



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2013/023  
Order No.: 299 (NBI/2015)  
Date: 24 September 2015  
Original: English

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**Before:** Judge Vinod Boolell  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

NYEKAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON PRODUCTION OF  
EVIDENCE**

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**Counsel for the Applicant:**  
Ron Mponda

**Counsel for the Respondent:**  
Elizabeth Brown, UNHCR

## **Introduction**

1. The Applicant, a former staff member of the United Nations High Commissioner for Refugees (UNHCR), filed the current Application to challenge the decision of the High Commissioner for Refugees, dated 26 February 2013, to impose on her the disciplinary measure of a written censure as per staff rule 10.2(a)(i) and a fine of one month's net base salary as per staff rule 10.2(a)(v) (the Contested Decisions).

2. The Applicant filed her Application with the Nairobi Registry of the United Nations Dispute Tribunal (the Tribunal) on 23 May 2013. The Respondent filed his Reply on 28 June 2013.

3. The Tribunal held a hearing of the case on the merits from 12-15 May 2014 during which extensive evidence was heard.

## **Background**

4. The Applicant joined the UNHCR Branch Office in Kigali, Rwanda, (BO Kigali) in February 2007 as the Representative at the P-5 level. She was promoted to the D-1 level in November 2007. The Applicant's assignment in BO Kigali ended in December 2010.

5. On 23 August 2010 and 8 November 2010, the IGO received 2 complaints of alleged misconduct involving the Applicant.

6. Consequently, on 1 December 2010, the IGO established an *ad hoc* inspection mission (Inspection Mission) to examine and report on the overall management of the UNHCR operation in Rwanda and, in particular, the internal management of BO Kigali. The Inspection Mission visited Kigali from 14 – 20 December 2010 and issued its report in January 2011.

7. In March 2011, the IGO established an Investigation Team to investigate the allegations contained in the two complaints received by the IGO on 23 August 2010 and 8 November 2010.

8. The Investigation Team finalized its investigation report on 18 October 2011.

9. In its report the Investigation Team made the following observations on its own findings and those of the Inspection Team:

While the conclusions of this report differ with those of the inspection team, which visited Kigali office in December, this panel believes that this is for several reasons. Firstly, [the Applicant] was still the Representative and a significant intimidatory presence. We note that both complainants advised against an investigation taking place while the Representative was still on board. Given the atmosphere of suspicion and mistrust in the office, it is our view that staff did not speak as openly as they did following her departure. Secondly, the workings of an inspection team and an investigation panel are very different. The Inspection team does not record or take notes of interviews, while the investigation panel is obliged to do so. Interviewees are therefore aware that what they say is on record and it provides some kind of protection, should they be victimized. Finally, the interview panel had already seen the initial complaints and conducted a number of interviews. These provided a basis for asking more specific questions to support or negate the allegations. Indeed, one interviewee stated that he did not volunteer any information, simply answered the questions posed by the inspection team. In short the investigation panel has the mandate to conduct a more comprehensive, in-depth inquiry than that afforded to the inspection with the result that the findings may be and in this case are different.

10. The Inspection Mission made the following observations on the way it approached its mission:

The mission to Kigali took place from 14-20 December 2010, and was both preceded and followed by extensive meetings and telephone conversations with key entities/staff at Headquarters as well as in other duty stations. All persons interviewed were routinely notified that any information shared with the inspection team would remain strictly confidential and would not be attributed in the final report. The mission also had access to various documents pertinent to its work,

such as the minutes of the Local Committee on Contracts, of the Local Asset Management Board, of staff meetings in Kigali, leave of absence records of the staff, correspondence with the Legal Affairs Section, the Country Operation Plan for 2010, and the findings of the 2008 Global Survey.

11. In the light of the observations of the Investigation Team on the operation of the Inspection Mission:

**It is hereby ORDERED that:**

12. The Respondent submit to the Nairobi Registry via the eFiling portal, under cover of confidentiality, and **no later than Thursday, 8 October 2015:**

- a. The Terms of Reference of the Inspection Mission;
- b. The key entities and other duty stations the Inspection Mission contacted and the information gathered;
- c. The persons interviewed by the Inspection Mission and the notes of evidence taken;
- d. The documents the Inspection Mission considered, namely, the minutes of staff meetings, leave of absence records and the Country Operation Plan for 2010, and the findings of the 2008 Global Survey.

*(Signed)*

Judge Vinod Boolell

Dated this 24<sup>th</sup> day of September 2015

Entered in the Register on this 24<sup>th</sup> day of September 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi