



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/062

Judgment No.: UNDT/2013/094

Date: 1 July 2013

Original: English

---

**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko, Acting Registrar

BALI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for the Applicant:**

Seth Levine, OSLA

**Counsel for the Respondent:**

Stephen Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 7 October 2011, the Applicant filed an Application contesting the termination of his fixed-term appointment with the United Nations Mission in Sudan (UNMIS) upon the closure of UNMIS on the grounds that:

- a. the decision was a breach of the process by which staff members of UNMIS were transferred to the United Nations Mission in South Sudan (UNMISS);
- b. the decision was vitiated by improper motives;
- c. he had a legitimate expectation that his fixed-term appointment would not be terminated; and
- d. the decision was taken without proper delegated authority and was *ultra vires*.

2. The Respondent filed a Reply on 3 February 2012 contesting that:

- a. the Applicant was not recommended for reassignment to UNMISS following the completion of a fair, transparent, impartial and objective comparative review process;
- b. following the termination of the mandate of UNMIS, the necessities of service required the abolition of the Applicant's post;
- c. the termination of the Applicant's contract was lawful.

## **Facts**

3. The Applicant was initially appointed for six months on 27 April 2007 as a Public Information Officer (PIO) at the P-3 level with the United Nations Mission in Liberia (UNMIL) under an Appointment of Limited Duration under the former 300-series of the Staff Rules.

4. Following the contractual reforms in July 2009, the Applicant was reappointed under a fixed-term appointment, limited in service to UNMIL, effective from 1 July 2009 to 30 June 2010.

5. On 10 February 2010, the Applicant was reappointed as a Radio Producer at the P-4 level with UNMIS. He was then given a fixed-term appointment for one year from 10 February 2010 to 9 February 2011. His fixed-term appointment was further extended for one year to 9 February 2012.

6. By its Resolution 1978 (2011) of 27 April 2011, the Security Council extended the mandate of UNMIS up until 9 July 2011 and announced its intention to establish a mission to succeed UNMIS. By Resolution 1997 (2011) of 11 July 2011, the Security Council, *inter alia*, decided to withdraw the mission effective 11 July 2011 and called upon the Secretary-General to complete the withdrawal of all uniformed and civilian UNMIS personnel, other than those required for the mission's liquidation, by 31 August 2011.

7. By a letter dated 18 May 2011 to the Chairperson of the UNMIS Field Staff Union ("FSU"), the Under-Secretary-General for Field Support ("USG/DFS") addressed the concerns earlier raised by the said Chairperson. He explained how the transition process would be undertaken by the Administration with regard to the transitioning of staff members from UNMIS to the proposed new mission in South Sudan.

8. The UNMIS Administration having experienced difficulties in obtaining visa extensions for international staff members from the Government of Sudan undertook to move international staff members to Juba in South Sudan pending the completion of a comparative review process. The Applicant was like others issued with a Reassignment Form dated 25 May 2011 to record his movement and the movement of his post from Khartoum to South Sudan, effective 1 July 2011.

9. UNMIS Administration published a number of Information Circulars to inform staff members of the policies which had been put in place for the transition process. Essentially, it was clear that there were fewer posts in the new mission than in the mission which was being closed down. This meant that there was to be

a system (a comparative review process) to determine those staff members who could be transitioned to the new mission since certain posts would be abolished.

10. One of these Information Circulars No. 327/2011 was issued on 26 June 2011 by the UNMIS Director of Mission Support (“DMS”) announcing the formation of a Comparative Review Panel (CRP) which was to review the transition of international posts in UNMIS to the new mission. The same circular also set out the criteria to be considered during the said review by the CRP.

11. On 30 June 2011, Information Circular No. 334/2011 (Update to UNMIS Staff regarding the UNMIS Draw-down process) was issued. The Information Circular noted that, for those staff members who were not selected or provisionally reassigned to a position in the new missions in South Sudan, Abyei or elsewhere in the Organization, their appointments could be terminated for reasons of reduction in staff or abolishment of post in accordance with Staff Regulation 9.3.

12. The CRP sat from 26 June until 5 July 2011 during which period it reviewed for transition, international staff members occupying posts within the same category, where the number of posts in the new mission were fewer than what obtained in UNMIS.

13. On 8 July 2011, the Security Council established the United Nations Mission in South Sudan (UNMISS) and adopted its mandate.

14. On 11 July 2011, through Resolution 1997, the Security Council withdrew the mandate of UNMIS with effect from 11 July 2011 and requested the Secretary-General to transfer appropriate staff, equipment, supplies and other assets from UNMIS to UNMISS or to the United Nations Interim Security Force in Abyei (“UNISFA”), including appropriate staff and logistics necessary for achieving the new scope of functions to be performed.

15. On 27 July 2011, the Applicant by memorandum was informed by Mr. Ojjero, the Chief Civilian Personnel Officer (CCPO) of UNMIS, of the termination of his appointment effective 31 August 2011 following the completion of the human resources post-matching and comparative review

exercise on the transition of international staff from UNMIS to either UNMISS or UNISFA.

16. Upon receiving the memorandum, the Applicant on 12 August 2011 requested a management evaluation of the decision to terminate his appointment.

17. On 24 August 2011, the Applicant applied for a suspension of the implementation of the decision. The Tribunal issued Judgment No. UNDT/2011/155 and refused the application for suspension of action on 31 August 2011. The Tribunal, however, found that the decision to terminate the Applicant's contract was *prima facie*, unlawful. The Tribunal further found as follows:

45. It is the finding of this Tribunal that the subject matter of this suit cannot properly be addressed and determined in a suspension of action application. The Application for suspension of action is hereby refused for not having satisfied one of the three conditions required under the Statute and Article 13 of the Tribunal's Rules of Procedure for its grant.

46. In view of its finding above, the Tribunal, in the interests of justice and in exercise of its inherent powers and the provisions of Articles 19 and 36 of its Rules of Procedure, hereby transfers the instant Application to the general cause list to be heard on the merits.

18. Judgment UNDT/2011/155 was appealed to the United Nations Appeals Tribunal (UNAT) which issued UNAT Judgment No. 2012-UNAT-244 on 29 June 2012. UNAT, *inter alia*, held that in ordering the placing of the application for suspension of action on the list of cases to be considered on the merits and requesting the parties to file written documents on the merits, the UNDT had exceeded the jurisdictional powers conferred on it by its Statute and rescinded the judgment.

19. On 7 October 2011, the Applicant filed the present Application on the merits. The Reply was filed on 3 February 2012.

20. On 22 June 2012, the Applicant filed an application requesting a joinder of three UNDT cases including the Applicant's. The Respondent filed objections to

the application on 25 June 2012. The Tribunal refused the application by oral order issued during the first day of the hearing on 26 June 2012.

21. The Tribunal then heard the case from 26 to 28 June 2012. During the proceedings, live evidence was received from Ms. Sylvia Fletcher who was the Principal Civil Affairs Officer and Chief of Civil Affairs in the Southern Sudan Regional office in UNMIS for the Respondent. Mr. Ashraff Eissa, who was at the times material to this case, Officer-in-Charge/Director, Communications & Public Information, UNMIS, Ms. Nanci Hersh, UNMIS Broadcast Technology Officer (BTO) and the Applicant himself, testified for the Applicant.

22. On 24 July 2012, the Applicant sought leave to tender additional documentary evidence. The evidence that the Applicant wanted admitted included:

- a. an email dated 19 May 2010 from Mr. Eissa to various recipients in Radio Miraya stating approved reporting lines that were to be followed as a result of direct instructions from the then Head of Mission and Special Representative of the Secretary-General (SRSG) in UNMIS;
- b. an email chain during the period 8 June 2010-14 July 2010 between Mr. Eissa and Mr. Claude Cirille, then Chief of Radio at the mission concerning the reporting lines for staff of the radio section.
- c. An email chain beginning on 28 July 2010 from the Applicant to various recipients.

23. On 10 August 2012, the Tribunal informed the parties that the issue of the admissibility of the additional evidence would be dealt with in this Judgment. The parties filed their closing submissions on 31 August 2012.

*Applicant's witnesses*

24. Mr. Eissa's evidence is summarized below.

- a. He joined UNMIS on 11 May 2009 as Deputy Chief Public Information Officer until October 2010 when he became the

Referendum Public Campaign Coordinator and Spokesperson of Public Information at the P-5 level.

- b. He was in contact with the Applicant from the time the said Applicant arrived at the Mission and was his First Reporting Officer (FRO) from 1 May 2010 to the end of November 2010. His assessment of the Applicant was very positive. The Applicant was the most outstanding in terms of the Performance Appraisal (“e-PAS”) evaluation with a rating of “exceeds expectations”.
- c. He knew the appraisal cycle ended on 31 March 2011 and he did his part of the appraisal in time. By 31 March 2011, he had finalised the e-PASes of the Applicant and that of others for which he had responsibility and sent them to the Second Reporting Officer, Ms. Jiang.
- d. After his e-PAS rating of the Applicant for the 2010/2011 cycle, Ms. Hua Jiang, then Chief, Public Information Office (CPIO) wrote to him requesting that the reporting lines of about four staff members including the Applicant change. He met with her and gave his views that the Staff Rules did not allow for a change of supervisors so late in the cycle. This directive to change the FRO of the Applicant and some others came in June 2011, after the finalization of e-PASes.
- e. Still in late June 2011, he attended a meeting with Ms. Quade Herman who was the Chief of Radio in UNMIS and Ms. Jiang where Ms. Herman told him that she wanted immediate control of several staff members’ e-PASes including that of the Applicant. He told them that changing the reporting structures at that time would be “nasty business” and that the staff members concerned would need to agree to the changes in their supervisors.
- f. In early July, Ms. Jiang informed him that she would not sign off the Applicant’s e-PAS if the rating was not downgraded. Ms. Jiang

told him that she would not sign off because she was under pressure from Ms. Herman to downgrade the Applicant's e-PAS rating. He encouraged Ms. Jiang to exercise her authority over Ms. Herman on the issue.

- g. Ms. Jiang approached him on several occasions to discuss this matter. She told him that she was under pressure from the UNMIS Chief of Staff ("the COS"), Mr. David Wimhurst, working through Ms. Herman, to downgrade the Applicant's performance appraisal. He told her that he could only downgrade the Applicant's performance rating with the consent of the Applicant. At the time, the Applicant had not been told about his rating as it would have been highly unprofessional to do so.
- h. The Applicant later met him and told him that he (Applicant) had spoken to Ms. Jiang and that he was happy to have his e-PAS downgraded. He then changed the rating but did not change his comments about the Applicant's performance.
- i. At the time of the mid-term review of the Applicant in November 2010, Mr. Eissa had not received any complaints about the Applicant's performance.
- j. He did not discuss the Applicant's performance with Ms. Herman because he thought that it was not an appropriate thing to do at the time.
- k. By the time he received a certain email about supervisors and reporting lines, he had already signed off the Applicant's e-PAS. He was of the opinion that the directive referred to future e-PAS cycles.
- l. Other than her request to downgrade the Applicant's performance appraisal, Ms. Jiang had never discussed the Applicant's performance with him.



- m. He had supervised the Applicant for up to eight months. Ms. Herman supervised the Applicant for up to four months. When Ms. Herman joined UNMIS, it was on a Temporary Vacancy Announcement and as she had no previous United Nations experience, he was hesitant about her assessment or appraisal on that basis.
  - n. He did not discuss the Applicant's appraisal with Ms. Herman as he felt that it was not the appropriate thing to do at the time. It is not correct to say that he did not want to hear Ms. Herman's point of view. She went to him and demanded to take control and she did not ask to discuss the Applicant's performance. The only discussions were between him and Ms. Jiang. These discussions took place after the appraisal period.
  - o. Ms. Herman was quite new and for her to appraise senior staff members was not the best thing.
  - p. He had no problems with Ms. Jiang as they worked well together.
  - q. Ms. Jiang did not discuss his appraisal of the Applicant. All that she asked was that the Applicant's rating be downgraded. As Second Reporting Officer (SRO), Ms. Jiang could send her comments on his appraisal and he would respond.
25. Ms. Hersh's evidence is summarized below.
- a. She joined UNMIS on 26 July 2005 as a Broadcast Technology Officer within the Public Information Office at the FS-6 level. She was promoted to the P-4 level on 1 January 2011.
  - b. She got to know the Applicant when he first arrived in February 2010 as the Deputy Chief of Radio and she interacted with him. She was the designated peer helper for the public information/radio staff. It was while performing that role that the Applicant

approached her with several issues pertaining to harassment by the Chief of Radio, Ms. Herman.

- c. She witnessed the Applicant's stress when he came to see her for counseling. The Applicant was made to work seven days a week by Ms. Herman. She noted that he appeared stressed out for working such long shifts. He was not provided with a mobile phone or broadband internet connections to enable him do his work on the website.
- d. He was also given the job of overseeing drivers which was not in his job description. Some staff members of Fondation Hirondelle (FH), a non-governmental organization which had signed a memorandum of understanding (MOU) with UNMIS, were given United Nations resources at the expense of United Nations staff such as the Applicant.
- e. She was aware that the Applicant's predecessor had these resources and that it was reasonable to expect the Applicant to inherit them.
- f. In October 2010, Ms. Anne Bennett, Head of Projects in FH, on learning that the Applicant was being transferred from Juba to Khartoum, told her that the Applicant was "useless and totally unreliable".
- g. She had a cordial but strained relationship with FH because of some unresolved issues between FH and UNMIS.
- h. When the Applicant first arrived in Khartoum, she was in Ms. Herman's office. Within a few minutes of his arrival, Ms. Herman told the Applicant in her presence that he had to move out of the office which his predecessor had occupied and that unless he provided her with justification; he would not be entitled to a separate office. She found Ms. Herman's reaction on first meeting the Applicant to be odd.

- i. She felt that Ms. Herman's reaction to the Applicant was related to an incident in 2010 when she and the Applicant had approached the SRSG about the issue of editorial control vis-à-vis FH and UNMIS staff. Mr. Wimhurst, the UNMIS Chief of Staff, seemed to support FH having editorial control and he was responsible for recruiting Ms. Herman. She and the Applicant were opposed to FH having editorial control.
  - j. FH staff were very condescending to the Applicant during senior staff meetings. It was mainly Ms. Herman and Mr. Wimhurst on the United Nations side and one Mr. Darwish and Ms. Bennett of FH who were involved in mistreating the Applicant. She perceived this to be a witch-hunt against the Applicant.
  - k. There was a time when Ms. Herman was insistent on becoming the FRO for senior staff members including the Applicant and herself. She was not comfortable that Ms. Herman who was encumbering a temporary appointment for three months, would be her FRO. In the end, another staff member, Mr. Tobgyal, ended up as her FRO and Mr. Eissa her SRO.
  - l. UNMIS staff was shown an organogram in which United Nations staff members would serve a subordinate role to FH staff. The organogram placed the Applicant in a position where he would be reporting to general service staff.
  - m. The Applicant wrote her an email on 2 January 2011 explaining the harassment he was experiencing from Ms. Herman. She responded to the email on 22 February 2011.
26. Ms. Fletcher's evidence is summarized below.
- a. She is currently the Chief of the Recovery, Reintegration and Peace-Building Section in UNMISS at the D1 level. Prior to joining UNMISS she was the Principal Civil Affairs Officer and

Chief of Civil Affairs in the Southern Sudan Regional office in UNMIS.

- b. She served as the Co-chairperson on the CRP which reviewed international staff of UNMIS as part of the transition process to UNMISS.
- c. At the start of their work, the CRP in a plenary session had agreed on a methodology for rating staff according to the review criteria. They agreed upon the weighting for each criterion and the points to be awarded. A rating table was drawn up to reflect what was agreed. A list of criteria that would add up to 100 points was agreed upon as follows:
  - i. Performance (based on e-PAS).
  - ii. Relevant experience (based on Personal History Profiles (“PHPs”)).
  - iii. Direct relevant experience (based on PHPs).
  - iv. Adherence to core values (based on the core values section of the e-PAS).
  - v. Length of service (based on PHPs).
- d. After the methodology and criteria were agreed upon, the Panel broke up into teams to conduct the reviews. All of the teams worked in one large room.
- e. She participated in the Applicant’s comparative review. Her own team reviewed the Applicant, Ms. Helen Papper and Ms. Valerie Msoka for the one available P-4 post of Radio Producer in UNMISS.
- f. After the comparative review process, Ms. Papper received 66 points, the Applicant received 62 points and Ms. Msoka received

61 points. The Panel recommended that Ms. Papper be rolled over to the P-4 Radio Producer Post in UNMISS. The Panel recommended that the Applicant and Ms. Msoka be included in the pool of available candidates in ranking order if there were found to be more posts with similar functions in UNMISS.

- g. She neither knew the Applicant nor Ms. Herman before the CRP. She knew Ms. Jiang through official circles and also Mr. Wimhurst as he was the Chief of Staff. The CRP had three team leaders and sometimes broke into three groups. Ms. Herman was one of the three team leaders and they must have talked “generally” during the CRP exercise.
- h. The CRP exercise was guided by the terms of references for the new posts in UNMISS. In assessing the direct relevant experience, the CRP did not take into account the former terms of reference on the basis of which the candidates had been recruited to their posts in UNMIS, instead they considered the new terms of reference set for the job in the new UNMISS mission side by side with the candidates’ PHPs and awarded marks over a maximum of 20.
- i. In assessing candidates against the criteria for length of service in the United Nations, candidates who had served longer in the Organization were awarded higher marks. The maximum marks under this heading were 20. Length of service in UNMIS was not considered.
- j. For the two reporting periods considered, a maximum of 40 marks could be awarded. A rating of “exceeds performance expectations” on an e-PAS would attract the maximum score of 20, whereas a rating of “successfully meets performance expectation” would get 10 marks. Part of the methodology adopted by the panel was that because of weaknesses in the e-PAS system where supervisors did not give high ratings but gave positive commendations, extra

marks were given at the discretion of the Panel for positive comments.

### **Applicant's case**

27. The Applicant's case as deduced from his oral testimony and pleadings is summarized below.

28. His separation was a unilateral act, purportedly initiated on behalf of the Secretary-General, that is, it was a termination under staff rule 9.6(a) although there is no unequivocal statement that the appointment had been terminated.

29. Pursuant to staff rule 9.6(c), termination of an appointment falls within the authority of the Secretary-General. Staff rule 9.6(c) does not provide for a delegation of this authority. ST/AI/234/Rev.1 (Administration of Staff Regulations Staff Rules), is the sole administrative instruction concerned with the delegation of authority within the United Nations and a review of this issuance demonstrates that the authority to terminate an appointment has not been delegated other than to (i) the Heads of UNOG, UNOV, UNEP and UN-HABITAT and (ii) the ASG/ORHM. Delegation must not be guessed at or presumed.

30. The Respondent had stated that the ASG/OHRM authorized the termination of the Applicant's contract. On 27 July, the CCPO issued a notice of termination. On 29 July, the Director of FPD/DFS wrote to the ASG/OHRM seeking approval for the said termination, which was retrospectively granted. Where delegated authority exists, it must be exercised by the person in whom it is vested. Delegation must precede the taking of the decision – a delegated authority is not synonymous with the retrospective rubber stamping of a decision taken by a person without the proper authority.

31. The decision to terminate his employment was taken at the Mission level and was therefore unlawful. Even if the ASG/OHRM had the requisite delegated authority, she could not cure a decision which was *ab initio* unlawful by subsequently authorizing it.

32. Neither staff rule 9.6 nor ST/AI/234/Rev.1 delegates the authority to terminate appointments to the Chief Civilian Personnel Officer of UNMIS, therefore the impugned decision is *ultra vires*.

33. The Applicant refers the Tribunal to its Judgment on the suspension of action application where it held that the decision to terminate the Applicant's appointment was unlawful.

34. He had a legitimate expectation that his contract would be renewed, which was engendered by the notice of reassignment to South Sudan received on 1 June 2011.

35. Had the CRP been fair, transparent and lawful rather than tainted by animus and dishonesty, he would have been transitioned to UNMISS. This head of claim is illustrated by the following state of affairs:

- a. He suffered marginalization as a result of being identified as part of a group that was opposed to a relationship between UNMIS and FH in which FH would have editorial control of UNMIS Radio Miraya.
- b. His application for the temporary vacancy announcement for the post of Chief of Radio was opened on 30 August 2010, four days after the vacancy announcement was closed. He was therefore wrongfully and effectively excluded from competing for the post.
- c. Despite being the acting Chief of Radio at the time, he was not short-listed for the post. The process of filling the temporary vacancy announcement was driven by Mr. Wimhurst who had come into conflict with the Applicant over the UNMIS relationship with FH.
- d. The Applicant suffered harassment at the hands of Ms. Herman and others orchestrated by FH.
- e. The withholding and downgrading of his 2010/2011 e-PAS, which was orchestrated with the specific intent of subverting the review of his candidacy by the CRP.

- f. The evidence of Ms. Fletcher showed that there was significant scope for “contamination” between the CRP sub-groups or teams. Ms. Fletcher accepted in cross examination that she may have spoken to Ms. Herman during the review sessions as they were all in the same room.

36. The recruitment of Ms. Herman as Chief of Radio was followed by an increase in his harassment and marginalization. After his transfer to Khartoum from Juba, he met with Ms. Herman who instructed him to vacate his office. He was also assigned an impossible workload without being provided the most basic resources to complete his tasks. Ms. Herman printed reporting lines that showed him reporting to two national staff and an FH staff. When he pointed out the irregularity, the reporting lines were magnified to A3 size and placed on a notice board.

37. It was against this backdrop that he came to be assessed by the CRP. Given the animus directed towards him during this period, the Applicant submits that it is inconceivable that there would not have been an attempt by senior management to ensure that he was not transitioned to UNMISS.

38. The Applicant submitted that the withholding and downgrading of his 2010/2011 e-PAS is linked to the issue of his harassment and marginalization and that the e-PAS process was manipulated so that whatever the outcome, he was bound to be placed at a disadvantage during the CRP. In the end, his 2010/2011 e-PAS was deemed to be missing during the CRP exercise. In such a situation and contrary to the CRP’s methodology, his 2009/2010 e-PAS was not counted twice but instead the Panel went further back to his 2008/2009 e-PAS.

39. Had the CRP followed the methodology which it claimed to have adopted, it would have awarded him a mark of 40 for his e-PAS giving him a total of 72 points overall which would have led to his being transitioned to UNMISS.

40. The outcome of the CRP is evidence of its flaws. The Applicant was recruited as a Deputy Chief of Radio and Senior Radio Producer at the P-4 level in February 2010 and it is inconceivable how as somebody who was recruited



following a competitive selection process for that position, he could receive the lowest mark out of 20 for relevant experience in relation to the same job albeit with less responsibility.

41. The Applicant submitted that despite applying for every suitable PIO position with the United Nations since being separated, he has been unsuccessful yet he is on the roster for most of the positions. The Applicant submits that there is an active bar to his gaining employment with the United Nations.

42. Based on the foregoing, the Applicant seeks a declaration that the decision to terminate his contract was unlawful. He further seeks appropriate remedies by way of specific performance and/or damages.

### **Respondent's case**

43. The Respondent's case is summarized below.

44. The decision to terminate the Applicant's appointment was lawful. Following the comparative review, the Panel awarded the Applicant 62 points out of a possible 100 points based on the pre-determined review criteria and methodology. The Applicant's point total resulted in the Applicant being ranked second. The Panel therefore recommended that the first-ranked candidate be reassigned to the only available P-4 Radio Producer post in UNMISS. The Administration accepted the Panel's recommendation.

45. The Applicant has not adduced any evidence or demonstrated to the Tribunal that the comparative review process was flawed.

46. The Applicant was evaluated against the review criteria according to an objective methodology developed by the Panel. The review of the Applicant was impartial. The Panel did not make any errors in evaluating the candidates according to the agreed methodology. There is no evidence that factors that were not part of the agreed methodology were taken into account by the Panel.

47. The Applicant and the two other P-4 Radio Producers were subject to an objective and impartial comparative review process. To avoid any potential

conflict of interest, the Panel agreed that no Panel member would review a staff member in their occupational group or with whom they were close. The review of the P-4 Radio Producers was carried out by two Panel members, the Co-Chairperson of the Panel, Ms. Fletcher, and the Senior Security Sector Reform Officer of UNMIS.

48. In her evidence to the Tribunal, Ms. Fletcher stated that the Panel did not seek or receive any input from anyone regarding the review. She did not recall speaking to Ms. Herman, a fellow Panel member, regarding the review.

49. To carry out the review, the Panel members reviewed the staff members' PHPs and last two e-PASes. After evaluating the Applicant, Ms. Papper, and Ms. Msoka against the review criteria, the Panel awarded the Applicant 62 points, Ms. Papper 66 points, and Ms. Msoka 61 points.

50. As Ms. Papper scored higher than the Applicant and Ms. Msoka, the Panel recommended that Ms. Papper be "rolled over" to the P-4 Radio Producer post in UNMISS. The Panel recommended that the Applicant and Ms. Msoka be pooled in ranking order in the event that there would be surplus posts with similar functions in the new mission.

51. The Administration accepted the Panel's recommendation, and Ms. Papper was provisionally reassigned to UNMISS. As no additional posts were established in UNMISS with similar functions after the comparative review, the Applicant's appointment was terminated. The reason for the termination was the abolition of all UNMIS posts.

52. Contrary to the Applicant's contentions, neither the evaluation of the performance records (e-PAS reports) nor the evaluation of performance based on direct relevant experience was flawed. The evaluation of performance records was based on an agreed methodology. The Applicant has advanced no reasons for asserting that the evaluation of his direct relevant experience was flawed. Further, it is not for the Tribunal to step into the shoes of the Panel and decide upon the methodology that ought to have been applied, or to conduct a fresh evaluation of the staff members under review.

53. Contrary to the Applicant's contentions that there was no basis for the award of 15 points to Ms. Papper for each of her e-PASes, as explained by Ms. Fletcher in her testimony, the Panel had the discretion to award an additional five points to a staff member who received a rating of "fully successful" or "successfully meets" if the e-PAS included positive comments. This issue was debated at length, and the agreed methodology was based on the Panel members' understanding of the strengths and weaknesses of the e-PAS system. The methodology took into consideration the possibility that some supervisors tend to assign higher ratings than others and those supervisors who tend to assign lower ratings may include positive comments, while not assigning a higher rating to a staff member. The Panel agreed that this approach would help address this lack of uniformity in the e-PAS system

54. Ms. Fletcher explained that the Panel was required to make a judgment about whether the comments justified additional points. The Panel looked for comments that indicated that the staff member's performance was described as excellent or outstanding, or that he or she performed additional work for the reporting period.

55. Contrary to the Applicant's contentions that his rating for his 2009-2010 e-PAS should have been counted for both years under the agreed methodology, in cross-examination, Ms. Fletcher explained that this was not consistent with the agreed methodology. There were a number of cases where the most recent e-PAS (for the 2010/2011 cycle) were not available. In such cases, the Panel asked for an e-PAS from an earlier cycle, so that two e-PASes were considered. The Applicant's e-PASes for 2008-2009 and 2009-2010 were available. As noted in the Panel's report, it was only in cases where one e-PAS was available that the rating on the available e-PAS was assumed for the last two years. This was not the case for the Applicant.

56. In response to the Applicant's submission that he is at a loss to understand that his direct experience could be rated at half that of his colleague, Ms. Papper, Ms. Fletcher recalled that she and her fellow Panel member consulted colleagues who worked in human resources to gain an understanding of the

functions of the post in UNMISS, where necessary. They did not consult the Chief of Radio in order to ensure impartiality. Where candidates received the same or almost the same number of points in the review, the Panel gave particular scrutiny to the candidates' experience, based on their PHPs and the terms of reference (TOR) for the post under consideration. The Applicant's and Ms. Papper's entire work experience, not just their most relevant experience as Radio Producers with UNMIS, were carefully reviewed by the Panel.

57. The Panel concluded that Ms. Papper had more experience as a Radio Producer. In addition to her experience in UNMIS as a Radio Producer for 21 months, she had over nine years of experience as a producer in other media organizations, primarily in radio. She also had considerable amount of journalism experience, both in radio and television. The Applicant's experience was in the field of journalism, public information, and radio production. He was a Radio Producer in UNMIS for only 16 months. He had also worked as a journalist, mainly on a freelance basis, in television and radio for approximately eight years. In addition, he had over four years of experience in public information and media outreach. His previous experience also included two years as a radio producer/editor, and three years as a television producer.

58. The Applicant's contention that the termination decision was simply a ruse to install the preferred candidate in UNMISS is without merit. The Applicant has not discharged his burden of proving that the Chief of Staff, the Chief of the Public Information Office (CPIO), or the Chief of Radio participated in, or influenced the comparative review process, or that they held personal animus against him. The Applicant did not establish any connection between the differences he had with them and the decision to terminate his appointment.

59. The Applicant has not demonstrated that the comparative review was flawed because Ms. Jiang and Ms. Herman allegedly manipulated the performance rating for his 2010-2011 e-PAS report. He contends that this ultimately made the difference between being reassigned to UNMISS or being terminated following the comparative review.

60. At the hearing, the Tribunal did not permit the Respondent to examine Ms. Jiang regarding her role as the Applicant's SRO on the basis that the Respondent's Reply did not join issue with the Applicant's pleading in this regard. As a consequence, the Tribunal does not have a full account of the circumstances in which the e-PAS was finalized. Accordingly, the Applicant's and Mr. Eissa's testimony regarding Ms. Jiang's role ought to be given no weight, as it is not corroborated by any document or other testimony.

61. With regard to Ms. Jiang, the Respondent submitted that there is no evidence from which to infer that she delayed finalizing the e-PAS or sought to downgrade the performance rating for the purpose of influencing the outcome of the comparative review process. Nor did the Applicant establish that Ms. Jiang held any personal animus against him. The suggestion that Ms. Jiang acted at the behest of the Chief of Staff or Chief of Radio is simply speculation. Further, Ms. Jiang was not on the CRP and there is no evidence that she was aware of the methodology applied during the comparative review. Even if it is assumed for the sake of argument that Ms. Jiang manipulated or delayed the e-PAS, she could not have known that this would make a difference to the outcome of the comparative review given the other criteria that were taken into account.

62. The discussions surrounding who should be the Applicant's FRO and the suitability of Mr. Eissa's initial rating resulted in the delay in finalizing the Applicant's 2010-2011 e-PAS. On 5 April 2011, Ms. Jiang gave a written instruction to the Applicant and Mr. Eissa to amend the Applicant's e-PAS to replace Mr. Eissa with the Chief of Radio, Ms. Herman, as the Applicant's FRO. Given her position, Ms. Jiang had the authority and responsibility for determining the reporting lines for staff within the Public Information Office. As Ms. Herman was the Applicant's supervisor at the end of the reporting cycle, the instruction to change the Applicant's FRO was in accordance with ST/AI/2010/5 (Performance Management and Development System).

63. As the Applicant's SRO, Ms. Jiang was entitled to request Mr. Eissa to revise his initial rating. Ms. Jiang had the responsibility for ensuring consistency in the application of the e-PAS system by the FROs who reported to her. Mr.

Eissa admitted in his evidence that he no longer supervised the Applicant after Ms. Herman joined UNMIS at the beginning of November 2006. He failed to consult Ms. Herman about the Applicant's performance over the remaining period to the end of the e-PAS cycle (nearly five months). This failure provided reasonable grounds for Ms. Jiang to request a revision of the initial rating.

64. The inference to be drawn from Ms. Jiang's request to revise the rating is that it originated from her assessment that the Applicant's performance did not justify the highest rating of "exceeds performance expectations". The Applicant accepted the final rating when he signed his e-PAS. If he had reservations about the final rating, he ought to have raised the matter with Ms. Jiang but he did not.

65. There is no evidence that Ms. Herman manipulated the Applicant's 2010-2011 e-PAS. She played no part in the finalization of the e-PAS as she did not become the Applicant's First Reporting Officer.

66. The Applicant's contentions that Ms. Herman conducted an orchestrated campaign of slur and innuendo against him are without merit. At the hearing, the Tribunal did not permit the Respondent to call Ms. Herman to give evidence concerning the allegations against her. As such, the Tribunal determined, *inter alia*, that these allegations were not credible. Otherwise, the Tribunal would have permitted a full account of their working relationship. Accordingly, the Applicant's testimony regarding the working relationship ought to be given no weight.

67. The contention that Mr. Wimhurst installed Ms. Herman as the Chief of Radio is mere speculation. There is no evidence before the Tribunal that Mr. Wimhurst knew the Chief of Radio before her selection, or of collusion by the members of the interview panel, the hiring manager, and the head of mission to select her for this position.

68. There is no basis for the claim that the Applicant's conflict with Mr. Wimhurst regarding the issue of editorial control over Radio Miraya had any impact on the Applicant's working relationship with the Chief of Radio.

69. The issue of editorial control was addressed in the MOU between UNMIS and FH regarding the operation of Radio Miraya. The MOU provided that decisions with respect to editorial matters would be made on a consensual basis, with the UNMIS Chief of Radio retaining ultimate decision-making authority. The MOU also provided for editorial lines to be jointly defined by the Chief of Radio and FH's Editor-in-Chief. It appears that there was considerable disagreement between FH staff and some UNMIS staff (including the Applicant) over the implementation of these provisions at the working level.

70. The Applicant's assertions that the MOU appeared to contravene United Nations rules and regulations, are not supported by any evidence. The Office of Internal Oversight Services' (OIOS) Audit Report of the public information programme in UNMIS did not identify any such contraventions. Further, OIOS expressed no concern that the editorial reporting lines violated the Staff Regulations and Rules by having United Nations staff report to FH staff. Given the objectives of an OIOS internal audit, such omissions are telling.

71. The Applicant has produced no evidence that he raised concerns about Ms. Herman's approach to editorial control of Radio Miraya directly with her, or with other members of senior management, for example, Ms. Jiang, Mr. Wimhurst, or the SRSG. Much was made by the Applicant of the intervention by the SRSG on the issue of editorial control. However, this was before the Chief of Radio joined UNMIS. It is reasonable to infer that the instructions issued by the SRSG in May and August 2010 were simply to ensure that the MOU, which provided that editorial control ultimately remained with the Chief of Radio, was properly implemented by Mr. Eissa and the Applicant in their capacities, respectively as Officer-in-Charge, CPIO and Officer-in-Charge, Chief of Radio.

72. The Applicant's evidence about his interaction with Ms. Herman after she joined UNMIS should be seen in light of the fact that he was not selected for the position of Chief of Radio and his misplaced belief that the Chief of Radio was pursuing an agenda on behalf of the Chief of Staff. It is reasonable to infer that the Applicant simply did not accept his non-selection. The evidence of Ms. Hersh regarding the interaction between the Chief of Radio and the Applicant was,

necessarily, biased in view of her own perceived difficulties with the Chief of Radio. While the Applicant gave evidence that the OIOS Intake Committee declined to investigate his report of abuse of authority, he failed to produce the correspondence with OIOS to this effect. In the absence of documentary evidence, the Applicant has not met his burden of establishing that the report was ever made.

73. The termination decision was not unlawful on the ground of lack of delegated authority. Should the Tribunal find that the termination decision was unlawful on the ground of lack of delegated authority; the Applicant is not entitled to any compensation as he has suffered no consequential damage.

74. The Applicant had no legitimate expectation that his fixed-term appointment would not be terminated.

75. The Secretary-General has a broad discretion in determining the operational needs of a new field mission based on its mandate. This discretion includes staffing levels and the functions of posts. The Secretary-General's discretion extends to formulating a transition process under which peacekeeping mission staff members whose appointments are terminated may be reassigned to a new mission.

76. It is not for the Dispute Tribunal to substitute its views for those of the Secretary-General with regard to the transition process, or the staffing requirements of a peacekeeping mission. A decision following a comparative review process may only be set aside on limited grounds, for example, breach of procedure during the comparative review, or the review was arbitrary, motivated by improper purposes, relevant factors were ignored or irrelevant factors taken into account.

77. In view of the foregoing, the Respondent requested the Tribunal to reject the Application.



## Considerations

78. Firstly, with respect to the various documentary evidence that the parties sought to tender in support of their cases, the Tribunal is of the considered view that, in accordance with art. 18.1 of its Rules of Procedure, these pieces of evidence are relevant and address some of the legal issues in this case.

79. Having reviewed the entire case record, the Tribunal finds that the following legal questions arise for consideration:

- a. Were the Organization's Rules, the guidelines and criteria in Information Circulars 218/2011 and 327/2011 including the guidelines or methodology said to have been adopted by the Central Review Panel for the transition of staff members from UNMIS to the new UNMISS mission properly followed in respect to the Applicant?
- b. Did evidence before the Tribunal sufficiently establish that there was a poor working relationship between the Chief of Radio, Ms. Herman and the Applicant? Did the said evidence establish the presence of animus, harassment and abuse of authority against the Applicant?
- c. Did Mr. Wimhurst the Chief of Staff (COS) or Ms. Jiang, the Chief of the Public Information Office (CPIO participate in or influence the Comparative Review Process to the detriment of the Applicant?
- d. Was the decision to terminate the Applicant's contract taken with the requisite authority? If indeed delegated authority was retrospectively granted, was it material to the outcomes in this case?
- e. Was the Respondent, in the course of the hearing of this case, entitled to call new witnesses to introduce unpled evidence or to attack the Applicant's pleadings on which he had failed to provide a reply or to join issues?

***Were the Organization's Rules and the guidelines and criteria in Information Circulars 218/2011 and 327/2011 which were made for the transition from UNMIS to the new UNMISS followed in respect to the Applicant? Was the comparative review process objective and did the CRP Panel follow its own stated criteria and methodology?***

80. A comparative review panel was constituted for purposes of reviewing the international posts in UNMIS where the number of staff was in excess of the number of proposed posts in the new mission for particular job categories and post levels. This was communicated to staff members via Information Circular No. 327/2011 dated 26 June 2013.

81. The comparative review panel was required to rate staff members against specific criteria set out in paragraph four of Information Circular Number 327/2011. These criteria included the following:

- a) Core Values (integrity, respect for diversity and professionalism) as provided in the last 2 e-PAS reports;
- b) Performance (e-PAS) as recorded in the last 2 reports;
- c) Length of service;
- d) Seniority/experience in given field;
- e) Gender; and
- f) Geographical representation.

82. It therefore follows that it is against these stated criteria that the CRP would establish the methodology for evaluating staff members in order to determine which candidate would get the job.

*The CRP's use of e-PASes in awarding marks to candidates*

83. The summary of the Applicant's submissions on this score is that the award of marks for performance based on consideration of the e-PASes was manipulated by the CRP in order to place him at a disadvantage during the comparative review process and that if in fact the CRP had followed the methodology it claimed to have adopted, it would have awarded him a total of at least 72 points overall.

84. Also for ease of reference, the Respondent's submissions on the issue were that the Applicant was evaluated against a review criteria according to an objective methodology developed by the Panel and that the review was impartial and not flawed. Moreover, the Panel was required to make a judgment about whether the comments on e-PASes justified additional points when a staff member's performance was "excellent" or "outstanding" for the reporting periods.

85. It was with a view to throwing light on the foregoing submissions as to how e-PASes were used and applied in the comparative review exercise that the Tribunal issued, on 18 April 2013, Order No. 086 (NBI/2013) in which the Respondent was required to produce the following documents:

- a. The ePASes that the CRP used to evaluate Ms. Helen Papper for the one available P-4 post of Radio Producer in UNMISS.
- b. The ePASes that the CRP used to evaluate Ms. Valerie Msoka for the one available P-4 post of Radio Producer in UNMISS.

86. The Respondent filed the required documents on 22 and 29 April 2013.

87. The Tribunal's examination of the said e-PASes showed that for the 2009/2010 performance period, Ms. Papper was evaluated as being "fully competent" in the core values, core competencies and managerial competencies. Her overall rating was "successfully meets performance expectations". In the overall comments, Ms. Papper's FRO stated that she had successfully fulfilled her duties. She was said to be responsible for two positions of radio producer and OIC in Juba.

88. With regard to the 2010/2011 performance period, while Ms. Papper was cited in the e-PAS as being "outstanding" in the core value of professionalism; the same e-PAS indicated that she "required development" in the two core competencies of (1) communication and (2) planning and organization. She was also listed as "requiring development" in the managerial competency of managing performance. In overall comments by her FRO, she was said to have put her all into Radio Miraya and was a valuable member of the team.

89. The Tribunal also reviewed the e-PASes for Ms. Msoka and the Applicant which the CRP had used in the comparative review exercise. For the 2008/2009 performance period, Ms. Msoka was evaluated as being “fully competent” in the core values, core competencies and managerial competencies. Her overall rating was “successfully meets performance expectations”. In the overall comments, she was described as “an asset” to the United Nations radio in Sudan. She was said to have worn two hats without a chief of radio.

90. For the 2009/2010 performance period, Ms. Msoka was also evaluated as being “fully competent” in the core values, core competencies and managerial competencies. Her overall rating was again rated as “successfully meets performance expectations” and overall was said to have made “major achievements in radio”.

91. The Applicant’s e-PAS for the 2009/2010 performance period showed that he was evaluated as being “outstanding” in the core value of integrity. He was also listed as “outstanding” in the core competencies of (1) communication, (2) teamwork and additionally found to be “outstanding” still in the two managerial competencies of (1) judgment/decision making and (2) empowering others. He was rated as “fully competent” in all the other core values, core competencies and managerial competencies. His overall rating was “frequently exceeds performance expectations” In making overall comments; the Applicant’s FRO said he had made very strong efforts in the appraisal period.

92. In the second e-PAS used for the Applicant, that is, the one for the 2008/2009 performance period, he was again rated as “outstanding” in five areas. These were the core value of professionalism, two core competencies of planning & organization and creativity and two managerial competencies of vision and empowering others. His overall rating was “fully successful performance”. His FRO’s overall comment was that he had done “a very good job” and was “an asset” to the Organization.

93. The foregoing examination of the e-PASes of the Applicant and the two other colleagues with whom he underwent a comparative review and on the basis of which marks were awarded for transition to the new mission is shockingly

revealing of a process that came out with top marks for a total lack of integrity and transparency.

94. Ms. Fletcher had in her testimony before the Tribunal strenuously defended a “discretion” that the CRP possessed to grant an additional five marks for each of two e-PASes used in the comparative review exercise based on what she referred to as “positive comments”.

95. In response to a question by the Tribunal, she testified that if a candidate had the maximum of 20 marks due to his or her overall rating on an e-PAS, positive comments would not count. But where the candidate had an overall rating of “fully successful performance” which would earn 10 marks but was given “positive comments”, her CRP team gave five extra marks. She strove to show that Ms. Papper deserved ten extra marks in a marking scale that awarded a maximum of forty points for two e-PASes because of “positive comments” in her two e-PASes that were considered.

96. The Tribunal’s efforts in meticulously examining the e-PASes in question were done with a view to ascertaining and judging the fairness and transparency that attended the comparative review exercise, which the Respondent’s agents carried out in UNMIS in June-July 2011 and which they unfortunately, shamelessly defend in this case.

97. There is absolutely no doubt that in the e-PASes of Ms. Papper for which she was awarded 10 extra marks to outscore her two other colleagues including the Applicant, there were no “positive comments” setting her appraisal apart from that of her colleagues.

98. Rather interestingly, in Ms. Papper’s most recent e-PAS (2010/2011), she was listed as falling below average in two core competencies of her post and as requiring development. In the same e-PAS, Ms. Papper was also rated as requiring development in one managerial competency also placing her below average in that area.

99. This is in marked contrast to the Applicant who in both of his e-PASes had been assessed as “outstanding” in one core value, two core competencies and two

managerial competencies, all together in five areas. Why did the Applicant not get five extra marks for his 2008/2009 e-PAS in spite of outstanding performance in five areas?

100. Ms. Msoka, who had been awarded the same overall rating of “fully successful performance” as Ms. Papper in her e-PASes was not found to have fallen below average in any of the competencies or “requiring development” in any area. In spite of being described as an “excellent” radio producer and one that had made “major achievements”, Ms. Fletcher’s CRP team did not award her any extra marks on any of her e-PASes. Further Ms. Msoka during one of the appraisal periods, like Ms. Papper, had been responsible for fulfilling the duties of her position while also filling the position of OIC for the Chief of Radio position.

101. Rather, it was Ms. Papper; the candidate with the weakest e-PASes out of three candidates considered, that was assisted by the CRP team to end up with the highest scores under the e-PAS criterion on the basis of some non-existent “positive comments”. Where were these positive comments that entitled Ms. Papper to ten gratuitous marks in a marking scale with a ceiling of 40? What magic words in the e-PASes of Ms. Papper informed the exercise of the discretion of Ms. Fletcher’s team in awarding her ten extra marks and withholding the same from the other candidates?

102. In spite of claiming that her CRP team looked for comments that indicated that the staff member’s performances were “excellent” or “outstanding” in order to award an extra five marks, Ms. Fletcher evidently ignored the comments that Ms. Msoka was an “excellent” radio producer and that the Applicant was “outstanding” in five areas in each appraisal period. These “positive comments” in respect of these two candidates did not merit any extra marks in her review.

103. The ridiculous result of Ms. Fletcher’s CRP team’s award of marks on e-PASes were that the Applicant who had been rated as “outstanding” in five areas in each of two reporting periods obtained the same scores of thirty marks over a maximum of forty with Ms. Papper who had been rated as “requiring development” in two core competencies and one managerial competency in one

reporting period. This is a most scandalous and embarrassing manipulation of the comparative review process which ought not to be condoned.

*The CRP's review and award of marks for core values*

104. The Tribunal averts its mind at this point to another part of the testimony provided by Ms. Fletcher. At paragraphs 24 and 25 of her witness statement, she testified about her team's review of core values. Her testimony on this score is hereunder reproduced.

24. The core values criterion was rated by reference to a staff member's ratings for integrity, professionalism and respect for diversity/gender, contained in his or her last two e-PASes. The evaluation was a weighted system for the three elements of core values over two years of e-PAS, with one point awarded for a "fully competent" rating and 2 points awarded for an "outstanding" rating on each of the three elements over two years. The maximum number of points was 10 points.

25. Based on their e-PAS reports, Ms. Papper and Mr. Bali were both awarded five points, reflecting that they both had fully competent ratings.

105. Reviewing the foregoing piece of evidence with regard to marks awarded for core values, it is easy to see that in the e-PASes for both appraisal periods used in the comparative review, the ratings awarded the Applicant for core values were different from those of Ms. Papper. While in each of the two appraisal periods considered, the Applicant was rated as "outstanding" in one of the Organization's three core values; Ms. Papper was rated "outstanding" in one core value for only one of the two appraisal periods considered.

106. Why then would both Ms. Papper and Mr. Bali get equal scores of five points for core values from Ms. Fletcher's CRP team? Why did Ms. Fletcher's team find it difficult to apply what she had told the Tribunal was an agreed methodology by the CRP? Was this flaw on the part of Ms. Fletcher's team a genuine mistake, sheer incompetence or a manipulation by the said CRP team?

*Was any clear methodology actually adopted in the CRP exercise?*

107. The Applicant had testified that the methodology used by the CRP in the comparative review exercise was never published or made known to staff members and that he did not know what part the e-PASes played in the exercise until the Respondent's Reply in this case. Evidence was led by the Respondent to the effect that the CRP started its work by first holding a plenary session where a methodology was adopted for conducting the performance review exercise. Part of this methodology was discretion on the part of the CRP to award extra marks where it saw positive comments in the e-PAS of a staff member who had been awarded an overall rating of "fully successful performance".

108. Although this Tribunal's examination of the e-PASes of the Applicant and two other candidates against whom he was reviewed has exposed the fraudulent manipulations that occurred in that comparative review exercise, it is yet critical to observe that the methodology that was claimed to have been adopted by the CRP was not properly placed before the Tribunal.

109. There were no minutes of a plenary session of the CRP at which this much-touted methodology was adopted. There was no document showing a methodology prepared and signed by the CRP for the purposes of the comparative review on 26 June 2011 after its purported plenary. Instead, it was the CRP's sketchy two-page report which was written and signed at the end of the comparative review exercise in July 2011, showing an unclear, confused table on a corner of one its pages that was tendered as proof of the adoption of some methodology by the CRP. The unsettling question here is whether any methodology was indeed adopted by the CRP before it commenced its work of comparative review of candidates? The Tribunal finds that no evidence tendered by the Administration's agents on this issue reliably leads to that conclusion.

*How the candidates were awarded marks on direct relevant experience*

110. Evidence was tendered by the Respondent's witness in an effort to explain why the Applicant was awarded a score of eight out of a maximum of 20 marks for direct relevant experience by the CRP based on his PHP. In his closing



address, the Applicant's counsel submitted that it is inconceivable that someone who was competitively recruited as Deputy Chief of Radio and Senior Radio Producer at the P-4 level would receive the lowest mark for relevant experience in relation to the same job with less responsibility.

111. The Tribunal examined the Applicant's and Ms. Papper's PHPs in the light of the testimony of Ms. Fletcher. According to the witness, her CRP team counted the number of years of direct relevant experience with reference to the TOR for the post. Ms. Papper was awarded 15 points while the Applicant got eight out of the maximum of 20 marks under that heading.

112. Ms. Fletcher told the Tribunal that Ms. Papper had more experience as a radio producer and that in addition to her work in UNMIS as a radio producer for 21 months, she had over nine years' experience as a producer in other media organizations, primarily radio. Mr. Bali, according to the witness, was a radio producer in UNMIS for 16 months and had worked as a freelance journalist in television and radio for eight years, had four years' experience in public information and media outreach. He had also been a radio producer/editor for two years and a television producer for three years. Both candidates were journalists.

113. The Tribunal had very carefully examined the PHPs of the two candidates with a view to determining the accuracy of the information proffered by the witness as the basis for awarding marks in the important assignment thrust upon her CRP team. A perusal of Ms. Papper's PHP showed that in her 15 years of work experience (including an internship), ranging from 1996-2011, she had spent six years and nine months (1998-2005) working as an independent or freelance reporter for three news organizations.

114. During three years of this period, she was also working as a video journalist in two other organizations (2002-2005). She had also spent three years as a Television Journalist for France 24 (2006-2009) and nine months as Associate Producer/Field Reporter for the Stanley Foundation, an international affairs think tank based in the United States.

115. With regard to her experience as a radio producer; before Ms. Papper started her first United Nations appointment in the United Nations Stabilization Mission in Haiti (MINUSTAH) as a Radio/Video Producer for one year, her PHP shows that she worked for eight months as a Radio Journalist/Producer for Radio France International. She had also worked as a Senior Producer for the University of Oklahoma radio station. As an intern, she had worked over a period of three years as a radio reporter/host with WAER, a radio station of the Syracuse University in New York.

116. Clearly, Ms. Papper's experience did not include "over nine years' experience as a producer in other media organizations, primarily in radio," as testified to by Ms. Fletcher. Ms. Papper had worked as an independent or freelance reporter for nearly seven years and the cumulative period she had worked as a radio producer before coming to UNMIS was the one year in MINUSTAH, the nine months for Radio France and fifteen months at KGOU, the University of Oklahoma radio station, all totaling about three years.

117. On the part of the Applicant, his work experience spanned a period of 19 years (1992-2011) at the times material to this application. He had worked as a freelance writer for different international media organizations over a cumulative period of about five years. Outside the United Nations, he had worked variously as Chief Editor, Sub-editor, Trainer, Correspondent, Producer and Public Affairs and Outreach Officer for various media organizations in radio and television. His experience as Radio Producer included six months at Inter-news network, twelve months in Saraya Media Communication, both Non-Governmental media and a period of 12 and a half months producing documentaries for international radio stations. The cumulative period therefore in which he had worked as a Producer in Radio and radio programs before going to UNMIS covered a little over two and a half years.

118. Ms. Fletcher stated in her testimony that she was guided during the comparative review exercise involving the Applicant by the TOR for the new post in UNMISS. This, according to her, meant that in assessing direct relevant experience, the CRP did not take into account the former TOR for the candidates.

119. She also testified that the TOR for the said Radio Producer P-4 post in UNMISS with which she and her team did the comparative review could not be located. This absurd claim meant that the said TOR was not placed before the Tribunal. Still, it remains inexplicable and in fact unacceptable, that in a comparison of the PHPs of the two candidates, the CRP would award one of them only eight marks over 20 (a mark well below average), while awarding the other 15 marks based on the untrue claims made before this Tribunal by Ms. Fletcher.

120. Why was it difficult for Ms. Fletcher and UNMISS Administration to produce the TOR used by the CRP to review the Applicant's candidacy? Does this mean that UNMISS had lost the TORs which it had used, less than a year before the hearing of this case, to review and select staff members for posts within the mission? Does this imply that the mission in fact lacks the means of preserving its own records or is it that Ms. Fletcher's CRP team was not guided by any TORs for the P-4 Radio Producer post for this comparative review as she claimed? It is the Tribunal's finding that the TORs used in the comparative review process for the post of Radio Producer P-4 for UNMISS were deliberately withheld by the Respondent's agents because their production would have been fatal to the Respondent's case.

*The Tribunal's role*

121. The Respondent's Counsel in his submissions raised the issue of the Tribunal's role in this case. At paragraph 7 of his closing address, the Respondent's counsel correctly submitted as follows:

It is not for the Dispute Tribunal to substitute its views for those of the Administration with regard to the transition process.

And in the following paragraph 8, learned counsel continued:

The Dispute Tribunal may not substitute its views with those of the Administration in determining the review criteria, the methodology for applying the criteria, or the evaluation of staff based on the criteria.

122. The learned Counsel also correctly went on to submit that the Administration's decisions may be set aside where procedural rules had been

breached or if discretion was exercised in an arbitrary, capricious or illegal manner. He submitted also that where a transition process involves a comparative review of staff, the review must be based on objective criteria, and carried out by a process that is impartial and transparent.

123. The foregoing examination of the e-PASes and the PHPs of the candidates against the criteria and methodology said to have been employed by the CRP manifestly shows that the conduct of the comparative review of the Applicant and his peers for the one P-4 Radio Producer post in the new mission was nothing short of an egregious and unacceptable breach and subversion of the applicable procedural rules, criteria and methodology the CRP claimed it adopted. While this Tribunal may not substitute its views for those of the Respondent's senior officers who had responsibility for the transition process, it has a bounden duty to examine the claims of these officers as to how they applied the set criteria and the methodology established by them in the comparative review exercise, in order to determine that the process was indeed transparent, legal and objective and conducted with integrity. This, it has done.

124. While Ms. Papper was the candidate with the weakest e-PASes, she was unbelievably and inexplicably awarded extra marks to surpass her better-qualified colleagues (according to the standards set by the Mission and the CRP) to enable her transition to the new mission. Clearly and truthfully, had the CRP followed its own stated methodology, this should never have been the case. The shoddiness, bias, lack of transparency, lack of integrity and the withholding of damning documentary evidence in this case stand out in bold relief, shaming the highest standards and best practices for which the United Nations ought to be known.

125. The Tribunal finds that, contrary to the Respondent's submission that the CRP conducted its evaluation against a set of review criteria set out in information circulars and according to an objective methodology developed by the Panel at its plenary; the comparative review process was not only flawed but evidently shamefully manipulated in relation, at least, to its review of the Applicant. It is only proper in the circumstances, to hold that, had the CRP followed its own

stated or claimed methodology, the Applicant would have received higher marks in the exercise than Ms. Papper.

126. While it is the submission of the Respondent's Counsel that the Secretary-General enjoys a broad discretion in relation to staffing matters; he acknowledged rightly also that it was the duty of the CRP to be guided by the extant provisions of art. 101.3 of the Charter of the United Nations ("the Charter") that the paramount consideration in employment of staff shall be the necessity for securing the highest standards of efficiency, competence and integrity. These laudable provisions of the Charter were definitely not given effect in this case but were rather unfortunately subverted based on the personal whims of some of those entrusted with the responsibility of overseeing the transitions to the new UNMISS.

***Did evidence before the Tribunal sufficiently establish that there was a poor working relationship between the Chief of Radio, Ms. Herman and the Applicant? Did the said evidence establish the presence of animus, harassment and abuse of authority against the Applicant?***

127. Part of the Applicant's case is that months before the new Chief of Radio was recruited, there had been controversies and tensions between some of the UNMIS staff in the Public Information and radio section on the one hand and staff of Fondation Hironnelle (FH) an NGO with whom the Organization had an MOU on the other hand as to who should have editorial control of the Organization's Radio Miraya. While the SRSG had instructed that UNMIS staff must control editorial content, the Chief of Staff (COS) Mr. Wimhurst gave a contrary instruction requiring UNMIS staff to report to FH staff.

128. According to the Applicant, the fact that he was on the side of UNMIS staff having editorial control pitted him against the COS. He subsequently underwent maltreatment at the hands of the said COS and the new Chief of Radio, a fellow Canadian, Ms. Herman, whom the COS later recruited.

129. The Applicant testified that upon his reporting for duty in Khartoum, he met with the Chief of Radio, Ms. Herman, who immediately instructed him to

vacate the office occupied by his predecessor for an FH trainer that was yet to arrive. She also denied him the use of an official sim card, internet and broadband used by his predecessor. She asked him to supervise the drivers and made him web editor, requiring him to work during office hours, at night from home every day of the week and from home every weekend even when he fell ill.

130. The Applicant tendered his annexes four and five which were email chains mostly consisting of emails sent to him by staff of FH about his work which were rude and insulting and copied to Ms. Herman by the authors. He also testified that his 2010/2011 e-PAS was not finalized until after the comparative review exercise at the instigation of Ms. Herman who wanted the rating that was awarded him downgraded. It was his case that the harassment he was subjected to had caused him to seek the help of the new CPIO Ms. Jiang and Ms. Hersh, another staff member who was a designated peer-helper, but the harassment only intensified.

131. Ms. Hersh who testified for the Applicant corroborated his story about his first meeting with the new Chief of Radio and how she was hostile to him by instructing him to leave his predecessor's office space. She also corroborated the Applicant's testimony as to how he was denied other working tools used by his predecessor and given additional duties that meant he had to work at all hours of the day and night. According to the witness, the Applicant sought her help as the designated peer-helper.

132. The Applicant's Annex 6 is an email to Ms. Jiang, Chief of Public Information, from the Applicant dated 7 March 2011 and copied to Ms. Herman, complaining about rude and inflammatory emails addressed to him by senior and junior staff of FH alike and usually copied to the entire web team. There was no response to the said email by either Ms. Jiang or Ms. Herman. It was the Applicant's testimony that Ms. Jiang held a mediation meeting where she asked the Applicant, the Chief of Radio and FH staff to forget their differences because the mission mandate would end in June 2011 but did not address any of the issues raised. She did not offer the Applicant any support.

133. Annex 15 of the Application shows an email from the Applicant on 2 January 2011 to the designated peer-support for the office Ms. Hersh and her

reply dated 22 February 2011. The mails are titled “sharing conversation in meeting with Chief of Radio today – facing harassment.” The email from the Applicant described a 40-minute meeting with Ms. Herman in which he was undermined, talked-down at, accused of lateness to work and humiliated by her. In the reply Ms. Hersh advised the Applicant that things had reached a point where he should be seeking formal resolution since the informal was clearly not working.

134. The Respondent in his Reply to the Application submitted that the decision to terminate the Applicant was not based on improper motives. The Respondent then went on to state that

the Applicant has made a number of allegations concerning his interactions with FH, the Chief of Radio and other senior staff of UNMIS. In essence, he contends that there was an orchestrated campaign against him. The Respondent denies all of the allegations made by the Applicant.

135. It is a primary and basic rule of pleading that the party replying or answering to a claim or complaint must fully and sufficiently address any “allegations of fact” that go to any “issues” that are raised in the said claim or complaint. In other words, a reply filed by the Respondent before this Tribunal must admit or deny the specific allegations set forth in the application. It is for this reason that an Application or claim is served on the Respondent and a period of 30 days is afforded him to reply.

136. Blackstone’s Civil Practice<sup>1</sup>, states:

A defence to a claim must say which of the allegations in the particulars of claim are admitted, which are denied and which allegations the defendant is unable to admit or deny, but requires the claimant to prove. Every allegation made in a claim should be dealt with in the defence.

137. It further provides that “where an allegation is denied, this normally implies that the defendant intends to put up a positive case to the contrary.”

---

<sup>1</sup> French D., Kay M. and Sime S. (Eds). (2010). Blackstone’s Civil Practice Oxford.: Oxford University Press.

Indeed where the defendant denies an allegation, he must state his reasons for doing so; and if he intends to put forward a different version of events from that given by the claimant, he must state his own version.

138. Also, Rule 8(b) of the American Federal Rules of Civil Procedure provides that a defendant's answer to a complaint requires a short and plain statement to each claim asserted. The defendant must admit the plaintiff's claims or state that he or she does not have enough information to admit or deny.

139. In the instant case, except for a very general traverse at paragraph 46 of his Reply, the Respondent has neither answered to the allegations of fact pleaded by the Applicant nor addressed the documentary evidence adduced in support of the said facts. He has merely stated: "the Respondent denies all the allegations made by the Applicant." The Respondent's failure to deal with the particular allegations of the Applicant leaves the Tribunal with no other course of action than to accept the Applicant's version of the events.

140. Section 1.2 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) defines "harassment" as

any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.

141. The Tribunal, based on pleadings, ample oral and documentary evidence and the fact that these claims are unchallenged, finds that at all times material to this Application; there existed a very poor working relationship between the Applicant and Ms. Herman, the Chief of Radio. The Tribunal finds also that the Applicant was undermined and harassed by Ms. Herman and that she condoned or ignored the harassment and shabby treatment meted out to the said Applicant by FH senior and junior staff under her watch even when these were called to her



attention. As a result, the UNMIS radio workplace was rendered unbearable, hostile and intimidating for the Applicant.

***Did Mr. Wimhurst the Chief of Staff (COS) or Ms. Jiang, the Chief of the Public Information Office (CPIO) influence the Comparative Review Process to the detriment of the Applicant?***

142. The Applicant has submitted that the CRP was tainted by animus and dishonesty and that his claim is substantiated by:

- a. his marginalization as a result of being identified as part of a group that was opposed to the relationship between the UNMIS radio station, Radio Miraya, and FH.
- b. Mr. Wimhurst had come into conflict with him over the UNMIS relationship with FH.
- c. The evidence of Ms. Fletcher showed that there was significant scope for “contamination” between the CRP sub-groups. Ms. Fletcher accepted in cross examination that she may have spoken to Ms. Herman during the review sessions as they were all in the same room.
- d. The recruitment of Ms. Herman as Chief of Radio was followed by an increase in his harassment and marginalization. After his transfer to Khartoum from Juba, he was met by Ms. Herman who required him to vacate his office. He was assigned an impossible workload without being provided the most basic resources to complete his tasks. Ms. Herman printed reporting lines that showed him reporting to two national staff and an FH staff. When he pointed out the irregularity, the reporting lines were magnified to A3 size and placed on a notice board.
- e. It was against this backdrop that he came to be assessed by the CRP. Given the animus directed towards him during this period, the Applicant submitted that it is inconceivable that there would not have been an attempt by senior management to ensure that he was not transitioned to UNMISS.

143. In response to these allegations, the Respondent submitted that:

- a. The Applicant has not adduced any evidence or demonstrated to the Tribunal that the comparative review process was flawed.
- b. The Applicant was evaluated against the review criteria according to an objective methodology developed by the Panel.
- c. The review of the Applicant was impartial. The Panel did not make any errors in evaluating the candidates according to the agreed methodology.
- d. There is no evidence that factors that were not part of the agreed methodology were taken into account by the Panel.
- e. The Applicant and the two other P-4 Radio Producers were subject to an objective and impartial comparative review process. To avoid any potential conflict of interest.
- f. In her evidence to the Tribunal, Ms. Fletcher stated that the Panel did not seek or receive any input from anyone regarding the review. She did not recall speaking to Ms. Herman, a fellow Panel member, regarding the review.

*Mr. Wimhurst*

144. The Tribunal has carefully reviewed the entire case record and the Parties' oral submissions and finds as follows:

- a. In an email dated 1 August 2010 to Ms. Bennet, the head of Project at FH, Mr. Wimhurst stated that he had good links with FH and had worked closely with them in the past. He also indicated that he had a lot of respect for their work.
- b. Another email dated 23 August 2010 sent by the Deputy Spokesperson of UNMIS on instructions from Mr. Wimhurst in which editorial control was handed back to FH staff against the instructions of the SRSG shows that, as submitted by the Applicant, there was strong disagreement on the issue of reporting lines between UNMIS and FH staff.
- c. This was corroborated by Ms. Hersh's evidence that when she and the Applicant had approached the SRSG about the issue of editorial

control vis-à-vis FH and UNMIS staff, Mr. Wimhurst, the UNMIS Chief of Staff, contrary to the then SRSG's position supported FH having editorial control.

- d. It was submitted by the Applicant that despite being the Officer-in-Charge of Radio since the resignation of the previous Chief, when a Temporary Vacancy Announcement was issued for the post and he applied, his application was not opened before the recruitment exercise nor was he shortlisted for the position.
- e. The Applicant submitted further that Mr. Wimhurst took personal charge of the recruitment process to install his preferred candidate, Ms. Herman, to the position. This, the Applicant submitted, was as a result of the animus against him for opposing the return of editorial control to FH staff. The Respondent did not attempt to counter this evidence but only offered a blanket denial.
- f. Ms. Hersh in her testimony informed the Tribunal that FH staff was very condescending to the Applicant during senior staff meetings and that it was mainly Ms. Herman and Mr. Wimhurst on the United Nations side and one Mr. Darwish and Ms. Bennett of FH who were involved in mistreating the Applicant. Ms. Hersh perceived this to be a witch-hunt against the Applicant.

145. The foregoing reveals the familiarity that Mr. Wimhurst had with FH and also the presence of animus against the Applicant on the part of Mr. Wimhurst arising from that relationship. The Tribunal can only infer that while Mr. Wimhurst was trying to protect FH staff in the relationship it had with the UN, he did so at the expense of such UN staff as the Applicant.

*Ms. Jiang*

- a. On 7 March 2011, the Applicant sent an email to Ms. Jiang in which he complained about abusive emails that he had received from FH National staff that he supervised. It appears that Ms. Jiang did nothing to redress the situation or to protect him.

- b. The Applicant testified that on 25 July 2011, he went to see Ms. Jiang about his e-PAS but she informed him that she would only sign off on it if his FRO, downgraded his assessment from “exceeds expectations” to “fully satisfactory performance”. This was in the aftermath of the comparative review process where e-PAS ratings, according to what the Tribunal was told, accounted for the highest marks awarded in the comparative review process and therefore largely determined whether staff members subject to the process would be transitioned to the new UNMISS or not.
- c. Mr. Eissa’s uncontested evidence was that he had completed the Applicant’s ePAS in good time at the end of March 2011 and sent it on to Ms. Jiang as SRO. Instead of signing it off or making her own comments on the said e-PAS, Ms. Jiang had asked him on several subsequent occasions to downgrade the said Applicant’s e-PAS. She told him that she was under pressure from Mr. Wimhurst, working through Ms. Herman, to downgrade the Applicant’s performance appraisal.
- d. The evidence of Ms. Fletcher showed that there was significant scope for “contamination” between the CRP sub-groups or teams in which Ms. Herman was a team leader. Ms. Fletcher accepted in cross examination that she may have spoken to Ms. Herman during the review sessions as they were all in the same room.

146. Given the foregoing, the Tribunal finds and concludes that it is more likely than not, on a balance of probabilities, that the comparative review process was negatively influenced to the detriment of the Applicant. The disagreement between the Applicant and Mr. Wimhurst over the reporting relationship between UNMIS and FH created bad blood on the part of Mr. Wimhurst, enough to lead him to put pressure on Ms. Jiang and Ms. Fletcher through Ms. Herman to negatively influence the outcome of the CRP process in respect of the Applicant.

***Was the decision to terminate the Applicant's contract taken with the requisite authority? If indeed delegated authority was retrospectively granted, was it material to the outcomes in this case?***

147. The Applicant submitted that the CCPO of UNMIS did not have the authority to take the decision to terminate his appointment. He further submitted that even if notification of the CCPO's decision was issued by the ASG/OHRM, Ms. Catherine Pollard, on 1 August 2011, she did no more than "rubber-stamp" his decision. The ASG's delegated authority to terminate her appointment was therefore sought after the decision had been taken. The Applicant submits that authority cannot be delegated retrospectively and that even for an ASG, there remains no power to terminate in these circumstances and, therefore, the decision was *ultra vires* and unlawful.

148. The Respondent submitted that the abolition of the Applicant's post and the termination of his appointment were the inevitable consequences of Security Council Resolution 1978 (2011), which extended the mandate of UNMIS for a final time to 9 July 2011 and that Security Council Resolution 1997 (2011) instructed the Secretary-General, as the Chief Administrative Officer, to complete the withdrawal of civilian UNMIS personnel, other than those required for the mission's liquidation, by 31 August 2011.

149. The Respondent further submitted that as a consequence of the resolutions, all posts within UNMIS were, necessarily, to be abolished. For the staff members of UNMIS who were not reassigned to UNMISS or selected for another post within the Organization, the termination of their appointments was mandatory and there was no scope for renewal of their appointments.

150. Having reviewed the parties' submissions on this issue, the Tribunal finds that the termination decision was taken without the requisite delegated authority notwithstanding the fact that all posts within UNMIS were necessarily to be abolished as a result of Security Council Resolution 1997 (2011). While the Security Council called for the withdrawal of all civilian UNMIS personnel who were not required for the mission's liquidation, this should not have been used as an excuse to avoid compliance with the procedures set out in ST/AI/234/Rev.1. A

careful reading of the Administrative Instruction reveals that the ASG/OHRM has delegated authority to terminate an appointment only for health-related reasons. The Secretary-General retains the authority in all other cases.

***Was the Respondent, in the course of the hearing of this case, entitled to call new witnesses and through them to introduce unpled evidence or to attack the Applicant's pleadings in respect of which the Respondent had failed to reply or join issues?***

151. On 18 June 2012, the Tribunal held a case management conference in this case in which the Tribunal gave directions for a fair and expeditious disposal as provided for in art. 19 of the Tribunal's Rules of Procedure. The Respondent's Counsel informed the Tribunal about witnesses he would call and Ms. Jiang was not one of them. On 28 June 2012, while this matter was being heard, the Respondent called Ms. Jiang as a witness.

152. The Applicant's Counsel, objected to her testimony being received on the matter of the completion of the Applicant's e-PAS since it was not addressed in the Respondent's Reply. This objection was brought under art. 17.5 of the Tribunal's Rules of Procedure. The Tribunal upheld the objection and ruled that her evidence was not admissible if it was only in relation to her treatment of the Applicant's e-PAS.

153. In his closing address, the Respondent's counsel submitted that the "Tribunal did not permit the Respondent to examine Ms. Jiang regarding her role as the Applicant's second reporting officer on the basis that the Respondent's Reply did not join issue with the Applicant's pleading in this regard." He continued that: "as a consequence, the Dispute Tribunal does not have a full account of the circumstances in which the e-PAS was finalized."

154. It is pertinent at this point to examine the provisions of the relevant article of the UNDT Rules of Procedure as they relate to the matter of the admissibility of evidence. Article 17.5 of the Tribunal's Rules of Procedure states:

Any party may object to the testimony of a given witness or expert, stating reasons for such objection. **The Tribunal shall decide on the matter. Its decision shall be final.**” (Emphasis added)

Article 18.1 emphasizes further: “The Tribunal shall determine the admissibility of any evidence.”

155. While the Respondent’s Counsel is entitled in his closing submissions to address the Tribunal on the issues of fact and law arising in this case, it is not in his place to attack the ruling of the Tribunal on the proper procedure to be followed in tendering evidence. As already stated, a burden lies on a defendant or respondent to give his own version of the facts where he denies a pleaded fact. A failure to discharge this burden may be fatal to the case of the party. More than that, it does not speak to good preparation or a fair and expeditious disposal of a case that witnesses are called up randomly by a party regardless of the scheduling adopted during the case management conference.

#### *Accountability of United Nations’ Managers*

156. The Tribunal has stressed in numerous earlier judgments that those managers and agents of the Administration, who in the course of carrying out their official duties and responsibilities to the Organizations, prefer to be guided not by the Charter and applicable rules and standards but by their personal whims to subvert the outcomes of the Organization’s processes ought to be called to account.

157. Even though the Tribunal is not aware that any of its referrals for accountability has received any attention, it finds it necessary not to flinch in this duty. It accordingly refers Mr. David Wimhurst and Ms. Sylvia Fletcher, for the purpose of considering what action should be taken in respect of their conduct, specifically, Mr. Wimhurst for using Ms. Herman and Ms. Jiang to influence the comparative review process to the detriment of the Applicant and Ms. Fletcher for her lack of integrity in manipulating the CRP process to the detriment of the Applicant.

***Judgment***

158. The Tribunal orders rescission of the administrative decision to separate the Applicant from service and orders the Respondent to reinstate the Applicant.

159. Should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to reinstate the Applicant, as an alternative he must pay compensation to the Applicant in the sum of two years' net base salary at the rate in effect at the date of Judgment.

160. The Applicant is entitled to compensation for the substantive and procedural irregularities occasioned him by the failure by the Administration to follow its own guidelines and its rules and procedures, and the Tribunal accordingly:

- a. Awards the Applicant one years' net base salary as compensation for the substantive irregularity.
- b. Awards the Applicant 4 months' net base salary for the procedural irregularity.

161. If the Secretary-General decides not to perform the obligation to reinstate the Applicant, the total sum of compensation is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

162. The case is referred to the Secretary-General under art. 10.8 of the Statute of the Tribunal for the purpose of considering what action should be taken in respect of the conduct of Mr. Wimhurst for using Ms. Herman and Ms. Jiang to influence the comparative review process to the detriment of the Applicant and Ms. Fletcher for her lack of integrity in manipulating the CRP process to the detriment of the Applicant.



*(Signed)*

Judge Nkemdilim Izuako

Dated this 1<sup>st</sup> day of July 2013

Entered in the Register on this Dated this 1<sup>st</sup> day of July 2013

*(Signed)*

Abena Kwakye-Berko, Acting Registrar, Nairobi