



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2018/088  
Order No.: 036 (NBI/2020)  
Date: 11 February 2020  
Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

MBOGOL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE RESPONDENT'S  
MOTION IN RESPONSE TO ORDER  
NO. 011 (NBI/2020)**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Nicole Wynn, AAS/ALD/OHR  
Rosangela Adamo, AAS/ALD/OHR

## **Introduction**

1. The Applicant is challenging a decision that she characterizes as a “decision not to rewrite [her] September 2016-March 2017 performance evaluation in order to correct and finalize the document as instructed by the Chief HR on 19 October 2017, and its consequences”.

2. By Order No. 011 (NBI/2020), the Tribunal informed the parties of its decision to hold a hearing during the week of 24 February 2020 and invited them to submit their witness lists and confirm their availability on or before 31 January 2020.

3. On 31 January 2020, the Respondent filed a witness list and moved the Tribunal to find as “irreceivable” the Applicant’s allegation that the comparative review process had been improperly conducted due to the inaccuracy of the list of P-4 Political Affairs Officers subject to the review. In a separate submission filed on 31 January 2020, also in response to Order No. 011 (NBI/2020), the Respondent submitted that, should the Tribunal reject his motion to exclude the Applicant’s allegation that the comparative review process had been improperly conducted, he would offer the rebuttal testimony of Mr. Ebow Idun, the UNAMID Deputy Chief Human Resources Management Section.

4. The Tribunal notes that the notion of receivability relates to actions put before the Tribunal, limited by the identity of the contested decisions and not by the particular factual allegations. The applicable legal framework does not foresee estopping an applicant for supplying different factual and legal justifications in support of the claim originally made. The Tribunal recalls that the Applicant is contesting the “consequences” of her performance evaluation, that those are detailed at paragraphs 15 – 17 of her management evaluation request and include the non-renewal of her fixed-term appointment. The basis of the non-renewal decision had been the comparative review process. The propriety of this process is not, therefore, irrelevant for the legality of the contested decision. The Tribunal, accordingly, decides as follows:

**ORDER**

5. The motion to exclude the Applicant's allegation as "irreceivable" is dismissed;
6. Evidence of Mr. Ebow Idun is allowed and the Respondent is requested to include the witness in the hearing schedule.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart  
Dated this 11<sup>th</sup> day of February 2020

Entered in the Register on this 11<sup>th</sup> day of February 2020

*(Signed)*

Eric Muli, Legal Officer, for  
Abena Kwakye-Berko, Registrar, Nairobi