



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/067
Judgment No.: UNDT/2025/098
Date: 26 November 2025
Original: English

Before: Judge Solomon Areda Waktolla

Registry: Geneva

Registrar: Liliana López Bello

NOVO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Marco Gambardella, OSLA
Robbie Leighton, OSLA

Counsel for Respondent:

Alister Cumming, UNICEF
Chinonyelum Esther Uwazie, UNICEF

Introduction

1. The Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), filed an application contesting the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity, as well as the administrative measure of placing his name on the Clear-Check database.

2. For the reasons set forth below, the Tribunal decides to grant the application.

Facts and procedural history

3. The Applicant joined UNICEF on 1 November 1999. His last post was as an Emergency Officer at the National Officer B level with the UNICEF Bosnia and Herzegovina Office in Bihać. He held a fixed-term appointment.

4. On 1 January 2022, 19 April 2022, and 22 August 2022, the UNICEF Office of Internal Audit and Investigations (“OIAI”) received three reports of possible misconduct against the Applicant filed by the three complainants identified here as V01, V02, and V03.

5. On 21 November 2022 and 17 February 2023, OIAI informed the Applicant that it was investigating the allegations. He was interviewed on 22 November 2023.

6. On 23 March 2023, OIAI sent written interrogatories to the Applicant in relation to new allegations of unauthorized outside activities against him.

7. On 6 April and 5 June 2023, the Applicant provided his responses and signed a declaration to OIAI.

8. On 26 December 2023, OIAI completed its investigation and transmitted an investigation report to the UNICEF Deputy Executive Director, Management (“DED/M”) for appropriate action.

9. On 3 July 2024, the DED/M charged the Applicant with misconduct for several instances of possible harassment and/or sexual harassment against V01,

V02, and V03, and for unauthorized outside activities. The Applicant responded to the charge letter on 23 July 2024, following an extension of time.

10. By letter dated 10 September 2024, the DED/M found that the Applicant engaged in misconduct and imposed on him the disciplinary measure of separation from service, with compensation in lieu of notice, and with termination indemnity, in accordance with staff rule 10.2(a)(viii). This is the “contested decision”.

11. On 16 December 2024, the Applicant filed the instant application against the contested decision.

12. On 15 January 2025, the Respondent filed his reply.

13. On 13 March 2025, the Tribunal instructed the Applicant to file a rejoinder to the Respondent’s reply, and the parties to explore the possibility of having the dispute between them resolved without recourse to further litigation.

14. On 27 March 2025, the Applicant filed his rejoinder.

15. On 7 April 2025, the parties informed the Tribunal that, at that stage, there was no prospect of an informal resolution of this matter.

16. On 1 July 2025, the case was assigned to the undersigned Judge.

17. By Order No. 85 (GVA/2025), the Tribunal, *inter alia*, invited the parties to a Case Management Discussion (“CMD”), which took place on 17 July 2025.

18. After the CMD, the Tribunal instructed the parties to confirm by 23 July 2025 their availability and that of their witnesses to attend a hearing on the merits between 1 and 5 September 2025, starting at 2 p.m. (Geneva time).

19. On 23 and 31 July 2025, respectively, the Applicant and the Respondent filed their submissions regarding availability to attend the hearing at the proposed period.

20. By Order No. 96 (GVA/2025) of 11 August 2025, the Tribunal scheduled a virtual hearing on the merits, which took place via MS Teams between

1 and 4 September 2025. The Tribunal heard testimonies from the Applicant, V01, V02, V03, W01, W02, W03, W04, and W12.

21. By Order No. 105 (GVA/2025) of 5 September 2025, the Tribunal directed the parties to file their respective closing submissions, which they did on 23 September 2025.

Consideration

The contested decision

22. The Applicant was charged with misconduct for allegedly having engaged in the following conduct:

a. With respect to V01:

i. During a meeting at the cantonal government in Bihać, the Applicant was rude to V01, interrupting her several times to stop her from speaking at the meeting;

ii. On or about 19 August 2021, the Applicant yelled at V01 during a meeting with local authorities in Bihać, falsely accusing her of designing a plan, which he had presented a few weeks before at another stakeholders meeting, to deploy sixty staff members to the temporary reception center in Lipa;

iii. On or about 23 December 2021, the Applicant had a conversation at an advent street celebration at Bihać winter park with two junior colleagues, including a Save the Children employee, during which he accused V01 of being responsible for the cessation of UNICEF's partnership with Save the Children in Bihać in 2021.

b. With respect to V02:

i. On 17 September 2020, the Applicant commented on V02's physical appearance. He asked her how tall she was, stating that she had a good height for a woman;

- ii. On 17 September 2020, at a bar in Bihać with his team, the Applicant leaned too close to V02, encroaching into her personal space, inquiring whether she would like to go for a ride in an expensive car if a handsome man drove the car, and stating that she was the type of woman who was used to men doing favors for her;
 - iii. In the spring of 2020, V02 rode in an elevator with the Applicant, and as it stopped, he invited her to exit first instead of exiting, and as V01 exited, she was forced to brush her body against his;
 - iv. In 2021, after the Applicant became aware that V02 was in a romantic relationship with a Save the Children employee, he warned her colleagues to be careful about the information they share in her presence, stating that people who are together in bed tend to share a lot of information with their partners;
 - v. In the winter of 2021, the Applicant gave V02 a book entitled “Sex and Lies: True stories of women’s intimate lives in the Arab world” by Leila Slimani, stating that it could be relevant for her work. V02’s work was not related to the experiences addressed in the book.
- c. With respect to V03:
- i. In 2019 or 2020, while staring at V03’s bottom at a gym in Bihać, the Applicant stated that she was exercising to make her booty bigger on her husband’s instruction.
 - ii. In October 2020, while visiting a police training centre in Sarajevo to make a presentation with V03, the Applicant stated that she liked strong, muscular men.
- d. With respect to the Applicant’s unauthorized outside activities with the University of Sarajevo:
- i. Despite the fact that he was authorized by UNICEF in October 2019 to work as an Assistant Professor at the University of

Sarajevo for fifteen hours per semester, he worked for sixty hours per semester, including lectures and exercises for the academic year 2019/2020;

ii. During the academic years 2020/2021 and 2021/2022, without authorization from UNICEF, the Applicant worked as an Assistant Professor at the University of Sarajevo for sixty hours per semester, including lectures and exercises;

iii. During the academic years 2020/2021 and 2021/2022, without authorization from UNICEF, the Applicant received remuneration amounting to BAM 17,889.24 (approximately, USD 10,478.69) for his work as an Assistant Professor at the University of Sarajevo. This represented thirteen months of outside earnings after the initial approval he was granted on 26 October 2019. The Applicant's unauthorized engagement with the University of Sarajevo lasted from November 2020 until September 2022;

iv. In 2019 and 2020, without authorization from UNICEF, the Applicant co-published two scholarly articles.

23. As a result, the Applicant's conduct was found to have violated staff regulations 1.2(a), 1.2(b), 1.2(o), and 1.2(p), and staff rules 1.2(f), and 1.2(r), as well as sec. 2.1 of CF/EXD/2012-007 Amend. 1 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority), sec. 2 of POLICY/DHR/2020/002 (UNICEF Policy on the prohibition of discrimination, harassment, sexual harassment and abuse of authority), sec. 1.2 of CF/EXD/2012-009 (Executive Directive on Outside Activities), and para. 4 of PROCEDURE/DHR/2021/007 (UNICEF Procedure on Outside Activities).

Legal framework

24. Staff regulation 1.2(a)

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

25. Staff regulation 1.2(b)

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

26. Staff regulation 1.2(o)

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

27. Staff regulation 1.2(p)

The Secretary-General may authorize staff members to engage in an outside occupation or employment, whether remunerated or not, if:

(i) The outside occupation or employment does not conflict with the staff member's official functions or the status of an international civil servant;

(ii) The outside occupation or employment is not against the interest of the United Nations; and

(iii) The outside occupation or employment is permitted by local law at the duty station or where the occupation or employment occurs;

28. Staff rule 1.2(f)

Any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited.

29. Staff rule 1.2(r)

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

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

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

30. UNICEF's Policy on the prohibition of discrimination, harassment, sexual harassment and abuse of authority (POLICY/DHR/2020/002), defines harassment and sexual harassment as follows:

Harassment: any unwelcome conduct that might reasonably be expected or be perceived to cause offence, or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment. Harassment may take the form of words, gestures, or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another person, including mobbing or bullying. Harassment may be directed at one or more persons based on a shared characteristic, trait or status.

Sexual harassment: any unwelcome and improper conduct of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.

...

General principles

9. While typically involving a pattern of behavior, prohibited conduct may take the form of a single incident.

10. In assessing the reasonableness of expectations or perceptions, the perspective of the person(s) who is/are the target(s) of the prohibited conduct (hereinafter referred to as “victim”) shall be taken into account.

11. Disagreements between a supervisor and a supervisee about his/her performance, which are to be addressed in regular performance-management discussions, or about other work-related matters normally do not constitute prohibited conduct.

12. Staff members who are alleged to have committed prohibited conduct may be subject to the actions included in UNICEF’s Policy on the Disciplinary Process and Measures. Prohibited conduct committed by non-staff personnel will be addressed in accordance with the terms and conditions of their contracts, and the applicable policies regarding such non-staff personnel.

13. Managers and supervisors in particular are expected to act as role models for UNICEF personnel under their direct or indirect supervision, and to promote a safe and harmonious working environment, free from prohibited conduct.

31. Section 2.1 of CF/EXD/2012-007 Amend. 1 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority) provides that:

In accordance with the provisions of Article 101, paragraph 3 of the Charter of the United Nations, and the core values set out in UN Staff Regulation 1.2(a) and UN Staff Rule 1.2[f], every staff member has the right to be treated with dignity and respect, and to work in an environment free from harassment and abuse. Consequently, any form of discrimination, harassment, sexual harassment and abuse of authority is prohibited.

32. Section 2 of POLICY/DHR/2020/002 (UNICEF Policy on the prohibition of discrimination, harassment, sexual harassment and abuse of authority) reads that:

The prohibition to engage in discrimination, harassment, sexual harassment and abuse of authority (hereinafter collectively referred to as “prohibited conduct”) applies to all UNICEF personnel.

33. Section 1.2 of CF/EXD/2012-009 Executive Directive on Outside Activities provides that:

Staff shall not participate in any outside activity, whether remunerated or not, without prior approval, as specified in section 2 (see also United Nations staff rule 1.2 (r)).

34. Paragraph 4 of PROCEDURE/DHR/2021/007 UNICEF Procedure on Outside Activities reads that:

Staff shall not participate in any outside activity, whether remunerated or not, without prior approval, as specified in this procedure (see also United Nations staff rule 1.2 (r)).

Scope of judicial review and burden of proof

35. Under art. 9.4 of the Dispute Tribunal's Statute, in 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; (b) whether the established facts amount to misconduct; (c) whether the sanction is proportionate to the offence; and (d) whether the staff member's due process rights were respected. 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. (*Karkara* 2021-UNAT-1172, para. 51, *Bamba* 2022-UNAT-1259, para. 37).

36. The Appeals Tribunal has further 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" (*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" (*Turkey* 2019-UNAT-955, para. 32).

37. 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" or otherwise "substitute its own decision for that of the Secretary-General" (*Sanwidi* 2010-UNAT-084, para. 40). In this regard, "the Dispute Tribunal is not conducting a 'merit-based review, but a judicial review'" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (*Sanwidi*, para. 42).

38. Among the circumstances to consider when assessing the Administration's exercise of its discretion, the Appeals Tribunal stated "[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion" (*Sanwidi*, para. 38).

39. The Tribunal's Statute generally reflects the jurisprudence of the Appeals Tribunal (AAC 2023-UNAT-1370, para. 38; *Mizyed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024, para. 48).

40. The ensuing analysis will, therefore, examine:

- a. Whether the facts on which the disciplinary measure was based have been established;
- b. Whether the established facts legally amount to misconduct;
- c. Whether the sanction is proportionate to the offence; and,
- d. Whether the staff member's due process rights were respected.

Whether the facts on which the disciplinary measure was based have been established by the applicable evidentiary standard

41. In the course of its deliberations and determination of this case, the Tribunal conducted a comprehensive review of the applicable legal framework. This included an in-depth analysis of the relevant policies, rules, and regulations that govern the conduct and proceedings concerning disciplinary matters within the Organization.

42. Furthermore, the Tribunal carefully examined the parties' submissions and the evidence on record. Each party provided written arguments and responses, which the Tribunal reviewed meticulously to ensure a thorough understanding of the issues and the factual basis of the dispute.

43. The Tribunal also examined the oral testimony provided during the hearing on the merits, which took place virtually over the course of four days, between 1 and 4 September 2025. During this period, the Applicant, V01, V02, V03, and five other witnesses were called to testify. The oral testimonies were given under oath and recorded for the case record.

44. In addition, the investigation conducted by OIAI was duly considered. The witnesses interviewed by OIAI provided their statements, which were transcribed and form part of the case record. These transcripts capture the detailed accounts and observations of the witnesses regarding the relevant events and issues at hand.

45. The Tribunal has engaged in a thorough examination of these witness testimonies, paying special attention to the most relevant parts that bear directly on the issues contested. This includes analyzing the consistency, credibility, and significance of their statements, taking into account the overall evidence submitted.

46. The following is a summarized account of each witness's testimony.

The Applicant's testimony

47. The Applicant testified as a medical doctor and public-health specialist with over 22 years' experience in the United Nations system. He joined UNICEF in 2019 as an Emergency Coordinator in the Bihać field office. His responsibilities included coordinating UNICEF child protection, education and related services for refugees and migrants in temporary reception centers ("TRCs") and outreach; supervising child-protection teams; managing UNICEF's interactions with implementing partners (notably, Save the Children), and with local and state authorities (cantonal governments, Ministry of Security, Service for Foreigners).

48. The Applicant described the migration situation between 2018 and 2021 as a large, unexpected influx that overwhelmed local capacity and required substantial international support. He stated that the "EU/IPA funding" was routed via the International Organization for Migration ("IOM") to UN agencies, and that UNICEF would provide funds for its implementing partners in the field. An important implementing partner in Bihać at the time was Save the Children, where

V01 worked. UNICEF was the designated lead agency for child protection and education in response to the migration situation at the time. The Applicant emphasized the operational necessity of maintaining constructive, diplomatic relationships with national and cantonal authorities, as their support and approval were required for field operations and staffing decisions.

49. Save the Children was described as the principal implementing partner for child protection and education in multiple TRCs. The Applicant estimated Save the Children staffed over 100 personnel on operations funded primarily by the European Union (“EU”); UNICEF coordinated aggregate staffing numbers and budgets across partners.

50. The Applicant participated in planning and presenting consolidated staffing requirements for Lipa TRC (approximately 60 staff across agencies and partners). He stated that in late 2021, UNICEF transitioned the child-protection implementing partner role from Save the Children to World Vision. He identified reasons cited internally as reduced EU funding, with World Vision offering lower-cost service delivery, and reporting/timeliness concerns with Save the Children. He acknowledged that a Ministry of Security adviser had expressed dissatisfaction with Save the Children and that such expressions likely influenced management discussions, but he did not contend that authorities issued a formal directive to change partners.

51. The Applicant described his approach to authorities as diplomatic and risk-averse, aimed at protecting UNICEF’s reputation and safeguarding children’s interests. He stated that open confrontation with authorities in formal meetings was often counterproductive and that he coached junior colleagues to adopt tactful strategies. He acknowledged that some colleagues, including V01, adopted more confrontational approaches that sometimes produced tensions in meetings.

Allegations involving V01

52. V01 had a senior position in Save the Children. The Applicant worked with her regularly in coordination meetings.

53. The Applicant stated that he could not identify any specific meeting by date but acknowledged that multiple formal cantonal meetings took place, often chaired by senior government officials and conducted under strict protocols. He asserted that he could not physically prevent anyone from speaking while the Chair presided and described his interventions as general in nature and intended to protect UNICEF's reputation and the rights of children.

54. The Applicant acknowledged that he occasionally adopted a firm approach with colleagues, encouraging them to be more diplomatic. He denied, however, being rude, asserting that he consistently acted politely and professionally. He further noted that he had never received any formal admonishment from meeting chairs or participants regarding rudeness. The Applicant recalled that V01 expressed feeling upset after one meeting and threatened to report him. He stated that he may have apologized afterward to maintain a constructive working relationship, though he could not recall the specifics.

55. The Applicant recalled a meeting convened by a Senior Adviser from the Ministry of Security ("the Adviser"), attended by the Director of the Center for Social Welfare and representatives from Save the Children. He stated that UNICEF had previously presented a consolidated staffing plan for the opening of the Lipa TRC, estimating approximately 60 staff across agencies and partners. According to the Applicant, V01 allegedly agreed with the Center for Social Welfare Director to an additional request of 10 personnel, which deviated from the agreed consolidated plan.

56. The Applicant described the Adviser's reaction to V01's alleged agreement as strong and characterized the meeting as heated. The Applicant, however, denied shouting at V01. He reported that the meeting concluded with the Adviser firmly rejecting the proposed additional hires. The Applicant explained that he believed V01's actions were driven by concern for her staff and local arrangements, and he reiterated that UNICEF had prepared the aggregated staffing figure.

57. The Applicant admitted an informal conversation occurred at a local winter market with UNICEF and Save the Children staff, including W08, concerning

reasons for ending the partnership between Save the Children and UNICEF. The Applicant acknowledged regret for discussing partnership matters in an informal setting with junior staff. He maintained the official reasons he had given (funding constraints, cost-effectiveness, reporting issues) and noted that V01's relationships with local authorities had been raised by others.

Allegations involving V02

58. V02 joined UNICEF-supported operations in mid-2020. The Applicant supervised and mentored child-protection staff and characterized V02 as a quiet, competent junior staff member.

Team dinner and walk to a bar (September 2020)

59. The Applicant recalled a team dinner followed by attendance at a noisy bar and did not recall specific conversations along the walk. V02 alleged the Applicant made remarks about her height while walking behind her. The Applicant stated he did not remember such remarks, noted that light teasing about height occurred among team members, and denied intentionally following V02 or behaving in a predatory manner.

Conduct at the bar (proximity, leaning, comments)

60. Multiple witnesses reported that the Applicant sat near V02 and made remarks that some considered inappropriate, including a comment about a passing flashy car and whether she would like a ride with a handsome man. The Applicant characterized such remarks as ironic or contextual (referencing local smuggling concerns) and denied making specific, described comments (for example, implying she sought favors from men).

61. He denied deliberately leaning into V02's personal space. He explained that the venue's noise sometimes required closer proximity to hear and accepted that he may have been physically near V02 at times, while rejecting characterizations of unwanted attention.

Elevator incident (spring 2021)

62. V02 alleged a crowded elevator incident in which she was forced to exit and brushed against the Applicant's body. The Applicant denied that the incident occurred, stating he habitually gestures for women to exit first, and that the elevator allowed two people to exit without contact. He said he would have remembered such contact and denied inappropriateness.

Confidentiality warning (V02's relationship with a Save the Children colleague)

63. The Applicant acknowledged he knew that V02 had a romantic relationship with a Save the Children colleague. He stated that he had spoken generally with staff about protecting UNICEF's confidential information and reputation. Still, he did not recall issuing a documented or specific admonition to V02 or using intimate metaphors (for example, "people in bed share information").

Gifted book (winter 2021)

64. The Applicant gave V02 a copy of the book "Sex and Lies: True Stories of Women's Intimate Lives in the Arab World" by Leïla Slimani. He considered the book to be relevant for humanitarian staff to understand the cultural context of some UNICEF beneficiaries, including Moroccan women. V02 regarded the gift as inappropriate for her child-focused role. The Applicant defended the educational intent and asked that she consider sharing the book with other colleagues.

*Allegations involving V03 (colleague/consultant)***Gym interaction**

65. At the time of the incident, V03 was working with the UNICEF Bihać office, under the Applicant's supervision. V03 alleged that she encountered the Applicant at a local gym in Bihać, where he allegedly made comments suggesting that she exercised to enhance her "booty" and attributed her training technique to her husband. She further alleged that the Applicant looked at her from behind.

66. The Applicant denied making remarks focused on V03's body. He stated that he observed what he considered improper deadlift form and inquired whether her

husband, known to be an MMA fighter, had advised her technique. He further denied making lewd comments or looking at her body.

Police training centre incident

67. V03 alleged that, while at a Police Training Center, a Police Officer recognized her. The Applicant then made a remark suggesting she preferred “big, strong men.”

68. The Applicant denied making such comments. He stated that he had no recollection of any inappropriate remark in that context and described the event as unremarkable.

69. The Applicant stated that the lengthy investigation interviews were stressful and confusing and that he subsequently reviewed documents and witness transcripts. He emphasized that many of the events occurred in 2020 and 2021 and that routine, informal workplace interactions during meetings and social occasions may be difficult to recall with precision. He denied having received any formal admonishment in official meetings, denied losing control or shouting at any pregnant colleague, including V01, and denied intentionally engaging in harassment or sexual harassment.

70. The Applicant framed his conduct as motivated by duty to children, UNICEF’s mandate, and the need to preserve productive relationships with authorities and partners. He accepted that discussing sensitive partner issues with junior staff in an informal setting was a lapse in judgment and expressed regret. He acknowledged that some remarks or interactions might have been perceived as offensive or inappropriate by recipients. Still, he denied the most serious allegations of deliberate sexualized comments, physical contact, or harassment.

71. The Applicant suggested that some witnesses’ accounts might reflect misunderstandings, selective memory, personal competitiveness (notably, regarding V01), or contextual misinterpretation. He also proposed that certain witnesses may have interests that affect their credibility (for example, local staff relationships or immigration/permit matters).

72. The Applicant urged the Tribunal to evaluate contested incidents considering operational context, including time elapsed since events, formal meeting protocols, informal social settings, and cultural differences, and to weigh contemporaneous records and witness credibility when assessing disputed accounts.

V01's testimony

73. At the time of the events, V01 was employed by Save the Children. Her responsibilities included field operations, operations management, child protection, and coordination with partners, including UNICEF.

74. V01 described professional interactions with the Applicant, who held a senior UNICEF role in the Bihać response from approximately late 2019. Save the Children and UNICEF were operating as partners in the humanitarian response, with intensive day-to-day coordination in a small duty station.

75. V01 described the relationship as initially professional and transactional, but it became strained over time. She identified two recurring categories of tension: (a) operational and political disagreements concerning positioning, messaging, and authority within the field response, and (b) conduct by the Applicant, which she characterized as inappropriate.

76. V01 described the local context in Bihać as a small community heavily affected by migration flows. She stated that public sentiment and some local government actors were perceived as hostile to migrants, and that local political actors were sometimes described as right-leaning by participants in the response.

77. She described a humanitarian context involving United Nations Agencies, International Non-Governmental Organizations, and cantonal and local authorities. She stated that, over time, migration management responsibilities have transitioned toward national and local authorities, and that this shift has given rise to contentious issues such as the location of camps, the services to be provided, and the Organizations responsible for implementing those services.

78. V01 said that Save the Children's presence and scale increased during her tenure, including the receipt of funding from multiple donors. She suggested that

Save the Children's visibility and relative funding scale at times contributed to inter-agency tensions.

79. V01 reported an incident involving the Applicant during a cantonal government meeting in Bihać in 2020. She stated that a Senior Government Official publicly raised concerns regarding discrepancies between official lists of unaccompanied children and the numbers reported by child protection partners. According to V01, the Official referred to a specific case involving a child who had drowned as an example and suggested that the partner's records were inaccurate.

80. V01 stated that, in her role within Save the Children, she attempted to explain the likely administrative cause of the discrepancy, such as delays in the cancellation of guardianship records by the Center for Social Welfare, which resulted in inflated official lists. She reported that, while she was attempting to provide this explanation, the Applicant repeatedly interrupted her, spoke over her, and gestured in a manner she described as dismissive; all in the presence of Government Officials and representatives of other Agencies.

81. V01 described the Applicant's interruptions as public and humiliating. She said that after the meeting, she privately told him not to speak to her in that manner again and warned that she would report him if the conduct continued. She told the Tribunal that the Applicant initially became angry, raised his tone, and later returned to apologize. She accepted the apology as a conciliatory gesture.

82. V01 further explained that she did not make a formal complaint against the Applicant immediately because she wished to preserve operational cooperation and avoid a public conflict.

83. In addition, V01 described another meeting during which the Applicant allegedly misbehaved. This one was about the establishment and/or operation of the Lipa camp, and the related debates about who should be present and what services should be provided there as responsibilities transitioned.

84. During said meeting, V01 asserts that the Applicant publicly stated that UNICEF would have 60 staff present at Lipa. She said she believed the public

statement was imprudent because it alarmed authorities by suggesting a significant staffing presence. It was also more people than the government had initially agreed to in their consolidated plan with UNICEF and Save the Children.

85. V01 denied being the source of the figure stated by the Applicant and stated that Save the Children had contingency planning documentation that included staffing estimates, but that the Applicant presented the matter publicly in a way that caused confusion.

86. Following this meeting, V01 stated that she was summoned to a meeting at the Center for Social Welfare with the Applicant, a Ministry's Advisor, and other Officials. V01 claims that the Applicant attributed to her the allegedly exaggerated figure of staff foreseen for Lipa. He shouted at her, accused her of causing problems, and blamed Save the Children for preparing a standard operating procedure ("SOP") for Lipa without consulting the authorities.

87. Regarding the SOP allegation, V01 stated that Save the Children had shared an SOP draft with the Child Protection Working Group for adaptation and contribution, which was based on prior SOPs of other camps. She asserted that this was an inter-agency sharing and not a unilateral action to circumvent the authorities. V01 alleged that the Applicant shared said draft with the Ministry's Advisor, who angrily characterized it as a unilateral Save the Children document.

88. V01 stated that she was in the early stages of pregnancy at the time of the meeting at the Center for Social Welfare. The Applicant's behavior and accusations at the meeting caused her significant distress. She raised the issue at the meeting, informing the participants of her pregnancy and objecting to the way she was being addressed. She further stated that, afterwards, she sent an email to her Country Director documenting the meeting. This email was submitted as contemporaneous evidence during the proceedings.

89. V01 stated that the cumulative effect of operational pressures, the public nature of certain disputes, and nationality-based sensitivities contributed to a sense of vulnerability and influenced her subsequent decision to move from Bihać.

90. V01 stated that UNICEF decided to terminate its partnership agreement with Save the Children for certain camp-based activities, and that another Organization was selected as the implementing partner for those activities. She stated that Save the Children was provided with reasons for this decision, which included cost efficiency comparisons, administrative considerations, and difficulties in relations with authorities.

91. V01 stated that the termination of the partnership resulted in the cessation of some UNICEF-funded activities and impacted an estimated 30 to 36 Save the Children staff in the region. She reported that some affected staff later took positions with other Organizations.

92. V01 further alleged that, following the end of the partnership, the Applicant conveyed to colleagues and to other persons that Save the Children and V01's actions had been responsible for the loss of jobs; and that V01 had acted "against the Government." She referred to reports from colleagues that the Applicant had repeated such statements at informal social events, including a Christmas market gathering. V01 considered these repeated statements damaging to her reputation.

93. In this context, V01 reported that she confronted the Applicant by phone and informed him of her intention to make a formal report against him.

94. On the question of why she did not lodge a formal complaint against the Applicant earlier, V01 explained that the Applicant's conduct was cumulative over several years, that she had attempted informal resolution and reconciliation, and that she was concerned that formal complaints might be ineffective or could damage operational relationships that affected beneficiary protection.

95. V01 stated that she ultimately decided to file a formal report after repeated public accusations by the Applicant that she had caused job losses and was acting against Government interests, and after observing what she described as repeated inappropriate treatment of junior staff by him.

96. V01 stated that the cumulative effect of the events she described, such as rude comments and interruptions at meetings, dismissive and gendered remarks,

misattribution of blame for operational outcomes, and the public repetition of statements alleging she had acted against Government interests, created a working environment she considered hostile and untenable.

97. V01 stated that her principal professional objective throughout remained the protection of children and continuity of programmatic delivery.

V02's testimony

98. During the time of the reported incident, V02 worked as an individual contractor with UNICEF in Bihać. She joined the team in July 2020, and the Applicant acted as her supervisor.

99. On the evening of September 2020, a team of seven colleagues from the Bihać office went out for dinner, approximately between 6 and 7 pm, at a restaurant located across from the office. During dinner, the Applicant brought homemade liquor, which he consumed throughout the evening, appearing to be slightly intoxicated. V02 also consumed alcoholic beverages during the gathering.

100. Following the dinner, five team members walked to a bar nearby. V02 walked in front of the group with another colleague, while the Applicant walked behind her. During this walk, the Applicant made the following comment to V02: "How tall are you? You have a very nice height for a woman". V02 considered this comment inappropriate, given the Applicant's role as her supervisor and his position behind her.

101. At the bar, the group stood around a small, round terrace table. The Applicant stood next to V02. On his other side was W01, with W03 and W12 completing the table. At one point, an expensive car passed by outside, and the Applicant asked V02 whether she liked the car, and whether she would go for a ride with a handsome driver; to which she responded that she didn't care.

102. Throughout the evening, the Applicant leaned into V02's personal space, coming very close to her face while speaking. He appeared to be more intoxicated than others at the gathering. V02 stepped back repeatedly to maintain distance. During the same evening, she recalled that the Applicant told her that she was the

kind of woman who was used to men doing her favors. She did not ask him to elaborate on his comment.

103. The following morning, V02 discussed the previous night with two colleagues: W12 and W03. W03 told V02 that the Applicant's behavior was unacceptable and not an isolated incident. V02 also discussed this incident with other friends and colleagues, including V03, W06, and W01.

104. On one occasion in spring 2021, V02, the Applicant, and W14 were in a narrow elevator returning from a field visit. When the elevator stopped, W14 exited first; the Applicant then made a remark to V02, saying "ladies first," accompanied by a smirk. V02 exited behind them, placing her backpack between herself and the Applicant as a physical barrier to avoid contact due to the confined space. She stated that she may have brushed against him but emphasized that there was no deliberate physical contact.

105. V02 explained that she did not verbally challenge the Applicant at that moment because of the existing power dynamics. The Applicant was her supervisor, responsible for contract renewals and the office culture, which rarely saw confrontation or challenge directed at him.

106. V02 further described another inappropriate remark from the Applicant. She explained that, in the office dining area, W03 informed V02 that the Applicant had warned them to be careful about what they said in V02's presence. W03 relayed that the Applicant made a remark suggesting that "people can share many things when they are together in bed". By that time, UNICEF had discontinued its partnership with Save the Children, where V02's then-boyfriend was employed. The witness discussed this incident with W01 and V03.

107. Furthermore, on an occasion in early 2022, V02 recalled that the Applicant pulled a new copy of a book from his backpack and handed it to her. The Applicant explained that the book had been given to him by another humanitarian worker, and that he planned to read it before passing it along. He also advised V02 to share it with other colleagues after reading it, noting its relevance to their work. The book

was titled “Sex and Lies” by Leila Slimani, which is about the sexual experiences of women in the Arab world and, specifically, Morocco.

108. V02 put the book into her backpack, but upon reviewing the back cover and online reviews, which indicated the book's contents, she decided not to read it. She considered it puzzling and inappropriate for a supervisor to give a subordinate a book about the sexual experiences of women when said subject was neither relevant nor connected to their work. V02 noted that the book was new, having been published in 2020, and she had neither shared it with colleagues nor read it in full.

109. V02 explained that at the time, she did not directly confront the Applicant about his behavior due to cultural considerations, the power imbalance inherent in her contractual relationship (where she was at the lowest rank and dependent on him for contract renewal), and concerns that complaints might not be effectively addressed in the isolated Bihać office environment.

110. V02 clarified that there was no physical contact during the elevator or in the bar. Her discomfort stemmed from the Applicant leaning into her personal space and making inappropriate remarks.

V03's testimony

111. At the time of the incidents described herein, V03 was a staff member at the UNICEF Bihać office, and the Applicant acted as her supervisor.

112. In 2020, V03 reports an incident that occurred at a gym in Bihać. She states that she was engaged in her routine physical exercise when the Applicant approached her while she was performing an overhead press. According to her, during this interaction, the Applicant made remarks in Bosnian language concerning her physique.

113. Specifically, he used a colloquial and sexually charged term equivalent to “booty,” which V03 describes as inappropriate for adult discourse in Bosnia. He made a remark implying that her husband was encouraging her to do such exercises by stating: “Your husband must be telling you to do more of these exercises”. V03 explicitly told him that she was doing exercises for her upper body and not “booty”

exercises. She recalled telling the Applicant: “No, no, I don't like those exercises. I'm doing exercises for my upper body”.

114. Despite her protests and clear assertion that her activities were not related to “booty” exercises, the Applicant continued to gaze at her backside, specifically observing her through a mirror, which increased her discomfort. She felt uncomfortable and embarrassed during this exchange, perceiving that he was intentionally watching her lower body. After a brief interaction, she left the gym premises.

115. Following this incident, she confided in V02, a friend at the time, who encouraged her to consider reporting the matter. V03 expressed doubts about the efficacy of reporting such actions within their Organizational environment. V03 decided to cease going to the gym to preserve her dignity and mental well-being and changed the way she dressed, moving from loose shirts to layered clothing arrangements to minimize further attention.

116. V03 reported a second incident occurring at an UN-organized police training session in Sarajevo. She states she was participating in the training on behalf of UNICEF due to the absence of the designated Officer. The training involved representatives from multiple UN Agencies discussing their mandates and beneficiaries.

117. While walking from the entrance to the training session hall, V03 described being approached by a Police Officer, a known associate of her husband from martial arts training, who recognized her. During this walk, she stated that the Applicant made a comment referring to the Officer as “big and strong”, which she found inappropriate.

118. V03 also recounted subtle references made by the Applicant concerning her family background. Specifically, V03 stated that the Applicant mentioned her grandfather was a renowned doctor, politician, and university professor, suggesting or implying that the grandfather's prominence or reputation might be relevant to their interaction. She found these comments to be intrusive and inappropriate, as

they appeared to involve personal references about her family history in a context that she considered unprofessional.

119. V03 stated that after the interaction, she participated in her assigned presentation without interruption, concentrating solely on her designated role, which involved discussions on children residing in reception centers. V03 then left the venue and drove home alone, feeling distressed due to the nature of the Applicant's comments.

120. V03 stated that her colleague, V02, experienced similar inappropriate conduct from the Applicant. According to her, V02 shared her own experiences with her, indicating that the Applicant had stared at her during a group dinner and made suggestive comments concerning her appearance and preferences. V02 reportedly expressed significant distress and indicated that the conduct made her feel unsafe.

The testimony of W01

121. W01 had approximately six years of experience in the field of child protection, primarily working with UNICEF. During his tenure, he mainly worked under the supervision of the Applicant.

122. W01 described his professional relationship with the Applicant as positive, characterized by a shared professional rapport and collaborative participation in investigations. W01 did not experience or witness any inappropriate behavior by the Applicant that could be perceived as misconduct during the time they worked together at UNICEF.

123. W01 confirmed that he was familiar with V02. They met in late 2018 while working together for Save the Children and later became close friends and roommates. They subsequently worked together in the same team in UNICEF, handling camp activities.

124. W01 recalled that V02 had expressed discomfort with certain behaviors exhibited by the Applicant, specifically prolonged looks, pauses during conversations, and lip movements. W01 clarified that V02 did not initially characterize these behaviors as sexual harassment but rather as unsettling gestures.

The witness emphasized that, in his view, these behaviors appeared to be subconscious mannerisms rather than intentional acts of harassment. He explained that the Applicant makes these gestures, such as long pauses, lip movements, or prolonged looks to everyone, including him, but he did not consider these behaviors to be sexual or constitute harassment in any way.

125. W01 explicitly stated that he had not witnessed any incidents of misconduct or sexual harassment as described by other witnesses. He reiterated that while he observed certain gestures by the Applicant, he did not interpret them as having a sexual nature. W01 further clarified that the Applicant's behaviors were consistent across interactions with multiple colleagues and were not directed exclusively at V02.

126. W01 testified that he advised V02 to report her discomfort if she felt it necessary and assured her of his support. However, he noted that V02 appeared uncertain about pursuing a formal complaint at the time. He also confirmed that V02 had not previously raised concerns about similar behaviors from other colleagues.

127. W01 described an incident at a winter market where the Applicant made comments regarding the termination of UNICEF's partnership with Save the Children. The Applicant reportedly implied that V01 was responsible for the partnership's end. W01 clarified that these comments were made in a broader context of Organizational challenges and strained relationships, rather than as a personal attack on V01. W01 characterized the Applicant's remarks as unprofessional but not malicious, suggesting they were intended to diffuse tension, albeit inappropriately.

128. W01 noted that the relationship between the Applicant and V01 was strained, particularly around the time of the end of the partnership between UNICEF and Save the Children. However, he stated that he did not witness any personal attacks or harassment between them, describing their conflicts as professional disagreements rather than personal animosity.

129. W01 described the Applicant's management style as flexible and approachable, allowing staff a degree of autonomy in their work. While some colleagues, including V02, reportedly desired more guidance, the witness found the Applicant's style conducive to his role as a Consultant.

130. W01 mentioned that he had heard indirectly that V01 planned to report the Applicant following the winter market incident. W01 speculated that this could be perceived as retaliation by some, but also as a response to unprofessional behavior. However, W01 clarified that they had no direct knowledge of whether V01's report was influenced by the tensions between UNICEF and Save the Children.

131. In general, W01 did not witness any conduct by the Applicant that he would classify as harassment, sexual harassment, or other misconduct. He emphasized that while certain behaviors, such as prolonged looks and pauses, were observed, he did not interpret these as inappropriate or sexual in nature. The witness also highlighted that his observations were based on his direct experience and that he did not perceive any coercion or undue control in the Applicant's management style.

The testimony of W02

132. W02 has worked with Save the Children since December 2018. Based in Bihać, a key location for displaced populations, W02 coordinated with NGOs, UN agencies, and government bodies to deliver effective humanitarian aid. In his role, he worked closely with UNICEF and local authorities to prioritize children's rights in emergency settings.

133. W02 stated that he attended several high-level meetings concerning migration, child protection, and inter-agency cooperation. He stated he was present at a meeting in June or July 2021 attended by representatives of the Cantonal Government and UNICEF Officials, including the Applicant.

134. W02 described the subject matter of that meeting as relating to restrictions on mobility and the distribution of aid. He stated that during the meeting, V01 attempted to raise concerns about child safety and rights in the context of restrictions on non-food and food supplies.

135. W02 reported that while V01 sought to raise an issue about the movement of children and access to aid, he observed the Applicant intervene. W02 recalled that the Applicant used a verbal command, such as “stop talking” or similar language, accompanied by body language that W02 perceived as authoritative, which resulted in V01 ceasing to speak.

136. W02 further testified that the meeting was quiet and that he did not see the Applicant further undermining V01. If it happened, no one noticed. The witness characterized the Applicant’s intervention as unprofessional; however, he stated that it did not involve shouting or profane language.

137. W02 stated that after the interruption, V01 appeared uncomfortable and distressed. W02 noted that she was pregnant at the time and that this increased his concern for her well-being. After the meeting, W02 and V01 returned to the office on foot, and V01 expressed displeasure with how the Applicant had silenced her. He stated that she had indicated her intention to report the incident, which he supported and encouraged her to be channeled through proper procedures.

138. In August 2021 W02 attended a meeting organized by the Director of the Centre for Social Welfare, identified as Mr. Tutić, concerning deployment of staff to Lipa Camp and other operational matters. He stated there was tension relating to the reported number of child protection staff; he said he did not personally observe the dispute regarding staff numbers but heard about it during discussions.

139. W02 described a further incident at that August meeting involving a representative of the Ministry of Security, identified as Mr. Ketchman. W02 stated that Mr. Ketchman addressed NGOs in a harsh, authoritative tone and criticised them, referring to “public enemies” or “state enemies” and implying that organisations such as Save the Children were acting against the the country's interests. W02 reported that Mr. Ketchman referred negatively to communications with Brussels and suggested that a letter reportedly sent by VO1 to EU partners (referred to variously as Brussels or the EU partner ECHO) constituted action against national interests.

140. W02 testified that, during the meeting, the Applicant openly expressed disagreement with VO1 concerning the figures she reported on the number of child protection staff. W02 described this exchange as a major point of contention that heightened the already tense atmosphere. The disagreement sparked a heated discussion between the Applicant and VO1, further intensifying the strained dynamics of the meeting. W02 confirmed that the dispute over staffing numbers significantly contributed to the tension between the two and underscored the broader conflict that characterized their interaction.

141. According to W02, Mr. Ketchman's demeanor during the meeting was authoritative, aggressive, and accusatory. W02 stated that Mr. Ketchman raised his voice in a manner that W02 found intimidating, although he did not recall any use of profanity or an expression of overt anger. W02 stated that he perceived Mr. Ketchman's tone as a display of power intended to criticize NGOs and undermine their credibility.

142. W02 understood the remarks to be personally directed at VO1 and to be damaging to individual reputations and Organizational credibility. He stated he considered the public nature of the remarks inappropriate and potentially harmful.

143. W02 stated that following these meetings, VO1 appeared stressed and reported feeling intimidated and hindered in her work. Over time, relations between Save the Children and local authorities deteriorated, and VO1 subsequently decided to transfer out of Bihać.

144. W02 stated that he heard references to a letter allegedly sent to Brussels by VO1, but that he had not personally seen such correspondence. W02 stated that he understood reporting to external partners had provoked a negative reaction from Government Officials.

145. During the August 2021 meeting, W02 attempted to de-escalate the situation by intervening verbally. He said he referred to his own background in an effort to establish rapport with Mr. Ketchman and reduce tension. W02 stated that the intervention did not result in hostility from Mr. Ketchman but did not substantially change the course of the remarks.

146. W02 expressed the view that the conduct of the Advisor described above was unprofessional and that the public character of their remarks risked damaging the reputation and well-being of staff. He said that these interactions had a negative impact on operational collaboration and trust between Save the Children and the concerned authorities.

The testimony of W03

147. W03 has been serving UNICEF in Bihać since July 2019. She gave evidence about incidents involving the Applicant, her supervisor at the time, and her colleague, V02. W03 described two primary incidents.

148. On 17 September 2020, W03 attended a team dinner at a restaurant near their office, which was followed by a smaller group going to a nearby bar/café with outdoor seating. W03 recalled that V02, the Applicant, herself, and possibly colleagues W01 and W12 were present.

149. While at the bar, the Applicant showed videos from his previous travel vacations on his mobile phone. While doing so, W03 observed the Applicant lean his face very close to V02's; closer than W03 considered professionally appropriate. W03 did not recall any physical contact between them but recalled being concerned about the Applicant's closeness and invasion of V02's personal space.

150. W03 found the proximity uncomfortable and inappropriate for a supervisor to have with an employee, regardless of the social setting. She described it as "too close". W03 could not precisely recall V02's immediate physical reaction (i.e., whether V02 moved away or pushed him). Still, based on V02's body language and a later in-person exchange, the witness believed V02 felt very uncomfortable.

151. W03 remembered the Applicant drinking red wine but could not reliably recall whether V02 or others drank or whether anyone encouraged drinking.

152. W03 did not recall any contemporaneous comments or conversations at the table, except for the Applicant explaining the video.

153. During a separate lunch or break, a workplace conversation arose about who might have shared information externally about UNICEF activities. W03 stated that the Applicant suggested the sharer might be V02. Their colleague, W01, defended V02, saying she would not do that.

154. The Applicant reportedly said, in Bosnian language, words to the effect that “when you are with someone in bed, you tell your partner”, “you will be inclined to share information,” or similar. W03 initially stated she could not recall the exact sentence, but later confirmed recalling the specific words “when you are with someone in bed,” although not the entire sentence structure. The conversation tone was described as rough/unprofessional.

155. W03 associated the comment with V02’s partner, who, as far as she understood, worked at Save the Children at the time. W03 perceived the Applicant’s remark as implying V02 might leak UNICEF’s information to an intimate partner (i.e., assigning suspicion/blame based on alleged relationship ties).

156. W03 conveyed the remark to V02 and recalled that V02 was surprised, hurt, and offended. W03 and W01 objected to the insinuation. W03 considered it disrespectful to discuss colleagues in that manner and believed any suspicion should be addressed professionally and directly rather than with insinuations.

157. W03 further recalled multiple occasions where the Applicant commented that V02 was “very beautiful”, including in the presence of others. However, W03 did not recall the Applicant making such comments in V02’s presence.

158. W03 acknowledged that complimenting someone’s appearance does not inherently imply bad intent. Nonetheless, considering the broader context and the frequency of these remarks, the witness suggested that the pattern may have carried some significance.

159. While W03 could not reliably quantify the frequency of these comments, they were described as part of a recurring pattern of informal remarks. In terms of context and frequency, W03 found them notable enough to be included in the report.

W03 did not characterize the comments as malicious but indicated they contributed to an atmosphere that felt uncomfortable.

The testimony of W04

160. W04 is a staff member of UNICEF. Between July 2019 and May 2021, she was based in the Bihać office.

161. Throughout her testimony, W04 emphasized that she was not a direct eyewitness to the specific incidents alleged. Her evidence consists of secondhand reports from colleagues (namely, V02 and V03) with whom she had professional and occasional private contact.

162. W04 described two incidents recounted to her by V02. The first incident happened at an informal gathering (likely a bar after a meeting, possibly a farewell) where the Applicant commented about a passing car and said something to the effect of “look at that car - I bet you like guys who drive nice cars,” and then claimed he had a good car himself. The second incident was a remark the Applicant made in the office, warning colleagues to be careful about what they shared with V02 and warning them about what people “share when they are in bed alone”. V02 found these comments inappropriate.

163. W04 testified that V02 also told her generally that there were instances where the Applicant came too close to her and that V02 felt uncomfortable around him. V02 told W04 that she had consciously adjusted her clothing and behavior to avoid situations that made her uneasy. However, W04 could not assert that the Applicant leaned in or physically approached V02 on a specific night at the bar; V02 had described to W04 a pattern of uncomfortable interactions rather than a single, clearly dated event.

164. W04 further recounted a disclosure by V03 about an incident that occurred while V03 was exercising at a gym. According to V03’s account, the Applicant approached V03 at the gym, looked at her buttocks, and made a comment along the lines of “I see your husband instructed you to work on your [guza],” using a local diminutive term. W04 explained that the local word “guza” translates most closely

to “booty” in English. V03 reported to W04 feeling uncomfortable because the Applicant was looking at her buttocks while commenting.

165. Furthermore, W04 reported hearing from others that the Applicant made disparaging remarks about a Save the Children employee (namely, V01) at an informal gathering of senior staff from various Agencies. The reported comment was misogynistic in tone (i.e., that V01 “doesn't even count as a woman” or “doesn't even look like a girl”), said in the presence of male colleagues, and apparently motivated by discomfort with V01’s assertive professional demeanor.

166. In addition, W04 personally recalled one highly offensive, vulgar joke told by the Applicant in the office in the presence of colleagues, which involved a sexual violence theme. W04 and another colleague objected at the time, saying that the joke was terrible and inappropriate, particularly at the workplace.

167. W04 further recognized that her answers about these issues had been inconsistent in her OIOS interview (i.e., she had at times answered “no” or “I don't remember” to questions about vulgar language). W04 acknowledged the inconsistencies between her earlier interview/statement and her courtroom testimony, attributing them to time lapse, the nature of questioning during the investigation, and subsequent review and recollection.

The testimony of W12

168. W12 worked with UNICEF in Bosnia from August to November 2020. During this assignment, she worked with W01, V02, and the Applicant. W12 described her relationship with the Applicant as professional and respectful, stating that he was kind and professional towards her.

169. W12 reported that the incident she witnessed occurred during a team dinner, around 17 September 2020. She stated that the team gathered at a bistro for dinner, including W03, W04, W01, V02, W14, the Applicant, and herself.

170. W12 described the atmosphere at dinner as generally cheerful and with light cultural banter. W12 stated that a sweet fruit-based alcoholic drink was provided

by someone associated with the restaurant and that wine may also have been consumed.

171. After dinner, the group walked to a nearby café/bar. While walking from the restaurant to the bar, W12 reported overhearing the Applicant ask V02 how tall she was. V02 provided a numeric response. The witness recalled that the Applicant then commented, using words the witness recalled and paraphrased as “nice height for a female”. W12 perceived the phrasing and the tone as odd and out of place in the cultural context. W12 explained that, in Serbian, the choice of a term equivalent to “female” (as opposed to the ordinary word for “woman”) can carry a different, sometimes impersonal or offensive nuance. The witness stated that the phrasing and tone made her uncomfortable and that the remark caught her attention.

172. At the bar, W12 recalled that the group was seated at a single table in a small garden area. The witness described the atmosphere as noisy, due to the passing cars and general street noise. Once seated, a vehicle passed, and a remark was made about whether V02 would like to ride in that car. W12 observed that V02 appeared confused and hesitant in her response, and that the Applicant further asked V02 whether the driver was handsome, saying, “then why not?”. W12 described these comments as inappropriate.

173. W12 further recalled that the Applicant was seated across her, near V02. She observed a change in V02’s body language after the Applicant’s remarks. V02’s upper body appeared “somewhat frozen” while her legs and hips shifted outward away from the Applicant. W12 stated that V02 did not move her upper body backward but did change the position of her legs, and the witness interpreted this lower body movement as an attempt to create distance and an indicator of discomfort.

174. W12 reported that the Applicant leaned in towards V02 and spoke at a proximity, but that she did not observe any physical touching.

175. W12 estimated that the uncomfortable exchange lasted approximately fifteen to twenty minutes until W01 intervened by placing his hands on the table and

redirecting the conversation, which W12 said changed the mood. W12 stated that after a short interval, the group finished their drinks and left.

176. W12 reported that beers, wine, and soft drinks were present at the bar. She stated that she recalled drinking beer, believed that W01 also drank beer, and that the Applicant may have had wine. W12 recalled that V02 appeared to be drinking a soft or non-alcoholic drink. She did not recall any excessive drinking or any instances where persons were encouraged to drink more.

177. W12 did not recall the Applicant leaving the table to engage in an extended conversation with other people, although he may have gone briefly to the restroom.

178. W12 stated that later, during a field visit, she spoke privately with V02 to check whether V02 had felt uncomfortable on the evening in question. W12 testified that V02 said she had been confused about the meaning of the Applicant's behavior and remarks.

179. W12 stated that she discussed with V02 that she should not feel uncomfortable and told her about the mechanisms available to address ongoing conduct, further offering to be available for support. W12 emphasized that she did not observe any physical contact between the Applicant and V02, but that the conduct she observed consisted of what she perceived as an intrusion into personal space.

180. W12 affirmed that, during her time in the office, the Applicant had been kind and professional toward her personally. She further acknowledged limitations in her account, including her limited ability to hear low-volume exchanges and the fact that her attention was directed to non-verbal cues rather than capturing precise verbal exchanges.

Witness Credibility Assessment

With respect to incidents relating to V01

181. This assessment evaluates the credibility of the testimonies provided by V01 and W02 regarding three separate incidents involving V01. The Tribunal has

carefully considered witness statements, contextual factors, and evidentiary consistency to determine the reliability of each account.

182. Regarding the first incident, which took place during a Cantonal Government meeting in Bihać, V01 alleged that the Applicant repeatedly interrupted her, used dismissive gestures, and engaged in humiliating and undermining conduct. She characterized the incident as personally targeted and harassing in nature.

183. In contrast, W02 described the meeting as quiet and professional, noting that the Applicant only asked V01 to stop speaking and that no disruptive or undermining behavior was observed. W02 further stated that any intervention by the Applicant was subtle and went unnoticed by others in attendance.

184. The Tribunal finds W02's account more credible for several reasons. His testimony aligns with the fact that the meeting was chaired by senior officials following strict protocols, and no formal admonishment of the Applicant occurred. The professional setting supports W02's characterization of events. W02's testimony is more consistent with the evidence and context.

185. V01's testimony is marked by inconsistencies and lacks corroboration. Critical details, including seating arrangements, are disputed: V01 asserted that the Applicant sat in the corner, whereas W02 stated he sat beside her. Furthermore, no other witnesses substantiated her allegations of public humiliation.

186. The Tribunal considers that the professional context of strained relations between UNICEF and Save the Children, following the end of their partnership, likely could have influenced V01's perception of the Applicant's conduct. This contextual factor must be considered when assessing the objectivity of her testimony.

187. Concerning the August 2021 meeting on Lipa Camp staffing, V01 alleged the Applicant yelled at her in front of government officials, accusing her of mismanaging staffing plans and unilaterally altering agreements. This formed the basis for her claim of harassment.

188. W02, who was present at the same meeting, described it as tense and professionally contentious but did not witness shouting or harassment. He characterized the Applicant's tone as firm but consistent with advocacy for UNICEF's institutional interests.

189. W02 stated that the meeting was tense and marked by contentious exchanges. The Applicant forcefully expressed his views in support of UNICEF's position, the office he represented. At the meeting, a government official harshly criticized NGOs in the country, labeling them "public enemies" or "state enemies" and suggesting groups like Save the Children opposed national interests. W02 described his demeanor as aggressive and accusatory, noting that his raised voice was intimidating and intended to undermine NGO credibility, though without profanity or overt anger.

190. According to W02, the Applicant expressed disagreement with V01 over the reported number of child protection staff to be deployed at the Lipa camp. W02 confirmed that this dispute added to the tension during the meeting.

191. W02's testimony appears more reliable as it aligns with the high-stakes, multi-stakeholder nature of the meeting. His balanced account acknowledges the professional tension while not supporting claims of yelling or harassment. W02's account is more credible, as it reflects a professional disagreement rather than targeted intimidation.

192. V01's allegations are not supported by other witnesses, including government officials who were present. The Tribunal also highlighted that her complaint was filed only after a significant delay, raising concerns about both the timing and her motivations. Specifically, she did not submit her complaint immediately but did so only after the partnership between UNICEF and her office, Save the Children, had ended. V01 had a vested interest in that partnership, while the Applicant played a key role in the decision to terminate it and to stop UNICEF funding to Save the Children. This context further undermines the credibility of her claims.

193. The December 2021 incident involved an informal conversation at a winter market, during which V01 perceived the Applicant's comments as public

accusations blaming her for the partnership termination. She believed these remarks damaged her professional reputation.

194. W01, who was present during the conversation, acknowledged that the Applicant's remarks were unprofessional but clarified that they were not malicious or personally directed at V01. He stated the conversation addressed operational challenges rather than personal attacks.

195. W01's perspective proves credible as he contextualizes the remarks within broader organizational discussions. In the final determination, W02's testimony receives greater credibility for its consistency, objectivity, and alignment with evidence. V01's accounts appear to be influenced by institutional tensions and lack corroboration.

196. Therefore, the following facts are established by clear and convincing evidence with respect to the incidents involving V01:

- a. During a meeting at the cantonal government in Bihać, the Applicant asked V01 to stop speaking. This was done, however, discreetly and went unnoticed by others present. No disruptive or undermining behavior was observed.
- b. During a meeting with local authorities in Bihać, the meeting was tense and marked by heated professional disagreements, with both the Applicant and V01 advocating for their respective institutional interests. The Applicant's tone was firm and intense but remained within the scope of legitimate advocacy for UNICEF's operational position.
- c. Regarding the Applicant's informal remarks of 23 December 2021 about the end of the partnership between UNICEF and Save the Children, the Applicant attributed responsibility to V01 for the termination of the partnership between UNICEF and Save the Children.

With respect to the incidents relating to V02

197. After a careful and thorough analysis of the testimonies provided by V02 and the supporting accounts of other witnesses, including W01, W03, W04, and W12, the Tribunal finds that the evidence presented is mutually reinforcing and consistent. The testimonies corroborate one another in material respects, thereby strengthening the reliability of V02's account.

198. In reviewing V02's testimony, the Tribunal observed that she provided a clear and detailed narrative of the incidents in question, recounting what occurred without significant inconsistencies. Her account was not isolated but was supported by the independent testimonies of W01, W03, W04, and W12, each of whom confirmed aspects of her statements. This convergence of evidence lends substantial weight to her credibility.

199. Accordingly, the Tribunal concludes that V02's testimony is credible, having been corroborated by multiple witnesses and presented in a consistent and convincing manner.

200. Therefore, the Tribunal finds that the following incidents involving V02 have been established by clear and convincing evidence:

- a. On 17 September 2020, the Applicant commented on V02's physical appearance, asking how tall she was and remarking that she had a good height for a woman.
- b. On 17 September 2020, at a team gathering at a local bar, the Applicant, while speaking to V02, leaned too close to her. During this time, he also asked whether she would like to go for a ride in an expensive car if a handsome man was driving.
- c. In the spring of 2020, V02 rode in an elevator with the Applicant. As the elevator stopped, he invited her to exit first. V02 did so, and there was no physical contact between them.

d. In 2021, after the Applicant became aware that V02 was in a romantic relationship with a Save the Children employee, he cautioned her colleagues to be careful about the information they shared in her presence, stating that people who are together in bed tend to share a lot of information with their partners.

e. In the winter of 2021, the Applicant gave V02 a book entitled “Sex and Lies: True Stories of Women’s Intimate Lives in the Arab World” by Leila Slimani, stating that it could be relevant to her work.

With respect to incidents relating to V03

201. After a thorough review, the Tribunal determines that the testimony of V03 is clear, detailed, consistent, and has no significant contradictions. Furthermore, key aspects of V03’s statements are corroborated by W01, thereby reinforcing their reliability and substantially supporting V03’s credibility.

202. The Tribunal therefore concludes that V03’s testimony is trustworthy, as it was both consistent and validated by evidence. In this context, it further finds that the following incidents have been established by clear and convincing evidence:

a. In 2019 or 2020, while staring at V03’s bottom at a gym in Bihać, the Applicant stated that she was exercising to make her booty bigger on her husband’s instruction.

b. In October 2020, while visiting a police training centre in Sarajevo to do a presentation with V03, the Applicant stated to V03 that she liked strong, muscular men.

With respect to the Applicant’s unauthorized outside activities

203. With respect to the Applicant’s unauthorized outside activities, the Organization proved by clear and convincing evidence that the Applicant taught as an Assistant Professor between 2019–2022, exceeding the authorized hours and doing so without UNICEF’s prior approval. Documentary evidence also shows he co-published two scholarly articles in 2019 and 2020 without approval.

204. The Applicant partially admitted the conduct, acknowledging he did not seek authorization. However, he claimed he believed his activities fell within prior approval and that the publications were unrelated to his official duties.

205. Based on the evidence, the Tribunal finds by clear and convincing evidence that the Applicant engaged in the following unauthorized outside activities:

a. During the 2019/2020 academic year, the Applicant exceeded the authorized fifteen hours per semester at the University of Sarajevo by working sixty hours per semester, including lectures and exercises, without obtaining further approval from UNICEF.

b. In the 2020/2021 and 2021/2022 academic years, the Applicant continued to work as an Assistant Professor at the University of Sarajevo without authorization, again performing sixty hours of lectures and exercises per semester.

c. Between November 2020 and September 2022, the Applicant received unauthorized remuneration totalling BAM 17,889.24 (approximately USD 10,478.69) for his academic services, representing thirteen months of unapproved outside earnings following his initial, and limited, October 2019 approval.

d. In 2019 and 2020, the Applicant co-published two scholarly articles without seeking or receiving authorization from UNICEF.

Whether the established facts legally amount to misconduct

Legal and Factual Analysis with respect to each incident

206. UNICEF's Policy on the prohibition of discrimination, harassment, sexual harassment and abuse of authority (POLICY/DHR/2020/002), defines harassment and sexual harassment as follows:

Harassment: any unwelcome conduct that might reasonably be expected or be perceived to cause offence, or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment. Harassment

may take the form of words, gestures, or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another person, including mobbing or bullying. Harassment may be directed at one or more persons based on a shared characteristic, trait or status.

Sexual harassment: any unwelcome and improper conduct of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.

...

General principles

9. While typically involving a pattern of behavior, prohibited conduct may take the form of a single incident.

10. In assessing the reasonableness of expectations or perceptions, the perspective of the person(s) who is/are the target(s) of the prohibited conduct (hereinafter referred to as “victim”) shall be taken into account.

11. Disagreements between a supervisor and a supervisee about his/her performance, which are to be addressed in regular performance-management discussions, or about other work-related matters normally do not constitute prohibited conduct.

12. Staff members who are alleged to have committed prohibited conduct may be subject to the actions included in UNICEF’s Policy on the Disciplinary Process and Measures. Prohibited conduct committed by non-staff personnel will be addressed in accordance with the terms and conditions of their contracts, and the applicable policies regarding such non-staff personnel.

13. Managers and supervisors in particular are expected to act as role models for UNICEF personnel under their direct or indirect supervision, and to promote a safe and harmonious working environment, free from prohibited conduct.

Incident involving V01

Incident during a meeting at a Cantonal Government in Bihać,

207. The incident in question occurred during a Cantonal Government meeting in Bihać, where V01 attempted to address discrepancies in the official lists of unaccompanied children. V01 alleged that the Applicant repeatedly interrupted her,

spoke over her, and gestured dismissively, which she described as humiliating and harassing. The Applicant, however, denied being rude or interrupting V01 inappropriately. He acknowledged speaking firmly but maintained that his actions were professional and aimed at protecting UNICEF's reputation and operational interests.

208. The Applicant argues that his conduct during the meeting does not constitute harassment. He contends that the incident was a professional disagreement and not a personal attack on V01.

209. The Tribunal found some discrepancies in the testimonies.

210. V01 testified that the Applicant repeatedly interrupted her, gestured dismissively, and engaged in conduct she perceived as undermining and humiliating. The Applicant denied interrupting V01, asserting that established protocol would not have permitted such conduct.

211. W02 described the meeting as quiet and stated that he did not observe any behavior from the Applicant that could be construed as undermining V01. According to W02, the Applicant only asked V01 to stop speaking, and if any disruption occurred, it went unnoticed by others in the room.

212. Regarding seating arrangements, V01 testified that the Applicant sat across the corner, while W02 testified that the Applicant sat next to V01.

213. These inconsistencies in the testimonies undermine the claim that the Applicant's conduct constituted harassment. While V01 described the incident as humiliating and harassing, which the Applicant firmly denied, W02's account suggests that the meeting was generally quiet and that the Applicant's intervention, if it occurred, was overlooked by others. This discrepancy raises reasonable doubt as to whether the Applicant's conduct was unwelcome or perceived as offensive.

214. W01 explained in his testimony that the relationship between the Applicant and V01 was strained, especially around the time the partnership ended. However, he stated that he did not witness any personal attacks or harassment between them.

Instead, he described their interactions as professional disagreements rather than personal hostility.

215. The testimony of W01, who explicitly stated that the disagreement between the Applicant and V01 was not personal but professional, is particularly persuasive. W01's characterization of the conflict as arising from operational and political disagreements, rather than personal animosity, aligns with the Applicant's assertion that the incident was a professional disagreement. This testimony further supports the conclusion that the Applicant's conduct did not constitute harassment.

216. The meetings were chaired by Senior Cantonal Officials and followed strict protocols. The Chair of the meeting did not notice any harassment, and no formal admonishment was issued to the Applicant during or after the meeting. The Applicant noted he had limited capacity to impede a speaker while the Chair presided; his interventions would have been constrained and likely informal and low-tone.

217. The Administration's description that the Applicant "interrupted [V01] several times" is inconsistent with the testimony of W02. W02's account that the Applicant used a low-tone directive and that nobody noticed the alleged "interruption" supports a finding that the exchange was not a public humiliation designed to demean V01. It further supports the Applicant's assertion that his conduct was within the bounds of professional interaction and did not create a hostile or offensive work environment.

218. The Applicant's alleged involvement in the decision to withdraw UNICEF funding and operational responsibilities from Save the Children had tangible consequences for Save the Children's staffing and budget. In this context, the Tribunal finds that said decision likely affected V01's perception of the Applicant's conduct. Given the substantial impact of that decision on Save the Children's operations and personnel, V01 may have been particularly sensitive to the Applicant's actions. Although this context does not rule out the possibility of misconduct where it is otherwise established, it is a material consideration when evaluating credibility and whether the Applicant's interventions at the meetings

were reasonably perceived as humiliating rather than part of his managerial functions.

219. The Tribunal notes from the above witnesses' testimony that, although the Applicant's interventions during the meeting were at times abrupt and lacked the diplomatic polish expected at a high-level, multi-stakeholder setting, the conduct does not amount to harassment. Witnesses described the tone of these interventions as occasionally unprofessional but motivated by a sense of institutional responsibility rather than any intent to demean or intimidate V01. Based on the record, the behavior reflects shortcomings in professionalism and tone, rather than the kind of targeted, demeaning conduct prohibited by the Policy. Accordingly, it does not meet the threshold for a finding of harassment.

220. For the reasons stated above, the Tribunal concludes that the Applicant's conduct in relation to V01 during the Cantonal Government meeting in Bihać does not constitute harassment under the applicable legal framework.

Incident in August 2021

221. The Applicant was charged with harassing V01 by allegedly yelling at her during a meeting with local authorities in Bihać in August 2021.

222. The incident in question occurred during a meeting with local authorities concerning the deployment of staff to the Lipa camp. V01 alleged that the Applicant yelled at her during the meeting, accusing her of unilaterally designing a plan to deploy more staff members than what had been agreed upon by the local government.

223. The Applicant denies yelling at V01 and contends that the meeting was part of a broader professional disagreement between UNICEF and Save the Children over staffing and operational matters.

224. The Tribunal finds that the Applicant's conduct during the meeting does not meet the threshold for harassment. The evidence suggests that the meeting was heated and involved a professional disagreement between UNICEF and Save the Children over staffing allocations for the Lipa camp.

225. The Applicant denied yelling at V01 and explained that the meeting was part of a broader operational disagreement involving multiple stakeholders, including local authorities. He emphasized that his approach to such meetings was diplomatic and aimed at protecting UNICEF's interests and the rights of children. His role as UNICEF's representative required him to advocate for UNICEF's position, which may have led to a firm exchange of views.

226. V01 testified that the Applicant was the one who had publicly proposed, at a prior meeting, the deployment number that the Government had not agreed to. When confronted with the issue at the meeting with the Government, V01 submits that he shifted the blame to her instead, accusing her of having made such a public proposal without the Government's approval. V01 submitted that the Applicant misrepresented her actions to authorities and contributed to Save the Children's reputational damage. V01 further alleged that when she defended herself by explaining it was the Applicant who had publicly committed to that number of staff, the Applicant yelled at her in front of Government Officials, accusing her of mismanaging staffing plans.

227. The testimonies of W01 and W02 do not corroborate V01's claim that the Applicant yelled at her. W02, who was present at the meeting, described the Applicant's intervention as unprofessional but did not characterize it as shouting or harassment. W01, who worked closely with the Applicant, testified that he did not witness any harassment or misconduct by the Applicant.

228. V01's testimony on the Applicant's yelling is inconsistent and lacking corroboration. The Applicant has consistently denied yelling at V01 or making such accusations. Furthermore, there is no evidence from other witnesses, including Government Officials or other meeting participants, to support V01's claim that the Applicant yelled at her or misrepresented her actions.

229. The absence of corroborating evidence from other witnesses, particularly Government Officials who were present at the meeting, undermines the credibility of V01's testimony. If the Applicant had indeed yelled at V01 in such a public and

confrontational manner, it is reasonable to expect that other participants would have noticed and reported such behavior.

230. The testimonies of W01 and W02 provide context for the meeting in question, describing it as a high-stakes and tense discussion involving multiple stakeholders, including Government Officials, UNICEF, and Save the Children. Both witnesses acknowledged that the meeting was marked by a heated debate over sensitive operational matters, particularly the staffing allocations for the Lipa TRC. W02 noted that Government Officials were highly sensitive to the issues being discussed, and the atmosphere was charged due to the differing positions of the Organizations involved.

231. W01 similarly described the meeting as a professional but contentious exchange, where the Applicant, representing UNICEF, advocated for the Organization's position in a firm manner. Both witnesses emphasized that the debate was driven by institutional disagreements rather than personal animosity. While the tone may have been intense, it was consistent with the high-pressure environment of such inter-agency discussions. Neither witness corroborated V01's claim that the Applicant yelled at her or engaged in harassing behavior; instead, they framed the interaction as part of a broader, professional disagreement among stakeholders.

232. The Tribunal also notes that the Chair of the meeting did not observe any harassment. The absence of any formal admonishment or intervention by the Chair or other participants supports the Applicant's contention that the meeting was a professional disagreement rather than an instance of harassment.

233. The Tribunal therefore finds that the disagreement over the staffing proposal for the Lipa Camp was a professional matter involving multiple stakeholders, including UNICEF, Save the Children, and local authorities. The Applicant's role required him to advocate for UNICEF's position, and any firm exchange of views should be understood in the context of a professional disagreement rather than personal harassment.

234. V01 acknowledged that she did not file a formal complaint immediately after the meeting but only did so after repeated interactions with the Applicant.

235. In the Tribunal's view, V01's allegations of harassment appear to be influenced by the professional tensions between UNICEF and Save the Children, particularly following the termination of their partnership. The Tribunal notes that V01 did not file a formal complaint immediately after the incident but only did so after the partnership ended, which raises questions about the timing and motivation of her allegations.

236. The Tribunal therefore finds that the Applicant's conduct during the meeting with local authorities in Bihać in August 2021 does not constitute harassment under the applicable legal framework.

Incident in December 2021

237. The Applicant was furthermore charged with harassing V01 by publicly accusing her of being responsible for the cessation of UNICEF's partnership with Save the Children in Bihać in 2021.

238. The Applicant's alleged comments were made during an informal conversation with two junior colleagues at a street celebration at a local winter market. He admitted to the conversation, during which he discussed the reasons for ending the partnership between Save the Children and UNICEF. He acknowledged that this was a lapse in judgment but maintained that his comments were based on official reasons, including funding constraints and reporting issues, rather than personal accusations against V01.

239. The Applicant acknowledged that discussing sensitive matters in an informal setting with junior staff was inappropriate and expressed regret for this lapse in judgment.

240. The testimony of W01, a junior colleague present during the conversation, supports the Applicant's position. W01 characterized the Applicant's remarks as unprofessional but not malicious, suggesting they were intended to diffuse tension

rather than personally attack V01. W01 also noted that the relationship between the Applicant and V01 was strained due to professional disagreements.

241. In the Tribunal's view, the Applicant's comments during the informal conversation at the winter market, while unprofessional, did not create an intimidating, hostile, or offensive work environment for V01 and, therefore, do not meet the legal definition of harassment.

242. In fact, the comments were made in an informal setting and were not directed at V01 personally. Rather, they were part of a broader discussion about Organizational challenges and strained relationships.

243. While V01 perceived the Applicant's comments as damaging to her reputation, the perspective of the subject must be balanced against the reasonableness of the perception. The Applicant's comments, though unprofessional, were not intended to personally attack V01 or create a hostile work environment. The context of the conversation, an informal setting with junior staff, further supports the conclusion that the comments were not intended to harass or humiliate V01.

244. The Tribunal therefore finds that the incident in December 2021 does not constitute harassment under the applicable legal framework.

245. The Tribunal emphasizes that while the Applicant's actions were not found to constitute harassment, they were inappropriate and reflect a lapse in judgment. The Applicant is reminded of the importance of maintaining professionalism in all interactions.

Incident involving V02

Incident following dinner with colleagues

246. The Applicant was charged with misconduct for allegedly making the following comments to V02 during a walk from a restaurant to a bar: "How tall are you?" and "You have a very nice height for a woman". V02 found the comment inappropriate and felt uncomfortable.

247. Witnesses W12 and W03 consistently recalled the Applicant asking V02 about her height and saying, “Nice height for a female/woman,” while walking behind her.

248. The comment was brief, non-explicit, addressed to physical stature only, and occurred in a social, informal context involving several colleagues.

249. W01 described the Applicant’s general mannerisms as habitual, not intentionally sexual.

250. No evidence shows the remark was accompanied by sexual advances, explicit sexual language, coercion, or a demand for sexual favors.

251. Harassment is unwelcome conduct reasonably expected or perceived to cause offence or humiliation, and that interferes with work or creates an intimidating, hostile, or offensive work environment. Sexual harassment is unwelcome conduct of a sexual nature with similar effects. Assessment requires an objective evaluation of the conduct, context, and the subject’s perspective.

252. The Applicant’s question and compliment about V02’s height concern physical appearance. Such remarks can be unwelcome and may cause personal discomfort.

253. The Tribunal notes the importance of a respectful workplace and that supervisors must maintain professional boundaries. However, to qualify as harassment or sexual harassment under the Organization’s legal framework, the conduct must be of a nature and severity that would objectively create an intimidating, hostile, or offensive work environment, materially interfere with work, or be of a sexual nature.

254. The height remark was non-sexual in explicit content, brief, and not accompanied by sexualized language or conduct. Though it was inappropriate, given the supervisor-subordinate relationship, it does not meet the threshold for harassment or sexual harassment as defined.

255. The evidence here establishes unwelcome and unwise conduct but falls short of proving the requisite objective severity or sexual character.

256. The Tribunal therefore finds that this incident does not constitute harassment or sexual harassment under the applicable legal framework

Incident at the bar in Bihać

257. The second incident involving V02 occurred on the same night as the one mentioned above. The Applicant was charged with misconduct for allegedly (a) encroaching on V02's personal space while they sat together at a bar and (b) asking whether she would like to go for a ride in an expensive car if a handsome man drove it.

258. The Tribunal has considered the witness statements and testimonies from V02, the Applicant, W01, W03, W04, and W12. Several witnesses corroborate aspects of V02's account: that a team dinner was followed by a smaller group going to an outdoor seating area at a bar; that the Applicant was present and made remarks about a passing vehicle and asked V02 whether she would go for a ride with a handsome driver; and that at times the Applicant was physically close to V02 while showing content on his phone or speaking.

259. W03 and W12 described the Applicant's face being close to V02's and V02 stepping back; W03 described the proximity as closer than professionally appropriate. V02 consistently reported feeling uncomfortable and regaining distance multiple times. W01 and some other witnesses, however, described the Applicant's manner as generally non-sexual, and W01 testified that similar mannerisms occurred across interactions and were not, in his view, sexualized.

260. The Applicant denied deliberate encroachment or any sexual intent and explained that venue noise and informal social context explain the closer proximity. He also denied making rude comments or deliberate advances.

261. W12 and W03 also described the bar as noisy, with ambient street noise and passing-car noise, and stated that the group was gathered around a small, round outdoor table without chairs. W12 confirmed that ambient noise limited the ability

to hear low-volume exchanges and that her attention was directed to non-verbal cues.

262. The Tribunal finds the evidence establishes that: (1) the bar was noisy and crowded; (2) the Applicant sat or stood close to V02 and at times brought his face near hers while showing phone images or speaking; (3) the Applicant commented on a passing flashy vehicle and asked, in effect, whether V02 would take a ride with a handsome driver; (4) there is no reliable evidence of any physical touching, forced contact, or explicitly sexual proposition; (5) V02 felt uncomfortable and moved to create distance; and (6) the Applicant and others consumed alcohol that evening.

263. To constitute harassment, the conduct must be unwelcome and of a nature that would reasonably be expected to cause offence or create an intimidating, hostile or offensive work environment. The Tribunal accepts that V02 perceived discomfort from the Applicant's proximity and that she took steps to create distance.

264. The comment about the car, as reported, was an unsolicited personal remark from a supervisor to a junior staff member.

265. The interaction took place in a social setting following a team dinner with several colleagues present. The Tribunal considers that the ambient noise made it reasonable for participants to lean closer to one another to hear and view content on their mobile phones. The bar setting, therefore, provides a plausible explanation for the closer physical proximity during conversation and phone viewing. It was reasonable, under those circumstances, to lean closer to hear the conversation or to show phone content. The Applicant's conduct of showing phone images is consistent with informal social banter rather than an explicit sexual advance. No touching, demand, threat, *quid pro quo*, or explicit sexual propositions were shown.

266. Likewise, the Applicant's casual remark regarding a passing car appears to align more closely with informal social banter than with any overt sexual advance. There was no evidence of physical contact, coercion, threats, *quid pro quo* arrangements, or explicit sexual propositions. Witnesses who observed the incident expressed discomfort and described the behavior as unprofessional, socially

awkward, or reflective of personal mannerisms rather than indicative of predatory intent.

267. Upon reviewing the totality of the evidence and applying the objective standard mandated by the policy, the Tribunal concludes that while the Applicant's conduct was inconsiderate and caused discomfort to V02, it does not meet the threshold of harassment as defined under the applicable legal framework. The behavior lacked the requisite severity, sexualized nature, or pattern necessary to constitute harassment that disrupts professional duties or fosters a hostile work environment under the standards required for disciplinary action.

268. Sexual harassment requires unwelcome conduct of a sexual nature. The bar remark about a flashy car and a handsome driver, while personally awkward and inappropriate coming from a supervisor, is not by its nature a sexual proposition, nor did it contain sexualized language or explicit sexual content. The evidence does not establish that the comment was made as a sexual advance or that sexual touching, explicit sexual remarks, or behavior of a sexual nature beyond general physical closeness accompanied the Applicant's proximity. There is no clear and convincing evidence that the Applicant's conduct at the bar constituted sexual harassment within the policy definition.

269. The Tribunal emphasizes that V02's discomfort is genuine and weighty; her reaction and subsequent disclosures are credible. Nevertheless, the credibility of the complainant does not alone satisfy the higher threshold required to prove harassment or sexual harassment for disciplinary purposes. The Administration bears the burden to prove, with clear and convincing evidence, that the Applicant's incident at the bar constituted prohibited conduct. The evidence, when viewed objectively and in context, falls short of that standard.

270. For the reasons given above, the Tribunal finds that the Applicant's conduct in the bar does not constitute harassment or sexual harassment.

Incident in the elevator

271. The third incident concerns the Applicant's conduct in an elevator when he allegedly invited V02 to exit first.

272. Harassment is unwelcome conduct, reasonably expected or perceived to cause offence or humiliation, interfering with work, or creating an intimidating, hostile, or offensive work environment. Sexual harassment is unwelcome conduct of a sexual nature. While a single incident may suffice, findings must be supported by clear and convincing evidence and assessed in context, taking account of the perspective of the person who perceived the conduct as unwelcome.

273. Based on the testimony of V02 and the Applicant, when the elevator stopped, the Applicant told V02, "ladies first", and gestured for her to exit ahead of him. There was no reported physical contact between them.

274. The interaction was brief, polite, and contained no sexually suggestive language or behavior.

275. The Tribunal accepts the Applicant's consistent account that his remark was a customary, courteous gesture and that no unprofessional or intentional conduct occurred.

276. To constitute harassment, conduct must be unwelcome and of a nature that would reasonably be expected to cause offence or create an intimidating, hostile, or offensive work environment. The Tribunal considers that the Applicant's invitation for V02 to exit first was a brief, courteous remark (consistent with the social phrase "ladies first") made in a confined, operational context and not accompanied by any physical touching, threatening language, or conduct intended to belittle, coerce, or humiliate. Measured against the objective standards in the legal framework, this brief, courteous phrase and gesture do not constitute harassment.

277. Sexual harassment requires unwelcome conduct of a sexual nature. There is no evidence that the Applicant made sexual remarks, engaged in sexualized conduct, or intended a sexual advance in the elevator. The brief utterance "ladies

first” and a common-courtesy gesture do not, absent additional sexualized context or conduct, constitute sexual harassment.

278. For the reasons given above, the Tribunal finds that the elevator incident does not constitute harassment or sexual harassment.

Warning the team against V02

279. The fourth incident concerns the Applicant allegedly warning team members about sharing confidential information with V02 because she was in a personal relationship with a Save the Children employee. The Applicant allegedly used a metaphor that people who are together in bed tend to share information with their partners.

280. The question is whether the Applicant’s remark (a) constituted harassment and/or (b) constituted sexual harassment.

281. Based on the testimony of the witnesses, the Tribunal finds that the Applicant had knowledge that V02 was in a romantic relationship with a Save the Children employee. In an office conversation about information security and leaks following Organizational tensions between UNICEF and Save the Children, the Applicant warned colleagues to exercise caution about what they said in V02’s presence and used a phrase to the effect that “when people are together in bed, they tell their partners many things”.

282. W03, W04, and V02 reported the remark; the Applicant acknowledged discussing confidentiality but does not recall the precise wording. The remark was made in a professional setting during a discussion about potential information sharing and organizational confidentiality. It was not accompanied by a physical gesture, sexualized proposition, or explicit sexual conduct directed at V02.

283. V02 reported that she was offended by the remark and later confided in colleagues; W03 and W04 conveyed that V02 was upset. W01 testified that he perceived the Applicant’s style as sometimes unprofessional but did not classify the conduct as sexualized in nature.

284. The Tribunal finds V02's account of subjective offence credible. It also finds that the Applicant's stated purpose, concern for safeguarding UNICEF information given strained partner relations with Save the Children, is credible and that the remark was made in that operational context.

285. The Tribunal accepts that the Applicant's wording was unprofessional and insensitive. The remark singled out a staff member by reference to her intimate relationship and was likely to offend V02; her perception of offence is therefore given weight.

286. However, harassment requires conduct that, objectively, creates an intimidating, hostile or offensive work environment or otherwise interferes with work. In context, the Applicant's remark was made during a workplace discussion about information security at a time of operational tension between UNICEF and an implementing partner. The Applicant's stated purpose was to warn colleagues about the risk that confidential information might be shared externally; the intimate metaphor, while ill-judged, was used to illustrate that operational concern.

287. The Tribunal considers that, although the remark was unprofessional and offensive to V02, it does not meet the objective threshold for harassment or sexual harassment warranting disciplinary sanction. There is no evidence of a pattern of targeted humiliating conduct, no proof of intent to demean V02, and no showing that the comment materially interfered with her ability to perform her duties or created a sustained hostile work environment.

288. Similarly, the Applicant's phrase invoked intimate relations as a metaphor for information sharing but did not constitute an explicit sexual advance, sexualized conduct, or proposition toward V02. The evidence does not show sexual intent, sexual conduct, or a sexualized pattern directed at V02.

289. The Tribunal gives full weight to V02's subjective distress. Credibility of that distress, however, does not alone satisfy the elevated standard required for disciplinary findings of harassment or sexual harassment.

290. The Administration bore the burden to demonstrate, by clear and convincing evidence, that the remark objectively constituted prohibited conduct. However, it did not do so.

291. For the reasons given above, the Tribunal finds that the Applicant's conduct relating to warning the team against V02 does not constitute harassment or sexual harassment.

The book "Sex and Lies"

292. The fifth incident under examination concerning V02 refers to the Applicant's act of handing her a book entitled "Sex and Lies: true stories of women's intimate lives in the Arab world".

293. It is undisputed that the Applicant handed V02 a new copy of the aforementioned book and encouraged her to read it and pass it on to other colleagues. It is furthermore undisputed that the Applicant told V02 the book was relevant to humanitarian work and helpful in understanding certain cultural contexts.

294. V02 accepted the book but did not read it in full. When researching about the book, V02 considered the gift inappropriate.

295. The Tribunal did not find any evidence that the Applicant used sexual words, made sexual gestures, or engaged in sexualized conduct toward V02 when giving the book. He also did not seek feedback or initiate a discussion about the book or its sexual content at that time.

296. V02 and W04 described the gift as inappropriate and offensive. The Applicant described the act as intended for educational sharing rather than as a sexualized act.

297. Harassment requires unwelcome conduct that objectively creates an intimidating, hostile or offensive work environment or otherwise interferes with work. Sexual harassment requires unwelcome conduct of a sexual nature. A single incident can amount to prohibited conduct, but the Administration must prove such

conduct by clear and convincing evidence and the Tribunal must assess the incident in its context.

298. The objective legal question in this scenario is whether the act of handing V02 the book constituted harassment or sexual harassment. The evidence shows the Applicant framed the gift as educational, explicitly asked V02 to read and circulate the book to colleagues and intended the book to be shared among staff.

299. The Applicant did not accompany the gift with sexual language, gestures, touching, propositions or any request that could reasonably be construed as seeking sexual content or engagement. He did not ask V02 to discuss or comment on the sexual contents of the book or otherwise initiate a conversation that might have sexualized the interaction.

300. V02's assessment of the book's inappropriateness was based on her perception of the contents of the book, which, in turn, was based on her interpretation of the title, back cover, and online summaries.

301. Furthermore, the Applicant's intention to share the book with all colleagues, and not only with V02, supports his allegation that he believed the book was relevant and valuable for their humanitarian work, and that his goal was to promote understanding of certain cultural and social issues within staff. The act of handing the book to V02 was part of this broader intention to share educational material with the team, rather than a targeted or personal gesture.

302. whether the book is professionally relevant can be subjective, and in some humanitarian contexts materials concerning women's intimate experiences or trafficking may bear on protection, gender-based violence, or cultural understanding relevant to child protection work.

303. On the totality of the evidence, the gifting of the book does not meet the objective threshold for harassment or sexual harassment. There is no evidence of sexual intent, no pattern of sexualized conduct tied to the gifting, and no demonstration that the act interfered with V02's work or created a hostile work environment as required by ST/SGB/2019/8 and UNICEF Policy/DHR/2020/002.

304. Therefore, the Tribunal finds that the act of handing the book to V02 does not meet the objective threshold for harassment or sexual harassment.

Incident involving V03

Incident at a gym in Bihać

305. The Applicant was charged with misconduct for allegedly harassing V03 by staring at her posterior when she was exercising at a gym in Bihać and stating that she was doing so on her husband's instruction.

306. It is undisputed that the Applicant approached V03 at a gym when she was engaged in routine physical exercises. It is alleged that he made remarks in Bosnian implying that V03 was instructed by her husband to work on her "booty," and using colloquial language that V03 found inappropriate. Specifically, V03 told the Applicant that she was doing exercises for her upper body, not her "booty," and felt uncomfortable by his continued gaze at her posterior.

307. V03 confided in a colleague afterward, expressing her discomfort and embarrassment. She also took steps to change her usual clothing attire, switching to looser clothing to minimize further unwanted attention.

308. The Applicant denied acting in a sexual manner. He explained that he was observing V03's form because he noticed some technical issues during her deadlift, and he mentioned that her husband might have advised her on her technique. He stated the remarks were made in a professional manner with no sexual intent.

309. W01 testified that the Applicant frequently exhibited a pattern of staring and observing others, and that this behavior was common. He clarified that the Applicant's staring was not targeted at any individual. According to W01, the Applicant often engaged in this odd staring with everyone, and it is not of a sexual nature. He emphasized that this behavior was habitual and that he had not witnessed any sexual or harassing conduct involving the Applicant.

310. Furthermore, W01 explained that, although the Applicant's behavior in this regard was unprofessional and showed poor judgment, it was not directed at specific

persons nor was it intended to be sexual or harassing. He highlighted that the Applicant's staring appeared to be part of a pattern of habitual, subconscious observation rather than any sexual gesture or act.

311. The question before this Tribunal is whether the Applicant's behavior, unprofessional staring at V03's posterior and the statement about her husband's instructions, constitutes harassment or sexual harassment.

312. In the Tribunal's view, the Applicant's conduct must be evaluated in context. It must be established whether it was intentional, repetitive, or of a sexualized nature.

313. The act of staring appears to be a pattern of habitual, subconscious observation rather than any sexual gesture or act. W01's testimony is particularly relevant in this respect. Furthermore, V03's husband is a known sports figure, which provides additional context. This might explain the Applicant's specific mention of her husband's instructions, reflecting an awkward attempt at social interaction rather than misconduct.

314. In this context, the Tribunal acknowledges V03's feelings of discomfort but considers that the subjective offence alone does not establish harassment or sexual harassment; particularly when there is no objective evidence that the behavior was sexual or intimidating. Indeed, the Tribunal considers that, once more, the Applicant displayed unprofessional and intrusive behavior, but not one of a sexual nature.

315. For these reasons, the Tribunal confirms that the Applicant's conduct on the incident at the gym involving V03, though unprofessional, does not meet the objective criteria for harassment or sexual harassment under the applicable policies.

The incident at the police training centre

316. The Applicant is furthermore charged with misconduct for having made a remark to V03 about her preferences during a visit to the police training center in Sarajevo.

317. It is alleged that, during the visit to the police training center, the Applicant made a remark to V03, in Bosnian, stating that she liked strong, muscular men. V03 felt discomfort with the remark. She later confided in colleagues that she found the comment inappropriate and intrusive.

318. The Applicant stated in his testimony that his comment about V03 liking strong, muscular men was because V03's husband is a well-known athlete and sports figure. He explained that his remark was intended as a casual, social comment about her husband's physical stature and not of a sexual nature.

319. The Applicant denied that the remark had any sexual connotation or intent. He stated that he was speaking about physical strength, and that he did not use any sexual words, gestures, or conduct.

320. W01 testified that the Applicant often exhibited this type of behavior. He said that the Applicant had a habit of observing others and making comments, but that such behavior is not of a sexual or harassing nature.

321. The key question is whether the Applicant's remark about V03's alleged preference for muscular men, made in a professional setting, was unwelcome conduct of a sexual nature or of a sexualized connotation.

322. The evidence shows the remark was a casual, somewhat awkward comment about V03's personal preferences, referencing her husband's athleticism.

323. The remark was not accompanied by any sexual words, gestures, or conduct. The Applicant did not direct any sexual language towards V03, nor did he engage in any behavior that would reasonably be perceived as sexual harassment.

324. The fact that V03 felt uncomfortable is acknowledged and is relevant. However, subjective discomfort alone does not establish harassment or sexual harassment.

325. W01's testimony further supports that the Applicant's habitual observation-based behavior does not amount to sexual or harassing conduct, and that the remarks in question lacked sexual connotation. The fact that V03's husband

is a prominent athlete should be seen as a contextual detail that helps clarify the nature of the Applicant's casual remark.

326. For the reasons outlined, the Tribunal concludes that the Applicant's remark at the police training center was a casual, unprofessional comment, but it did not amount to harassment or sexual harassment under the policies and legal standards.

Unauthorized outside activity

327. The Applicant was also charged with misconduct for engaging in outside activities without prior approval.

328. According to the charge letter, UNICEF authorized the Applicant in October 2019 to work as an Assistant Professor at the University of Sarajevo for fifteen hours per semester; however, he worked sixty hours per semester during the 2019/2020 academic year. In the academic years 2020/2021 and 2021/2022, without UNICEF's authorization, he continued working as an Assistant Professor for sixty hours per semester. He received thirteen months of outside earnings between November 2020 and September 2022. Additionally, in 2019 and 2020, without authorization, the Applicant co-published two scholarly articles.

329. The Applicant partially admits the conduct, acknowledging he did not request or seek approval for his teaching and publication activities during the periods in question. The Applicant explains that he believed he was acting within the scope of his initial approval in October 2019, and sustains, furthermore, that he did not work more than the authorized number of hours, and that the scholarly articles did not require prior approval under the applicable policies because they were not related to the UN, UNICEF, or his official duties.

330. The Organization presented substantial evidence demonstrating that the Applicant worked as an Assistant Professor at the University of Sarajevo during the academic years 2019/2020, 2020/2021, and 2021/2022, exceeding the authorized fifteen hours per semester, and did so without seeking or obtaining prior approval from UNICEF.

331. There is also documentary evidence that the Applicant co-published two scholarly articles in 2019 and 2020 without prior approval from UNICEF.

332. The critical legal question is whether the Applicant obtained the required prior approval for his outside activities. The evidence clearly indicates that he did not.

333. The Applicant asserts that he relied on the initial approval received in October 2019 and believed that it covered all his teaching duties. Nonetheless, policies explicitly require staff to seek approval for any additional hours or activities beyond the scope of the initial authorization. The failure to obtain such approvals constitutes a breach of Staff Regulation 1.2(o), which states:

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

334. Similarly, Staff Rule 1.2(r) explicitly states:

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

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

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

335. Additionally, the UNICEF Executive Directive CF/EXD/2012-009 (UNICEF Executive Directive on Outside Activities), which was in effect at the time the Applicant requested prior approval in 2019, further clarifies:

1.2 Staff shall not participate in any outside activity, whether remunerated or not, without prior approval, as specified in section 2 (see also United Nations staff rule 1.2(r)).

336. The relevant UNICEF procedure PROCEDURE/DHR/2021/007 (UNICEF Procedure on Outside Activities) stipulates:

Paragraph 4. Staff shall not participate in any outside activity, whether remunerated or not, without prior approval, as specified in this procedure (see also United Nations staff rule 1.2 (r))

337. The applicable rules and policies unambiguously require prior approval before undertaking outside work or activities.

338. The Applicant was fully aware of these rules, having received the policies in the course of his employment. Ignorance or casual oversight cannot exempt him from compliance.

339. The evidence establishes that he did not seek approval for outside teaching hours or for scholarly publications in subsequent years, constituting a violation of these policies.

340. After a thorough review, the Tribunal affirms that the Organization has proven, by clear and convincing evidence, that the Applicant engaged in unauthorized outside activities in violation of applicable rules and policies.

Whether the sanction is proportionate to the offence

341. According to Staff Rule 10.3(b):

Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.

342. This principle of proportionality is well-established in the jurisprudence of the Dispute and Appeals Tribunals, requiring that sanctions be appropriate and not excessive in relation to the misconduct.

343. The principle of proportionality is a cornerstone of administrative law, including United Nations disciplinary decisions. It requires that sanctions be proportionate to the gravity of the misconduct, neither excessive nor unduly lenient.

The Dispute Tribunal has consistently held that a sanction must be rationally connected to the misconduct and not arbitrary or disproportionate (*Samandarov* 2018-UNAT-859, para. 25).

344. The Appeals Tribunal pronounced “the principle of proportionality” in its seminal judgment in *Sanwidi* 2010-UNAT-084, para. 39, holding that this “means that an administrative action should not be more excessive than is necessary for obtaining the desired result”. It also stated that the “requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive”, which then “involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective”.

345. Since then, the Appeals Tribunal has had the opportunity to further elaborate on the notion of proportionality, often referring to *Portillo Moya* 2015-UNAT-523, where it held that:

19. It follows from the reasoning of the quoted jurisprudence 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.

20. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration which carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures: a sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance, etc.

21. That is why only if 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, that the judicial review would conclude in its unlawfulness and change the consequence (i.e., by imposing a different one). This rationale is followed in the jurisprudence of this Tribunal. [reference

to footnote omitted] If that is not the case, judicial review should not interfere with administrative discretion.

346. In *Mihyar* 2024-UNAT-1462, the Appeals Tribunal further referred to its judgment in *Rajan* 2017-UNAT-781, para. 48, in which it held that:

48. A decision on the appropriate sanction for misconduct, therefore, involves a value-judgment and the consideration of a range of factors. The sanction prescribed by the relevant staff rules or governing contractual provisions is normally the primary signifier of the appropriateness of a sanction, but the Tribunal remains vested with the authority to overturn a prescribed penalty if it is regarded as too excessive in the circumstances of the case.[reference to footnote omitted] The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.

347. Furthermore, in *Kennedy* 2021-UNAT-1184, para. 69, the Appeals Tribunal clarified that when assessing proportionality, the Tribunal must consider factors such as the nature and gravity of the misconduct, the staff member's intent, and their disciplinary history. The Tribunal must ensure that disciplinary measures do not exceed what is necessary to maintain organizational discipline and integrity.

348. It is also well-established that even serious misconduct does not automatically warrant the most severe sanctions, like dismissal, unless that penalty is justified by the nature of the misconduct and its impact on the Organization (*Tomeci* UNDT/2024/064, paras. 107-112).

349. The Organization concluded that the Applicant engaged in serious misconduct, purportedly involving multiple incidents and three victims, as well as unauthorized engagement in outside activities. For this, a disciplinary sanction of separation from service was imposed on him, with compensation in lieu of notice and termination indemnity.

350. However, as this Tribunal has affirmed in the preceding section of this judgment, it finds that the established facts in relation to V01, V02, and V03 do not amount to harassment and/or sexual harassment. This determination was made after

a thorough review and assessment of the evidence on record, and a comprehensive fact-finding hearing.

351. Therefore, the only misconduct that the Tribunal recognizes as attributable to the Applicant is his involvement in outside activities for which he did not obtain prior authorization. These activities include teaching at the University beyond approved hours, teaching at the University without authorization, and publishing scholarly articles without prior approval.

352. Accordingly, the focus of this review now shifts solely to evaluating whether the disciplinary sanction of separation from service, with compensation in *lieu* of notice, and with termination indemnity, which was imposed based on the totality of the allegations, is proportionate to the misconduct that has been conclusively established. Namely, the unauthorized engagement in outside activities. The Tribunal will assess whether such a severe penalty is justified in relation to the proven conduct, considering applicable jurisprudence and standards of fairness and proportionality.

353. The Tribunal notes that the principles articulated in *Samandarov* and *Kennedy* demand that disciplinary measures be calibrated to the severity of the misconduct and must be rationally justified. The Appeals Tribunal emphasized in *Samandarov* that the penalty cannot be excessive in relation to the misconduct; and, in *Kennedy*, that disproportionate sanctions violate principles of fairness and legality.

354. In the present case, while the failure to seek prior approval for outside activities constitutes misconduct, it does not amount to serious or gross misconduct warranting a severe disciplinary sanction. The Applicant's long service, cooperation during the investigation, and absence of prior disciplinary issues weigh in favor of a less severe, proportionate penalty.

355. In light of the foregoing, and in accordance with the principles of proportionality, the Tribunal determines that the disciplinary sanction of separation from service, with compensation in *lieu* of notice, and with termination indemnity, imposed on the Applicant was disproportionate to the misconduct established.

Whether the staff member's due process rights were respected

356. The Applicant did not allege any violation of due process rights in his application, and the Tribunal finds that this matter does not require consideration in the present context.

Remedies

Inclusion of the Applicant's name in the UN-wide screening database on sexual misconduct

357. According to POLICY/DHR/2020/001, a staff member's name shall be included in the UN-wide screening database on sexual misconduct only where the staff member has been separated from service for misconduct of a sexual nature. Crucially, the evidence must establish responsibility for sexual misconduct as a precondition for such inclusion.

358. The inclusion of a staff member's name in the UN-wide database on sexual misconduct is a serious administrative action, with significant implications for reputation and future career prospects. As with all such measures, it must be grounded in a clear legal and factual basis and be proportionate to the misconduct established.

359. In this case, the Tribunal finds that the Applicant did not engage in sexual misconduct for the reasons set forth above.

360. Accordingly, his name should be excluded from the UN-wide database on sexual misconduct.

Compensation

361. The Statute of the Dispute Tribunal provides in its art. 10.5 an exhaustive list of remedies, which the Tribunal may order as follows:

- (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the

contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph.

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

362. Considering its abovementioned findings on the unlawfulness of the contested decision, the Tribunal finds that the most appropriate remedy would be to rescind the contested decision.

363. An order for rescission, although technically conceivable within the provisions of the Statute, cannot be made without proper consideration of its effect. In practical terms, the result of such an order would be nothing short of an upheaval in the staffing arrangements of the Organization, which would, in turn, infringe upon the rights of other staff members. It is perhaps in recognition of the potential effect of such an order that art. 10.5(a) of the Tribunal's Statute mandates the Tribunal also to set a monetary amount that the Respondent may elect to pay as an alternative to rescission or specific performance.

364. Given the circumstances of this case, the Tribunal sets the amount of compensation in *lieu* of rescission to three months and two weeks' net-base salary, which is the remaining amount of time between the Applicant's separation from service and the expiration date of his fixed-term appointment.

Conclusion

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

- a. The disciplinary sanction is rescinded;
- b. The Applicant is to be reinstated, with all his benefits and entitlements, from the date of separation, at the level he held before being separated.

- c. Should the Secretary-General elect to pay compensation instead of reinstating the Applicant, the Tribunal sets compensation in *lieu* at the amount of three months and two weeks of the Applicant's net-base salary;
- d. The aforementioned sums shall bear interest at the United States prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable;
- e. The Applicant's name shall be deleted from the UN-wide database on sexual misconduct; and
- f. All other claims are rejected.

(Signed)

Judge Solomon Areda Waktolla

Dated this 26th day of November 2025

Entered in the Register on this 26th day of November 2025

(Signed)

Liliana López Bello, Registrar, Geneva