts constituted sexual assault.

42. MW's report to BM (which was made at the first possible opportunity, immediately after the incident) and her reports to GR2 and LB constitute previous consistent statements of considerable evidentiary weight according to the standards established in the jurisprudence of the Appeals Tribunal (see, for example, *Mbaigolmem* 2018-UNAT-819, para. 31; *Majut* 2018-UNAT-862, paras. 86–89; and *Sall* 2018-UNAT-889, para. 40). The testimonies of the three witnesses relay MW's version in a coherent and credible manner.

43. The Applicant's assertion that MW and some of the witnesses interviewed by the Inspector General's Office made contradictory statements is unfounded. Although MW initially told the Inspector General's Office that she had not reported the incident to BM, she later said, "I can't imagine that I said anything, but I am no longer 100 per cent sure." Given that both MW and BM have stated that she was "shocked" by the Applicant's conduct, and considering the passage of time, the fact that MW did not immediately remember having confided in BM does not undermine her credibility. On the contrary, the fact that BM had the most detailed evidence to corroborate MW's account is an indication of good faith on MW's part.

44. It is well established that "in sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required" because "[i]t is not always the situation in sexual harassment cases that corroboration exists" (in *Hallal*; see also *Haidar* 2021-UNAT-1076, para. 43). MW's credible testimony is supported by the foregoing abundant, consistent and reliable evidence.

45. Based on the above, the Tribunal finds that MW's allegations have been established by clear and convincing evidence.

Complaint by JL

a. The Applicant's oral evidence

46. The Applicant stated that he worked with MV, but did not know JL and had never seen her before 2 December 2021. He denied that the incident alleged by JL had taken place and denied having touched or looked at JL in a sexually suggestive manner. He also denied asking her about an engagement ring or wedding band on her finger. He pointed out that certain measures had been put in place during the COVID-19 pandemic to prevent the spread of the disease, including limiting face-to-face meetings, washing hands frequently and avoiding shaking hands or other physical contact with colleagues. He thus did not embrace anyone.

47. The Applicant admitted before the Tribunal that during his first interview with the Inspector General's Office on 4 March 2022, he had stated that he did not know JL and that he had first met her in MV's office. He had also told the Inspector General's Office that he did not remember what occurred in MV's office.

b. JL's oral evidence

48. JL testified that she joined the UNHCR office in the Niger in September 2019. At the time, JL and the Applicant had minimal contact, as they did not work closely together. JL described an incident that occurred on 2 December 2021. She was with MV in the latter's office, chatting after lunch, when the Applicant entered the office. He put his hand on JL's left shoulder as if giving her a massage. This was unexpected and JL wondered why the Applicant was doing this, given that she had no relationship with him. This was during the COVID-19 pandemic when social distancing was the norm. But as the Applicant was the Deputy Representative, JL did not want to be rude. The Applicant began to speak, but JL could not remember what he was talking about.

49. When JL got up to get some water, she felt the Applicant staring directly at her bust in an overtly sexual manner. When JL returned to the room with the water, the Applicant stroked her hand and ring and asked if it was a wedding band or an engagement ring. JL did not know what to say and said that it was both. The Applicant then started talking about his own ring and JL left the room. The Applicant spoke French throughout the meeting. He sometimes spoke in English, when necessary, but was more at ease when speaking in French.

50. MV later told JL that when JL went to get water, the Applicant looked at her buttocks and that after JL left to return to her office, the Applicant asked MV many questions about her.

51. That same day, JL also spoke with “YM” [name redacted for privacy reasons], a more experienced colleague, who agreed that the Applicant’s conduct was unacceptable and encouraged JL to file a complaint. Several days later, JL took part in a refresher session on the Code of Conduct, conducted by YM. The session covered many different topics, including various behaviours that could constitute professional misconduct. JL was invited by YM to recount the incident of sexual harassment of which she had been a victim on 2 December 2021, which she did without revealing the name of the Applicant. Nonetheless, JL knew that there were many rumours about the Applicant’s conduct towards female staff members. This made her wary of his behaviour. JL also wondered whether the Applicant was fully aware of his actions but concluded that even though the Applicant’s conduct was not overtly sexual, and the Applicant had not physically touched JL’s private parts, the conduct met the definition of sexual harassment and decided to file a formal complaint.

52. Before filing the complaint and agreeing to testify in these proceedings, JL did not know who else had filed complaints against the Applicant. She had always been told to keep the matter confidential. Nor did she know that an investigation was under way when she filed her complaint. Furthermore, she saw GR1’s name on the witness list only one day before she was scheduled to testify before the Tribunal.

c. The Tribunal’s findings

53. The Petitioner was also disciplined for having massaged JL’s shoulder, looked at her (including her breasts) in a sexually suggestive manner and stroked her hand while asking whether she was married or engaged when he met her in MV’s office on 2 December 2021.

54. The evidence concerning the Applicant’s conduct includes the credible, reliable and consistent testimony of JL and MV, as well as similar facts evidence demonstrating the Applicant’s propensity to touch his female colleagues inappropriately.

55. JL presented a detailed, coherent and consistent account of the incident involving the

Applicant. She was precise in situating the events in time and space, described the context in which they occurred and recounted exactly what had happened. JL stated under oath that on 2 December 2021, while having lunch with MV in the latter's office, the Applicant entered the office, stood next to her, placed his right hand on her left shoulder and massaged her while asking how she was doing. JL explained that she felt very uncomfortable and surprised by this gesture. The Applicant then sat down next to her and started chatting. At one point, when JL got up to get some water, the Applicant looked at her chest in a very blatant manner. This so shocked JL that she said something to MV in their native tongue. When JL returned to MV's office, she sat down with her hands on her knees. The Applicant then began stroking her left hand, on which she was wearing a ring, and asked her whether it was an engagement ring or a wedding band. JL replied that it was both because she was uncomfortable, did not know what to say and wanted him to stop. JL then told MV that she had to go and left.

56. JL stated that, although the Applicant did not harass her in an overtly sexual manner in that he did not touch her private parts, she still felt that his conduct was inappropriate.

57. MV's oral evidence in her interview with the Inspector General's Office fully corroborates the substantive points of JL's account. MV stated that she had seen the Applicant look at JL from head to toe in a vulgar or sexually charged manner and stroke her hand inappropriately while asking her whether she was wearing a wedding band or an engagement ring. MV also stated that she immediately understood that JL felt uncomfortable, that JL said as much afterwards and that she understood how JL felt.

58. JL and MV are both reliable witnesses. They had nothing to gain by fabricating allegations against the Applicant, and there is no evidence of bias or motive for collusion. Their statements are consistent with similar facts evidence showing that the Applicant had a habit of touching his female colleagues and addressing inappropriate comments to them. These statements also confirm the Applicant's own testimony that his courteous, fraternal and cordial manner gives him permission to receive people "with open arms and touch them here and there" and that these are just "everyday occurrences".

59. The Tribunal finds no merit in the Applicant's arguments that JL and MV made

contradictory statements. MV may not have noticed or remembered that the Applicant had also touched JL's shoulder, but this is not proof that it did not happen. As stated earlier, the Appeals Tribunal has consistently held that credible oral victim testimony alone may be sufficient to support a finding of sexual harassment.

60. In these proceedings, JL's credible testimony as a victim is corroborated by MV's first-hand testimony and supported by similar facts evidence of the Applicant's propensity to touch his female colleagues inappropriately.

61. Based on the above, the Tribunal finds that the allegations have been established by clear and convincing evidence.

Complaint by GR1

a. The Applicant's oral evidence

62. The Applicant testified that he was very surprised to learn of GR1's complaint against him. He asserted that, ever since GR1 had arrived at UNHCR in Niamey, he had considered her to be like a sister and from time to time called her "my little sister" or "my darling little sister". He had facilitated her arrival in Niamey and never had ill intentions or sexual feelings towards her. Everyone in the office knew that he considered her to be like a sister. That was part of his culture.

63. During the cross-examination, the Applicant rejected the idea that he had wanted to bring a bit of heat to UNHCR Niger by kissing his female colleagues. He also denied having called his female colleagues "my little milk sister" or "legal wife". He clarified that he only called specific individuals "my darling little sister". He also denied that he received people "with open arms" or that he liked to "touch them here and there".

64. The Applicant denied the allegation that his conduct might have been unpleasant for certain individuals. During the cross-examination, he also denied having admitted to the

investigator from the Inspector General's Office that he needed to correct his behaviour in terms of touching people who might not like it.

65. The Applicant had supervised GR1 during the absence of GR1's direct supervisor. However, they were not close friends and did not know each other before February 2021, when GR1 joined UNHCR in the Niger. They had a strictly professional relationship and did not see each other outside work. He acknowledged that he sometimes called her "my darling little sister" but denied having ever called her "cute" or "pretty girl". He said that if he complimented someone on their attire, it should not be taken in a sexual sense. He denied ever having telephoned GR1 late at night, except for operational reasons. He sometimes embraced GR1 when greeting her, but he did not do so all the time. He also sometimes touched her as a sister but that depended on the context.

66. During the cross-examination before the Tribunal, the Applicant confirmed that UNHCR staff members were required to self-assess their linguistic skills. When he completed his self-assessment on 8 November 2017, he estimated that his knowledge of English was at an intermediate level and that assessment appeared on his employee information sheet. He regularly received emails and reports in English.

67. The Applicant was required to keep all details of the investigation confidential, but on 31 October 2022 he shared with a colleague in the social affairs office the interview of BM conducted by the Inspector General's Office. He explained that, during his interview, the Inspector General's Office had authorized him to share the information with someone who could advise him.

68. The Applicant complained of sexism against men and said that male managers were victims. He sees himself as a victim and considers it unfair that female employees behave in a certain way towards men and then complain of harassment and discrimination.

b. GR1's oral evidence

69. GR1 testified that she joined UNHCR operations in Niamey in February 2021. Although the Applicant was not her direct supervisor, she worked closely with him given that

he was the Deputy Representative. She stated that the Applicant's conduct made her very uncomfortable because he liked to touch her a lot physically and said things that she considered inappropriate.

70. The Applicant liked to embrace GR1 frequently; these embraces lasted too long and brought her chest close to his; the Applicant's conduct was often sexually suggestive, and she found it unhealthy. Sometimes he inappropriately touched her back, hair or buttocks. The longer she worked in the Niamey operations, the more often he touched her. These touches went beyond mere greetings. He embraced her and caressed her every time he saw her, whether in the corridor or in the office. She tried to ask him to stop but was unsuccessful. He touched her everywhere like someone might touch a lover, sometimes even in the presence of other people. He also frequently commented on GR1's clothing and once even made her come into his office so he could see what she was wearing. On that occasion, GR1 felt uncomfortable and humiliated.

71. The Applicant sometimes telephoned GR1 at inappropriate times, and not necessarily about work. He tried to invite her out but she told him she was not interested. At that time, she had a very young baby and was still breastfeeding.

72. The Applicant hardly ever called GR1 by her name. Rather, he called her "the little one", which she found inappropriate in a professional context. She said that he had not called her "my little sister" or "darling". When the Applicant noticed that GR1 was resisting his advances, he began to make negative comments about her professional performance and career prospects. GR1 also said that the Applicant's behaviour had had an impact on her in that she had started trying to avoid seeing him and had sometimes even been reluctant to go to work because she wanted to avoid any contact with him. She was very uncomfortable in the Applicant's presence and thought he was abusing his authority, but she did not dare to complain.

73. GR1 reported the Applicant's misconduct to YM, a more experienced colleague. She informed YM in June 2021 that she was not comfortable with the Applicant's conduct but that she was afraid that if she took action, it would affect her career prospects. YM also advised

GR1 to speak to the Staff Counsellor, which she found to be very useful.

74. Finally, in February 2022, GR1 decided to file a formal complaint because she felt overwhelmed by the Applicant's conduct. That was after she had attended a refresher session on the Code of Conduct. She had already heard other staff members complain about the Applicant's conduct, but after that refresher session, she decided to file a formal complaint. GR1 was not aware of other colleagues having filed complaints about the Applicant. At the time when she filed her complaint, she did not know that an investigation was already under way. GR1 was not spurred by other staff members to file a complaint. She was motivated only by what she personally experienced.

75. GRI's communications with the Applicant were always in French. He sometimes spoke English but she knew that he did not like to do so. Shortly after GR1's arrival in Niamey, her direct supervisor took medical leave. She therefore worked closely with the Applicant and the Representative of UNHCR for some time until her supervisor returned.

76. In November 2021, a workplace conflict arose between GR1 and the Applicant about a planned meeting with an external partner. On that occasion, the Applicant had insulted and yelled at GR1. After that incident, she avoided all direct contact with him and started communicating with him solely by email until her new supervisor arrived.

c. The Tribunal's findings

77. The Applicant was also disciplined for having patted GR1's buttocks, touched her back and her hair, and embraced her repeatedly in a way that made her uncomfortable in 2021.

78. The evidence for these allegations is the credible testimony by GR1 before the Tribunal and in her interview with the Inspector General's Office, the corroborating testimony of YM to whom GR1 had reported the incidents, the similar facts evidence showing a pattern of behaviour by the Applicant, and the Applicant's own admission that he was in the habit of touching GR1 and calling her affectionate names.

79. GR1 presented a detailed, coherent and consistent account of the multiple incidents

she experienced with the Applicant. In that regard, GR1 stated under oath that, in an encounter in the office corridor soon after her arrival in Niamey, the Applicant touched her back in an inappropriate manner that startled her. Other members of staff witnessed the incident and told her to be careful as the Applicant might ask her to do his cooking at home. GR1 also stated that, on another occasion, in May or June 2021, the Applicant entered her office and again touched her on the back to thank her for her work. GR1 said she did not like that.

80. GR1 also testified that the Applicant used to ask her to embrace him when she greeted him (and not just say “hello”) and that he repeatedly and constantly took her in his arms in a way that made her very uncomfortable because his embraces lasted several seconds and the Applicant took advantage of them in an unhealthy way and pressed his chest against hers “inappropriately”. She stated that she found that “unacceptable”.

81. GR1 also testified that, sometime after June 2021, the Applicant was in her office because he had asked her to print a document, and he patted her buttocks. GR1 was so shocked that she didn't say anything. Lastly, in October 2021, after a meeting about a project financed by the European Union, GR1 was returning to her office when the Applicant touched her hair. She stated that she was very uncomfortable and other colleagues were present but said nothing. She explained that she had not reacted immediately but that upon returning to her office, she had been on the point of crying.

82. Moreover, GR1 stated that the Applicant had begun to shout at her and show her a lack of respect after she had refused certain of his work-related demands, had not answered his calls late in the evening and had told him once that she did not like being touched by him. She described an incident in November 2021, when she had indigestion and sent a message to the Applicant to inform him that she would not be joining him in a meeting with an external partner. That morning, the Applicant called her to ask where she was and yelled at her, telling her that she was useless and that she should have called him.

83. GR1 also told the Inspector General's Office that she had reported incidents to YM on two occasions, the first time to inform him of the incidents of sexual harassment and the second time to report the incidents of abuse of authority. She then added that she had reported

to YM an incident that took place sometime between July and September 2001, when the Applicant had called her to his office because he wanted to see what she was wearing.

84. YM stated to the Inspector General's Office that GR1 had informed him of her uneasiness and dissatisfaction with the Applicant's conduct. YM confirmed that GR1 had told him that the Applicant: (i) greeted her with embraces that made her uncomfortable because they were of a sexual nature; (ii) had "wandering hands" that touched her all over; (iii) commented on her clothing; and (iv) made degrading and disparaging comments about her work. YM stated that GR1 had spoken to him two or three times in 2021, probably for the first time around June or July 2021, and that she seemed to be suffering from the situation because it was her first international post and she felt herself to be in a "weak position".

85. GR1's reports to YM, which were made a short time after the incidents, constitute previous consistent statements having considerable evidentiary weight pursuant to the jurisprudence of the Appeals Tribunal. Furthermore, the oral evidence of YM echoes that of GR1, with consistency that adds to its credibility.

86. GR1 and YM are reliable witnesses. The Applicant's assertion that the incident relating to the meeting with the external partner in November 2021 produced the animosity that prompted GR1 to file a malicious complaint is not only unsubstantiated but is also contradicted by the evidence. YM testified that GR1 had made two or three reports to him, starting in June or July 2021. Similarly, the fact that YM knew GR1 before her arrival in Niamey or that he might have criticized the Applicant's conduct does not constitute evidence of bias or a spurious motive. In the absence of an established motive, the Appeals Tribunal has declined to presume that a complainant or a witness would give false testimony (see, for example, *Siddiqi* 2019-UNAT-913, para. 30; *Majut*, para. 80; *Mbaigolmem*, para. 31; and *Aghadiuno* 2018-UNAT-811, para. 96).

87. In addition to the credible testimony of GR1 and YM, the allegations are substantiated by the similar facts evidence described above, showing the Applicant's propensity to touch and embrace female colleagues in an inappropriate manner that made them uncomfortable.

88. They are also substantiated by the evidence provided by the Applicant himself, according to which he called GR1 “my darling little sister”, “cute” and “pretty girl” in the workplace, touched his female colleagues “here and there”, and touched GR1 in particular: “But I cannot make a scene about ... about touching her, because... it’s touching her not because she’s a woman, but because she’s a sister, that’s all, I didn’t touch her as a woman, but as a sister, perhaps I did”.

89. Based on the above, the Tribunal finds that the allegations have been established by clear and convincing evidence.

90. The Tribunal also finds that the credible evidence presented by each of the complainants is sufficiently clear and convincing to attain a high level of probability and is adequately corroborated by the witness statements, which demonstrate a pattern of behaviour by the Applicant with regard to his female colleagues.

91. It is generally acknowledged that, at the end of her mission to Niamey in November 2018, MW had a debriefing meeting with the Applicant in his office. Neither is it contested that MW made an initial report of the incident at the first reasonable opportunity, immediately after the incident. That report is a previous consistent statement of the kind exceptionally admissible in cases involving sexual harassment or assault and is of considerable evidentiary weight.

92. Furthermore, JL and GR1, UNHCR staff members in Niamey, also filed complaints alleging similar conduct on the part of the Applicant. Taken together, these complaints constitute similar facts evidence indicating a propensity or pattern of impulsive behaviour on the part of the Applicant.

93. The three complainants testified before the Tribunal, and the credibility of their accounts was not undermined by any evidence to the contrary. In addition, the various statements of the witnesses interviewed by the Inspector General’s Office reflected the complainants’ allegations with remarkable consistency, which further strengthened their credibility.

94. In contrast, the Applicant's oral evidence before the Tribunal was vague, contradictory and hard to pin down.

95. The Tribunal also considers it objectively unlikely that the three complainants and the various witnesses against the Applicant, including both male and female staff members of UNHCR from different countries and different backgrounds, would have conferred or conspired with each other to falsely accuse the Applicant. There was no reason for them to do so.

96. On the basis of these substantiated facts, the Tribunal finds that the allegations of sexual harassment have been established by clear and convincing evidence. The undisputed facts, the evidence of the initial informal reports, the coherent evidence pointing to a pattern of behaviour, the internal consistency of the witness statements, the unsatisfactory statements of the Applicant and the inherent probabilities of the situation, taken cumulatively, constitute a clear and convincing concatenation of evidence establishing, with a high degree of probability, that the alleged misconduct in fact occurred.

Do the established facts legally amount to misconduct?

97. In the sanction letter, it is stated that the High Commissioner had determined that the Applicant's actions constituted sexual harassment and were in contravention of his obligations set out in staff regulation 1.2(a) and (b), staff rule 1.2(f), and paragraphs 4.2 and 4.3 of the UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4).

98. Staff regulation 1.2(b) provides that "[s]taff 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".

99. According to staff rule 10.1, failure by staff members to comply with their 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.

100. Pursuant to staff regulation 1.2(a) and staff rule 1.2(f), all staff members are entitled to be treated with dignity and respect and to work in an environment free from discrimination and harassment, including sexual harassment.

101. According to the definition given in paragraph 5.3 of the English version of document UNHCR/HCP/2014/4, sexual harassment is any unwelcome sexual advance, request for sexual favour, or verbal or physical conduct or gesture of a sexual nature that might reasonably be expected or be perceived² to cause offence or humiliation to another. Sexual harassment is particularly serious when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive environment. Sexual harassment may be unintentional and may occur outside the workplace and/or outside working hours. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between or amongst persons of the opposite or same sex.

102. In the present case, the Tribunal finds that the High Commissioner was right to consider that the Applicant's behaviour towards the complainants constituted sexual harassment. The acts described by the complainants and witnesses amount to physical conduct of a sexual nature that might reasonably be expected or be perceived³ to cause offence or humiliation to another. Furthermore, such conduct was clearly unwelcome.

103. The Tribunal notes that sexual harassment is particularly demoralizing when the perpetrator is a manager or supervisor, bearing in mind that, under paragraph 4.3(a) of document UNHCR/HCP/2014/4, such persons are expressly required to act as role models.

104. Accordingly, the Tribunal is satisfied, on the basis of the evidence available to it, that the established facts amount to misconduct in the form of sexual harassment and that the High

² Translator's note: "be expected or be perceived" is in line with the English version of para. 5.3 of document UNHCR/HCP/2014/4. A literal translation of the French would be "be expected to be perceived".

³ See translator's note above.

Commissioner discharged the overall responsibility incumbent on him in the present case.

Was the disciplinary measure imposed proportionate to the offence?

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

106. Regarding the Administration’s discretion in applying sanctions for misconduct, the Appeals Tribunal has held that “the matter of the degree of the sanction is usually reserved for the Administration, who has discretion to impose the measure that it considers adequate to the circumstances of the case and to the actions and behaviour of the staff member involved”, and that the Tribunal should not interfere with administrative discretion unless “the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity” (see *Portillo Moya* 2015-UNAT-523, paras. 19-21; see also *Sall* 2018-UNAT-889, *Nyawa* 2020-UNAT-1024).

107. The Appeals Tribunal has further stated that “...due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair”. The Appeals Tribunal has further explained that this means that the Dispute Tribunal should “objectively assess the basis, purpose and effects of any relevant administrative decision” (*Samandarov* 2018-UNAT-859, para. 24).

108. In the light of the established facts and the finding of misconduct, the three aforementioned allegations contained in the sanction letter, relating to “sexual abuse”, constitute “serious misconduct” under staff regulation 10.1(b). Furthermore, staff rule 10.2(a), under which the disciplinary measure was imposed, provides for the possibility of dismissal.

109. Dismissal is one of the most severe disciplinary measures that may be imposed in an administrative or employment case. However, a more lenient disciplinary measure would leave

open the possibility of reprisals in the workplace. In these circumstances, the Administration has no choice but to impose the disciplinary measure of dismissal for sexual harassment.

110. Furthermore, a review of the Organization's past practice shows that the most severe disciplinary measures, namely separation from service or dismissal pursuant to staff rule 10.2(a), have been imposed in cases of sexual harassment; these measures have been confirmed by the Appeals Tribunal in various judgments, including *Applicant* 2013-UNAT-280, *Applicant* 2013-UNAT-302, *Khan* 2014-UNAT-486 and *Nadasan* 2019-UNAT-918. The Appeals Tribunal stated in *Mbaigolmem*, para. 33, that:

... Sexual harassment is a scourge in the workplace which undermines the morale and well-being of staff members subjected to it. As such, it impacts negatively upon the efficiency of the Organization and impedes its capacity to ensure a safe, healthy and productive work environment. The Organization is entitled and obliged to pursue a severe approach to sexual harassment. The message therefore needs to be sent out clearly that staff members who sexually harass their colleagues should expect to lose their employment.

111. Accordingly, the Tribunal finds that the High Commissioner acted within his discretion when he imposed the disciplinary measure of dismissal in this case. Moreover, in the light of the Organization's past practice in similar cases of sexual harassment, the disciplinary measure imposed was proportionate.

Were the staff member's due process rights observed?

112. In sexual harassment proceedings, bringing the parties face to face is often particularly prejudicial to the victim. In this instance, it is in the hearing that the parties face each other; even there certain precautions can be taken to protect the alleged victim from being revictimized. In the present case, the Tribunal is satisfied that the key elements of the Applicant's due process rights were respected in accordance with staff rule 10.3(a).

113. The Applicant invoked the alleged violation of his right to confidentiality on the grounds that the Representative disclosed the existence of an investigation and the Applicant's placement on administrative leave. However, the Tribunal notes that, given that the Applicant

was the Deputy Representative and his responsibilities affected all UNHCR operations in the Niger, it was in the interests of the Organization to inform staff members that he had been placed on administrative leave owing to an investigation. The communication by the Representative of UNHCR was in that regard reasonable and operationally required.

114. The Tribunal is also satisfied that the Applicant was informed of the allegations made against him and his right to request legal assistance; he had the opportunity to make comments on the allegations made against him, he commented on the allegations of misconduct and he was informed of the reasons for the disciplinary measure imposed on him.

115. Furthermore, it was the Applicant himself who requested that a hearing be held in this case and, although he was unwell, he was able to testify at the hearing before the Tribunal. He was able to present his arguments freely with the assistance of his counsel. He raised all the questions previously addressed, including the veracity of the alleged incidents and the alleged cultural differences. He called into question the testimony of some of the witnesses interviewed by the Inspector General's Office and suggested that these witnesses were biased. The Tribunal heard those arguments but accepted the analysis of the Respondent that they did not undermine the veracity of the witnesses' statements.

116. The Tribunal is convinced that the Applicant understood the charge against him. He had the opportunity to call witnesses and present his arguments. It is true that the Inspector General's Office did not initially interview all the individuals who the Applicant might have wished to be heard as witnesses. However, the Applicant does not provide evidence that it would have contributed anything to his case if those additional witnesses had been heard. One of those witnesses is SC, a former staff member of the Organization, who clearly stated that she did not wish to participate in the investigation.

117. Based on the above, the Tribunal finds that the Applicant's due process rights were observed.

Conclusion

118. In view of the foregoing, the Tribunal DECIDES to reject the application.

(Signed)

Judge Joelle Adda

Dated this 6th day of December 2024

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

(Signed)

Isaac Endeley, Registrar, New York
