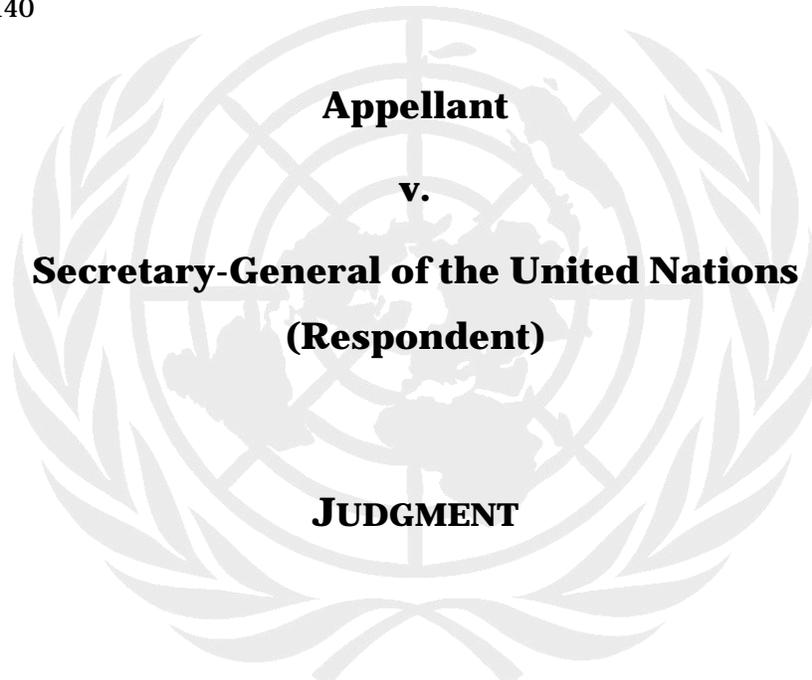




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-140



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| Before:       | Judge Mary Faherty, Presiding<br>Judge Sophia Adinyira<br>Judge Luis María Simón |
| Judgment No.: | 2011-UNAT-143  |
| Date:         | 8 July 2011  |
| Registrar:    | Weicheng Lin   |

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Counsel for Appellant: Self-represented

Counsel for Respondent: Melanie Shannon

**JUDGE MARY FAHERTY**, Presiding.

**Synopsis**

1. In order to protect the identity of the former staff member in this particular case, the former staff member will be referred to hereinafter as “the Appellant”.
2. The Appellant sought administrative review of the failure of the High Commissioner for Human Rights (HCHR) to reply to a formal complaint that the Appellant had lodged wherein the Appellant made claims of discrimination, harassment, and abuse of authority by the Appellant’s former superiors.
3. The Appellant separated from service in December 2004. The separation from service was not the subject-matter of any request for administrative review. The Joint Appeals Board (JAB), in its December 2008 report, held that the Administration had failed to address the Appellant’s complaint with the required due diligence and recommended compensation of one month net base salary. In January 2009, the Appellant was informed that the Secretary-General had decided to accept the JAB’s findings and conclusions.
4. In the application before the United Nations Dispute Tribunal (Dispute Tribunal or UNDT), the Appellant sought a variety of reliefs, including a full investigation into the matters which gave rise to the formal complaint submitted to the HCHR, a formal and unconditional apology by the Administration, and a range of compensatory reliefs, including compensation for economic loss, consequent on the Appellant’s separation, and compensation for the injury caused, including emotional pain and health deterioration.
5. The Appellant appeals to the United Nations Appeals Tribunal (Appeals Tribunal or this Tribunal) on the basis that the Dispute Tribunal erred in restricting the scope of its judicial review to the consideration of the adequacy of compensation to which, it was not disputed, the Appellant was entitled.
6. The Appellant further contends that the Dispute Tribunal erred in law in its failure to direct an investigation into the circumstances which gave rise to the Appellant’s formal complaint to the HCHR, and in failing to direct that an apology be issued to the Appellant.

7. Having regard to the submissions made by the Appellant and the Respondent in this appeal, we find as follows:

- i. The Dispute Tribunal properly determined that the issue before it for judicial review was the failure of the HCHR to address the Appellant's formal complaint.
- ii. There was no error of law or failure to exercise jurisdiction on the part of the Dispute Tribunal with regard to the Appellant's request for an investigation.
- iii. We are satisfied that the award by the Dispute Tribunal of USD 40,000 constituted sufficient satisfaction for the Appellant.
- iv. We are satisfied that the Dispute Tribunal correctly refused to entertain the request for compensation for economic loss by virtue of the fact that the Appellant's separation from service was not the subject of judicial review.
- v. On the issue of the Appellant's request for an apology, we find no basis to impugn the approach adopted by the Dispute Tribunal.

#### **Facts and Procedure**

8. The Appellant entered the service of the Office of the High Commissioner for Human Rights (OHCHR) in April 1998 in Cambodia. The Appellant subsequently served with the Department of Peacekeeping Operations (DPKO), OHCHR and the United Nations Office for Project Services (UNOPS) until 31 August 2003. On 4 November 2003, the Appellant joined the OHCHR New York Liaison Office (NYO) as a Human Rights Officer in the Peace and Security Team at the P-3 level under a two-year fixed-term appointment.

9. The Appellant is HIV-positive and suffered from a major depression without psychotic symptoms. The Appellant alleged incidents of harassment by the NYO management during the Appellant's work there and that the Appellant's health condition worsened as a result of the alleged mistreatment by the Appellant's direct supervisors.

10. The Appellant went on sick leave with full pay as of 29 March 2004 and on sick leave with half pay as of 4 August 2009.

11. While on sick leave, on 2 April 2004, the Appellant wrote an e-mail to all NYO staff, with copies to the Chief of Staff and the Acting High Commissioner of the OHCHR in Geneva, indicating the Appellant's concerns, requesting that outside help from the Office of Human Resources Management (OHRM) be sought to deal with the issue of high tension in the office, and seeking assistance in the Appellant's transfer to another office. Between May and June 2004, the Appellant twice wrote to the Acting High Commissioner, but did not receive any answers. The efforts of the Ombudsman's Office to secure the Appellant's temporary release from the NYO together with the Appellant's post also failed.

12. On 30 November 2004, the Appellant wrote a "formal complaint" to the HCHR, asking her to initiate investigations into the allegations of harassment, discrimination, and abuse of authority by the Appellant's supervisors. On 5 January 2005 the Appellant sent the High Commissioner a reminder e-mail but did not receive a response to any messages.

13. Since 1 December 2004, the Appellant has received disability benefits from the Organization.

14. In February 2005, the Appellant wrote to the Secretary-General requesting administrative review of the failure of the High Commissioner to respond to the Appellant's complaint. In June 2005 the Appellant lodged an appeal with the Geneva Joint Appeals Board (Geneva JAB) which, in December 2005, recommended that the Secretary-General declare the appeal inadmissible *ratione materiae*. The Geneva JAB's recommendation was accepted.

15. On 29 March 2006, the Appellant applied to the former Administrative Tribunal. The former Administrative Tribunal rendered a judgment on 2 May 2008, remanding the case to the Geneva JAB for consideration on the merits, and granting the Appellant three months' salary in compensation for the procedural delays encountered.

16. The Geneva JAB was constituted to review "the lack of response by the [HCHR] to the Appellant's complaints of discrimination, harassment and abuse of authority by [the Appellant's] former supervisors, and not the merits of such allegations". In a report dated 5 December 2008, the Geneva JAB held that the gravity of the Appellant's

allegations, and the persistent complaints, constituted sufficient reason for undertaking some form of preliminary action to deal with these allegations seriously, and that by ignoring the Appellant's repeated complaints, the Administration had "failed to address [the Appellant's] case with the required due diligence". For this violation, the Geneva JAB recommended one-month net base salary. As for the Appellant's demand for an investigation into the original claims and for an apology, the Geneva JAB considered that, due to the passage of time, no effective investigation could be opened, and that the declaration by the Geneva JAB, holding the Administration responsible for its failure to deal with the Appellant's complaints, constituted an appropriate satisfaction.

17. By letter dated 27 January 2009, the Appellant was informed that the Secretary-General had decided to accept the Geneva JAB's findings and conclusions.

18. Subsequently the Appellant filed an application with the former Administrative Tribunal, seeking inter alia an order requiring the Organization to investigate the Appellant's allegations, an apology, and a range of compensatory measures for financial loss including 40 to 60 years' net base salary for harm caused, and 15 years' net base salary for injuries caused including emotional pain and health deterioration. According to the Appellant, the one-month compensation had not been paid because of the filing of the appeal.

19. On 24 June 2009, the Secretary-General filed the Respondent's answer, in which he stressed that

[t]he issue in this case is adequacy of remedy awarded by the Respondent to the Applicant, in the form of compensation, for the Respondent's lack of response to the Applicant's complaints of discrimination, harassment and abuse of authority, taking into account all of the circumstances of [the Applicant's] case.

20. In the "Final Observations" dated 29 July 2009, the Appellant appeared to agree with the Secretary-General on the characterization of the issue, as the Appellant wrote that

[t]he issue in this case is one of fairness, justice and adequacy of remedy awarded by the Respondent to the Applicant, in the form of compensation, including Declaratory Judgments, Financial/Monetary Compensation, Non Monetary Compensation, Punitive or Exemplary Damages, for all the harm caused by the Administration actions as well as intentional and unintentional failure to comply with its legal

obligations to take appropriate actions before the Applicant's situation and complaints of discrimination harassment and abuse of authority, taking into account all of the circumstances of [this] case.

21. The Appellant's case was not considered by the former Administrative Tribunal before its abolition on 31 December 2009, and it was subsequently transferred to the UNDT.

22. On 20 August 2010, the UNDT rendered Judgment No. UNDT/2010/148. Regarding the scope of the case, Judge Ebrahim-Carstens determined that "the only legal issue before the Dispute Tribunal is whether compensation in the amount of one month's net base salary recommended by the JAB to be paid to the applicant for the Administration's failure to properly address [the applicant's] complaints was fair and adequate", but "the applicant's submissions concerning [the applicant's] sick leave entitlements and termination of [the applicant's] contract and alleged damages flowing from this termination are not properly before the Tribunal". While she thought the Appellant's claims for compensation were "excessive" and "unsustainable", Judge Ebrahim-Carstens nonetheless held that compensation in the amount of a month's salary was "wholly inadequate", as the Appellant was deprived of the opportunity to prove a breach of the Appellant's fundamental human right not to be discriminated against on the grounds of sexual orientation and HIV status and the Appellant's rights were further compromised by the passage of time which rendered any inquiry ineffective. While she did not think that compensation for actual economic loss was warranted, Judge Ebrahim-Carstens awarded the Appellant USD 40,000 for emotional distress, which sum included the equivalent of one month's net base salary that the Secretary-General had agreed to pay, but not yet paid. She clarified that it was more appropriate to express compensation for emotional distress and injury in lump sum figures and not in net base salary, because "[d]ignity, self-esteem and emotional well-being are equally valuable to all human beings regardless of their salary level or grade". Judge Ebrahim-Carstens dismissed the claims made by the Appellant concerning the deterioration of the Appellant's health and the Appellant's demand for an apology.

23. On 28 September 2010, the Appellant filed an appeal against the UNDT Judgment, which the Appellant amended to meet the filing requirement and re-filed on 3 October 2010. On 15 November 2010, the Secretary-General filed a request for a 15-day

extension of the time limit due to the sudden unavailability of the legal officer. The extension request was granted. On 3 December 2010, the Secretary-General filed an answer.

### **Submissions**

#### **The Appellant's Appeal**

24. The UNDT erred when it decided to ignore the Appellant's request for other forms of relief including an investigation and an apology, and focused only on the issue of adequacy of the compensation. In the view of the Appellant, "dignity is not restored simply by giving someone a higher bank balance but rather, it is restored by the administration of justice, the application of due process, and the issuance of an apology for past transgressions".

25. The only way to rescind the decision is to order a full and complete investigation. Not to order such an investigation constituted a denial of the Appellant's fundamental right to due process. The Administration as the responsible party should not be allowed to use the passage of time and the deterioration of evidence to avoid an inquiry. The Appellant cites an Inter-American Court of Human Rights case in support of the Appellant's contentions.

26. By failing to explore the causes for the deterioration of the Appellant's health conditions, the UNDT in effect allowed the Administration to abuse an employee and then use the results of the abuse as grounds for dismissal.

27. The Appellant reiterates the claims for relief made before the UNDT, namely the Appellant's claim for: an investigation; an apology; compensation for financial loss in the amount of 32 years' net base salary; and compensation for injuries caused including emotional suffering and health deterioration in the amount of five years' gross salary at the P-5 level.

#### **Secretary-General's Answer**

28. The UNDT correctly concluded that it may only review decisions that have been the subject of a prior request for administrative review. The HCHR's failure to reply to

the Appellant's formal complaint was the subject matter brought up by the Appellant in the request for administrative review. It was reviewed by the Geneva JAB and it was later brought by the Appellant before the former Administrative Tribunal. It should be noted that the Appellant indeed explicitly agreed in the Final Observations before the former Administrative Tribunal that the issue was the adequacy of the remedy awarded.

29. Contrary to the Appellant's assertion, an examination of the root causes of the Appellant's separation from service was outside the scope of judicial review, since the Appellant did not request administrative review of the decision to separate the Appellant.

30. The Appellant has merely reiterated the same claims that the UNDT found to be excessive and unsustainable, without identifying any errors in the UNDT's conclusion.

31. On the issue of investigation, the Appellant again reiterates the arguments presented to the UNDT. The UNDT considered them but concluded that an investigation would not be an effective remedy given the passage of time.

32. The UNDT correctly concluded that the admissions made by the Administration, its acceptance of the findings and recommendations of the Geneva JAB, and the clear reflection of those events in the UNDT Judgment under appeal, provided the Appellant with sufficient vindication and satisfaction. The Appellant's demand for an apology should therefore be denied.

#### **Considerations**

33. The principal issue for consideration in this appeal is whether the Dispute Tribunal erred in restricting the scope of its judicial review to the consideration of the adequacy of the compensation to which, it was not disputed, the Appellant was entitled.

34. The Appellant submits that the Dispute Tribunal erred in law and failed to exercise the jurisdiction vested in it in failing to substantially consider any other form of relief aside from compensation, notwithstanding the Appellant, in the submissions made to it on 2 May 2010, having specifically sought that the Dispute Tribunal direct a full investigation into the subject matter of the Appellant's initial complaint and that it direct that a formal and unconditional apology be issued by the Administration to the Appellant. Moreover, the Appellant submits that the Dispute Tribunal erred in law and

failed to exercise the jurisdiction vested in it in failing to “properly address the root causes of the Appellant’s termination from OHCHR”.

35. In the course of its Judgment, under the heading “Scope of the application”, the Dispute Tribunal set out as follows:

In [the applicant’s] request for an administrative review, dated 14 February 2005, the applicant sought review of the administrative decision of the High Commissioner “not to reply to a formal complaint and request compensation for abuse of power, harassment and discrimination by staff of the [OHCHR]”. Thus, the Administration’s failure to properly and timeously (sic) address the applicant’s complaint is the only matter receivable by the Dispute Tribunal.

36. Addressing the Appellant’s claims for compensation for financial loss, including salary and benefits and entitlements, which the Appellant in the submissions to the Dispute Tribunal, maintained, arose on foot of the separation from service, and addressing the claim made for sick leave entitlements, the Dispute Tribunal stated

The applicant was separated for reasons of health and it is not contested that the reasons for [the applicant’s] separation were lawful and valid. The claim for sick leave entitlements was not part of the applicant’s request for administrative review and is, in any case, time-barred pursuant to former staff rule 111.2(a), as the applicant was required to submit [a] request within two months of the date [the applicant] received notification of the decision in writing. Therefore, the applicant’s submissions concerning [the] sick leave entitlements and termination of [the] contract and alleged damages flowing from this termination are not properly before the Tribunal.

37. From a review of the procedural steps taken in this case, from the time of the Appellant’s letter of 14 February 2005 requesting that the Secretary-General review the administrative decision of the OHCRC not to reply to the Appellant’s formal complaint to the date the proceedings came before the Dispute Tribunal, it is evident that the issue identified as the subject matter for administrative review was the decision of OHCRC not to reply to the Appellant’s complaint of discrimination, harassment and abuse of power.

38. In the course of its Report of 5 December 2008, the JAB stated:

In order to avoid any possible confusion, the Panel wished to delimit the subject matter of the present appeal. The Panel emphasized that the issue it was called on to consider was the lack of response by the HCHR to the Appellant’s complaints of discrimination, harassment, and abuse of authority by [the Appellant’s] former

superiors, and not the merits of the allegations. This appears clearly from the formulation of the contested decision as detailed in the Appellant's statement of appeal and subsequent submissions. It is also consistent with UNAT's findings relating to the admissibility of this specific appeal as stated in Judgment no. 1385.

39. We note that while issue is taken by the Appellant, in the course of the submissions made to this Tribunal, with the decision of the Dispute Tribunal to limit judicial review to the adequacy of compensation, the fundamental approach of the Dispute Tribunal to the scope of the issue before it was nevertheless described by the Appellant in the following terms: "[T]he UNDT, in the judgment underlying this appeal, correctly understood that the issue at hand was 'the Administration's failure to properly and timeously (sic) address the Appellant's complaint'".

40. The Appellant separated from service on 3 December 2004. This separation was not the subject matter of any request for administrative review by the Appellant. Indeed, in the course of the submissions to this Tribunal, the Appellant expressly states that the validity or the lawfulness of the grounds of the separation from service was not in dispute. The Appellant submits that the Dispute Tribunal erred in law and failed to exercise its jurisdiction by concluding that the Appellant was lawfully and validly separated from service for reasons of health, in the absence of the Dispute Tribunal having addressed the root cause of why the Appellant was in such a condition in the first place.

41. It is well established in the jurisprudence of the Appeals Tribunal, as expressed in *Crichlow* and *Planas*,<sup>1</sup> that in order to invoke the jurisdiction of the Dispute Tribunal, a specific administrative decision must be identified and that administrative review, as required under the former internal justice system, must be sought in relation to that decision.

42. We are satisfied, having regard to the principles established in the above quoted cases, as to the jurisdiction of the Dispute Tribunal to receive complaints, that there was no error of law or failure to exercise jurisdiction on the part of the Dispute Tribunal when

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<sup>1</sup> *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035; *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049.

it determined as not receivable the Appellant's submissions, concerning sick leave entitlements, termination of contract, and the alleged damages flowing therefrom.

43. We are satisfied that the Dispute Tribunal properly determined that the issue before it for judicial review was the failure of the HCHR to address the Appellant's formal complaint, as made on 14 February 2005.

44. In the course of the submissions to this Tribunal, the Appellant contends that the Dispute Tribunal failed to consider the Appellant's request that it direct the Administration to conduct a full investigation into the matters which the Appellant claims gave rise to the formal complaint made in February 2005. The Appellant contends that such a failure "deprived the Appellant of any semblance of due process".

45. Article 10(5) of its Statute confers jurisdiction on the Dispute Tribunal to rescind a contested administrative decision, order specific performance and/or order compensation.

46. In the course of its consideration on the level of compensation which should be awarded to the Appellant, for the wrong done by virtue of the failure of the HCHR to respond to or address the Appellant's complaint, the Dispute Tribunal stated, *inter alia*, that "the applicant's rights have been further compromised because the events in question took place more than six years ago and, due to the passage of time, an inquiry as initially requested in 2004 would not be an effective remedy at this time. The harm done to the Applicant thus justifies a commensurate award and not the one month's salary offered to [the Applicant]."

47. On the facts of this particular case, the scope of the Dispute Tribunal's jurisdiction to direct an investigation, had it chosen to exercise such jurisdiction, was to direct that the procedure pursuant to ST/AI/371 (Revised disciplinary measures and procedures), then in force, be put in place, that the HCHR undertake a preliminary inquiry, and then make preliminary findings, in order to determine whether a formal investigation was required into the subject matter of the Appellant's complaint.

48. The Dispute Tribunal chose not to exercise its jurisdiction to direct that such an inquiry be conducted given that, as set out in its Judgment, more than six years had elapsed since the events of which the Appellant complained had taken place.

49. As the forum which is charged under the Statute to consider the facts of a particular case and as the forum which has before it the relevant information and/or evidence which will inform it as to what is the most appropriate remedy for an employee, should there be a finding that an infringement of legal rights has occurred, the Dispute Tribunal is in the best position to determine the nature of the remedy that should be granted in any particular case.

50. The Appeals Tribunal should be slow to interfere with the Dispute Tribunal's determinations in this regard, unless the exercise of the Dispute Tribunal's discretion is found to be manifestly unreasonable. This Tribunal is satisfied that in this case the Dispute Tribunal did not overstep the bounds of reasonableness or fairness in its assessment as to the benefits or otherwise of ordering an inquiry pursuant to ST/AI/371. It is the view of this Tribunal that the Appellant has not discharged the burden, which is on the Appellant, of showing how the Dispute Tribunal erred in its conclusion that directing that the procedure under ST/AI/371 be put in place would not be an effective remedy. Essentially, the same arguments have been made before us as were made to the Dispute Tribunal.

51. The Appellant submits that the Dispute Tribunal erred in refusing the claim for compensation for economic loss and sick leave benefit. The Appellant seeks compensation equivalent to 5 years gross salary at the P-5 level for the harm/emotional distress caused as a result of the HCHR's failure to respond to the formal complaint made in February 2005.

52. The Dispute Tribunal concluded that it was not competent to consider the Appellant's claims for actual economic loss, including salary and sick pay, as it found such claims not receivable. As this Tribunal has upheld the Dispute Tribunal's finding in this regard, it follows that the Dispute Tribunal did not err in law in dismissing the Appellant's claim for compensatory relief under Article 10(5)(a).

53. On the facts of this case, the jurisdiction of the Dispute Tribunal to make an award of compensation to the Appellant arises pursuant to Article 10.5(b) of its Statute.

54. The Dispute Tribunal properly concluded that the wrong which fell to be compensated under Article 10(5)(b) was the total failure of the HCHR to respond to the

Appellant's letter of complaint of 14 February 2005, a failure which, as stated by the Dispute Tribunal, was in breach of the requirement pursuant to Section 2 of ST/AI/371. As observed by the Dispute Tribunal, the nature of the complaints being made by the Appellant required the matter to have been taken seriously and enquired into properly, as required by Information Circular ST/IC/2003/17 which provides:

3. The Organization cannot tolerate discrimination and harassment in any form. Any infraction will be taken very seriously.

4. I expect all managers to take or initiate prompt and appropriate action in collaboration with the Office of Human Resources Management at Headquarters or the local Human Resources office at Offices away from Headquarters whenever an infraction occurs.

55. In measuring the compensatory award for the infringement which occurred in the case of the Appellant, the Dispute Tribunal took, as its starting point, the Respondent's acceptance of the findings in the JAB report and the Respondent's acceptance (albeit limited to the amount recommended by the JAB) that the Appellant was entitled to be compensated for the wrong perpetrated by the failure of the HCHR to deal with the Appellant's complaint.

56. The Dispute Tribunal opined that "the delay and failure to respond meant that the applicant was prejudiced in having [the] complaints investigated timeously (sic) or at all. The [Appellant] was deprived of the opportunity to prove a breach of [the] fundamental right not to be discriminated against...."

57. It concluded that in the particular case there was a "failure of the Administration to follow its own rules and regulations and to ensure protection for the values and principles concerning equal rights and protection against discrimination, enshrined in the [United Nations] Charter.... and several international instruments". Moreover, it took cognizance, from the documentation before it, including medical reports, of the adverse impact the events had on the Appellant's health, in so far as such documentation established causation. Furthermore, the Dispute Tribunal had regard to the "aggravating factor" that, by virtue of the number of years that had elapsed since the Appellant first made complaint, the Appellant's rights had been compromised.

58. The Judgment of the Dispute Tribunal clearly reflects that it had regard not just to the gravity of the wrong done to the Appellant, but also the impact of that wrong on the health of the Appellant, in so far as the medical evidence before the Dispute Tribunal so established. There is nothing in the submissions made by the Appellant which persuades this Tribunal that the Dispute Tribunal deviated from the established principles to be applied in making an award of compensation pursuant to Article 10(5)(b), or that it deviated from the requirement that an award of compensation should be proportionate to the injury suffered by the Appellant.

59. In all the circumstances we find that by its compensation award of USD 40,000, the Dispute Tribunal made a fair and equitable assessment, in light of the wrong done to the Appellant and the established adverse effect of same on the Appellant.

60. Among the relief sought before the Dispute Tribunal was that the OHCHR issue an apology for its failure to provide the Appellant with due process.

61. In the course of the submissions made to this Tribunal, the Appellant contends that, by failing to consider whether an apology is permitted pursuant to Article 10(5) of its Statute, the Dispute Tribunal failed to exercise the jurisdiction vested in it.

62. The Dispute Tribunal concluded that, having regard to the compensatory award of USD 40,000 made to the Appellant and the admissions made by the Administration with regard to the wrong done to the Appellant, factors which the Dispute Tribunal deemed were sufficient vindication for the Appellant, it need not consider whether an order for an apology is permitted by Article 10(5) of its Statute.

63. The Appellant argues that an award of an apology “is within the scope of the UNDT Statute and international concepts of justice”.

64. The request for an apology as a remedy has been the subject of consideration by the former Administrative Tribunal in the cases of *Perez Soto* and *Parsiot*.<sup>2</sup> The former Administrative Tribunal in *Perez Soto*, in denying a remedy of an apology to the applicant in that case, noted that since “[the Administrative Tribunal’s] opinions are in

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<sup>2</sup> Former Administrative Tribunal Judgment No. 1397, *Perez Soto* (2008); Former Administrative Tribunal Judgment No. 1234, *Parsiot* (2005).

the public domain, [the] Judgment constitutes a public record that the Applicant was wronged and was compensated accordingly” and that the “Applicant receives satisfaction for the wrongs done to [the Appellant] through this Judgment”.

65. Although on the face of its Judgment the Dispute Tribunal declined to embark on a consideration as to whether an apology was permitted under Article 10(5), the import of its reasoning accorded with the jurisprudence of the former Administrative Tribunal on the question of an apology as a remedy.

66. As we concur, as a matter of principle, with the rationale adopted by the former Administrative Tribunal, we find no basis, on the facts of the present case, to impugn the approach adopted by the Dispute Tribunal with regard to the issue of an apology, particularly in light of the very forceful expression rendered by the Dispute Tribunal in the course of its Judgment to the wrong which was done to the Appellant.

67. Having regard to the entirety of the arguments made by the Appellant in this case, we find that the Appellant has failed to surmount the burden, which is on the Appellant, of establishing that the Dispute Tribunal erred in law or that there was a failure to exercise jurisdiction on its part.

**Judgment**

68. We dismiss the appeal in its entirety.

Original and Authoritative Version: English

Dated this 8<sup>th</sup> day of July 2011 in Geneva, Switzerland.

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on this 29<sup>th</sup> August 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar