



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/048

Judgment No.: UNDT/2014/020

Date: 17 February 2014

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko, Acting Registrar

MUNIR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

George Irving

Counsel for the Respondent:

Fabrizio Mastrogirolamo, UNDP

This Judgment has been corrected in accordance with Article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant is a former staff member of the United Nations Children's Fund (UNICEF) where he served as a Procurement Manager at the P-3 level. He later joined the United Nations Development Programme (UNDP) on secondment from UNICEF, on 1 July 2009, as Operations Manager (OM) at the P-4 level in Khartoum, Sudan.

2. He worked with UNDP until 30 June 2012 when he was separated from service as a result of the non-extension of his secondment. On 28 August 2012, the Applicant filed an Application contesting the non-extension on the grounds that:

a. The decision taken and conveyed to him by Mr. Ali Al-Za'tari, the UNDP Resident Representative (RR) in Khartoum, on 26 April 2012 not to extend his secondment for one year was based on extraneous and prejudicial considerations.

b. He had a legitimate expectation of a one year extension of his secondment.

3. The Respondent filed a Reply to the Application on 5 October 2012 in which it was submitted that:

a. The decision not to extend the Applicant's secondment at UNDP for one further year was the result of the valid exercise of managerial discretion.

b. The Applicant had no legitimate expectation of a one year extension as there is no evidence that UNDP Sudan had promised him that his secondment would be extended.

Facts

4. The Applicant was employed by UNICEF from April 1997 until June 2009.

5. During the first half of 2009, and while still at UNICEF, the Applicant applied and was selected for the position of OM at the P-4 level with the UNDP Country Office (CO) in Sudan.

6. By letter dated 14 May 2009, UNICEF agreed to release him on secondment basis to UNDP effective 1 July 2009.

7. On 18 May 2009, a letter was addressed to the Applicant from one Mr. Dushyani Joshi, Chief, Recruitment and Staffing Section, Division of Human Resources at UNICEF regarding his upcoming secondment to UNDP. He was informed that staff members on secondment or loan to other United Nations Agencies from UNICEF were required to apply for suitable vacancies at least six months prior to the expiration of their secondment or loan should they intend to resume service with UNICEF.

8. The Applicant began his secondment at UNDP on 1 July 2009. His initial appointment was for a period of one year until 30 June 2010 but was subsequently extended yearly until his separation in 2012.

9. In reply to an email sent by the Applicant on 19 January 2012 informing UNICEF that UNDP was minded to extend his secondment for a fourth year, Ms. Marian Jones, Recruitment and Staffing Section, Division of Human Resources at UNICEF notified him that should UNDP request the extension of his services for another year, UNICEF senior management would need to grant approval.

10. The email also indicated that the extension of the Applicant's secondment to UNDP through 30 June 2013 would bring it to the maximum four years allowed while away from UNICEF on secondment.

11. On 29 February 2012, the UNDP Sudan CO Core Management Group (CMG) held a meeting in which one of the items on the agenda was the issue of contract extensions for international professional staff. The Applicant was present at this meeting in his capacity as the OM for the CO. A decision was taken at that meeting to extend the contracts of all the international staff members in the CO including the Applicant's.

12. On 2 March 2012, Mr. Ali Al-Za'tari took up duties as the new Resident Representative (RR) for UNDP Sudan.

13. On 23 March 2012, Mr. Al-Za'tari went to the Applicant's office accompanied by four other officials. He handed the Applicant a letter placing him on administrative leave with immediate effect to pave way for investigations into allegations of misconduct. The Applicant was ordered out of the office by the RR and was escorted out by a Security Officer who had accompanied the RR.

14. On 25 March 2012, Mr. Ehab Burawi, who was then the Operations Manager for the UNDP Demobilization, Demilitarization and Reintegration (DDR) programme in Khartoum was asked to assume duties as the OM for the UNDP CO in Khartoum on a temporary basis to fill the position that had been vacated by the Applicant who was then on administrative leave.

15. On 26 April 2012, Mr. Al-Za'tari addressed a letter to the Applicant informing him that his secondment from UNICEF to UNDP would expire upon completion of its third year on 30 June 2012. The letter also stated:

Under regular circumstances, UNDP would not have sought a further extension of your secondment. However, given the on-going investigations into allegations of wrongdoing further to which you have been placed on administrative leave until 30 June 2012, UNDP is prepared to request UNICEF for an extension of your secondment until 30 September 2012, unless you notify us, by 30 April 2012 that you do not wish for your secondment to be so extended. Please note that the request for a three month extension of your secondment is made solely to allow the completion of the on-going investigation...

The present letter also serves to provide you with sufficient notice for you to contact UNICEF and discuss your return upon your separation from UNDP.

16. On 28 April 2012, the Applicant responded to the letter from Mr. Al-Za'tari and requested a year's extension of his contract as opposed to the three month extension proposed.

17. Mr. Al-Za'tari wrote back to the Applicant on 2 May 2012 and reiterated his decision to extend the Applicant's contract by three months only for purposes of the on-going investigation, and not one year. He stated:

At a time when UNDP finds itself with staff members who need placement or legitimately look at their career progression, I am not in a position to consider the extension of your secondment for one further year. This would result in the Organization taking on yet additional liability.

18. On 3 and 4 May 2012 an exchange of emails ensued between the Applicant and Mr. Al-Za'tari. The Applicant insisted that he could not accept a three month extension of his secondment.

19. The Applicant requested management review of the decision of the RR on 14 May 2012 by writing to Ms. Helen Clark, Administrator of UNDP in New York.

20. He received a response to his request for management review on 28 June 2012 from Ms. Jens Wandel, Assistant Administrator and Director, Bureau of Management. The review concluded that there was no factual or legal basis for overturning the RR's decision.

21. The Applicant's term at UNDP came to an end on 30 June 2012. On the same date, he filed a complaint against Mr. Al-Za'tari for harassment, discrimination and abuse of authority.

22. On 17 July 2012, a vacancy announcement (VA) was prepared and approved for the Applicant's former post. The VA listed Arabic and English as the languages required for the post. The Applicant applied but was not shortlisted. Mr. Burawi was subsequently appointed to this post and was reassigned from his previous position in the DDR programme.

23. The Tribunal heard the case on 24-25 July and 14-15 August 2013 during which evidence was received from the following witnesses:

- a. The Applicant.

- b. Mr. Mustafa Ghulam for the Applicant.
 - c. Mr. Abusabeeb Elsadiq for the Respondent.
 - d. Mr. Ali Al-Za'tari for the Respondent.
 - e. Mr. Sayed Aqa, called by the Tribunal.
24. Mr. Ghulam's testimony is summarized below:
- a. He was the Applicant's First Reporting Officer (FRO). The Applicant's performance for three consecutive years was appraised as "exceeded performance expectations".
 - b. He only came to know about certain allegations against the Applicant in March 2012 from the Country Director (CD). Prior to that he had no knowledge of the allegations.
 - c. He was present at the CO CMG meeting of 29 February 2012 where decisions were taken to extend staff contracts, including the Applicant's, for a period of one year. After the meeting, he followed up by informing Human Resources to process all contract extensions.
 - d. He was not aware of any management meeting that reversed any of the decisions taken on 29 February 2012 regarding contract extensions for staff members.
 - e. After his arrival at UNDP Sudan as the RR, Mr. Al-Za'tari did not want the renewal of appointments for a number of staff members of Asian origin. Due to this, there had to be a temporary halt to the contract extension process. Eventually, all contracts were extended except that of the Applicant.
 - f. Mr. Al-Za'tari did not contact him with regard to the decision he took not to extend the Applicant's contract even though funding for the Applicant's position was available.

g. He was not consulted regarding Mr. Al-Za'tari's choice of Mr. Burawi to fill the Applicant's post after the Applicant was placed on administrative leave even though he was the FRO.

h. He was also not consulted when Mr. Al-Za'tari changed the job description of the OM position to include knowledge of Arabic as a requirement. It was the first time such a requirement was included in its many years of existence. In his view, fluency in Arabic in Sudan should not have been a requirement for that post.

i. He was also not consulted in the process for selecting a new OM. The entire recruitment process was handled by Mr. Al-Za'tari and the HR CO.

j. His objections to the manner in which the recruitment was being handled were dismissed. Mr. Al-Za'tari made it clear that he did not want to have any consultations or hear contributions and that he wanted to do things alone and in his own way. He marginalized supervisors and dealt with staff directly without their supervisors and took decisions alone.

k. The witness recorded an aide memoire of a discussion that he held with Mr. Sayed Aqa, the CD in which Mr. Aqa informed him of a conversation he had had with Mr. Al-Zatari regarding contract extensions of staff members among other issues. He immediately shared this aide memoire with Mr. Aqa. The aide memoire he made recorded that Mr. Al-Zatari had told Mr. Aqa that he did not want to extend some contracts including that of the Applicant and that he did not want any Pakistani in Management.

25. Mr. Elsadiq's testimony is summarized below:

a. He is a Programme Finance Analyst for the UNDP Sudan CO and also served as the head of the Management Support Unit (MSU) until January 2013.

b. He attended the CO CMG meeting of 29 February 2012 during which contract extensions were discussed among other agenda items.

c. There were two categories of staff whose contracts were reviewed; CO Staff and Project Staff. For CO staff, funding was not a problem but with project staff, funding had to be considered in detail.

d. The Applicant's post was a CO position and for these funding was stable. The meeting decided that in all positions where funding was available, staff appointments would be extended by one year.

26. Mr. Al-Za'tari's testimony is summarized below:

a. He arrived in Sudan as the new RR on 1 March 2012. He found that the CO suffered from a lot of financial and personnel issues which needed to be seriously looked into.

b. He also encountered another issue with the DDR programme which had to be scaled down so much so that some of the staff on that project had to be separated.

c. After his arrival, he came to understand that the Applicant was on secondment from UNICEF. He knew that UNDP has a policy that favours staff of the agency over those that are seconded. He could not recall any written authority for such a policy but he believed that it did exist.

d. Given that the office always had the problem of displaced UNDP staff members and sought ways of absorbing them into the system, he decided that UNDP would not renew the Applicant's contract for another year.

e. He was however not aware of any specific cases of displaced UNDP staff members that were placed by him in the CO.

f. The decision to bring in Mr. Burawi to serve in the Applicant's position while he was on administrative leave was taken together with Mr.

Aqa. He had known Mr. Burawi since 1999 and may have in the past acted as a referee for him.

g. Mr. Burawi later got the job through a competitive process. He did not discuss Mr. Burawi's appointment with Mr. Ghulam who was Mr. Burawi's FRO.

h. Mr. Burawi was a UNDP staff member who was displaced.

i. The witness admitted in cross-examination that Mr. Burawi was not displaced at the time he took up the Applicant's post.

j. He also admitted in cross-examination that as at the date of the hearing of this Application, the DDR project was still on-going albeit on a reduced scale. While the post of OM for DDR, formerly encumbered by Mr. Burawi was later abolished, at the time that Mr. Burawi took up the Applicant's post, the DDR post still existed.

k. Regarding the addition of Arabic as a requirement for the Applicant's former post, there was a need for an OM versed in Arabic and he discussed this change with Mr. Ghulam and Mr. Aqa. The job description for the post of CO Operations Manager was amended with concurrence from headquarters.

l. In answer to a question by the Tribunal, the witness said that he had been told that it was the procedure of UNDP for the RR to lead Officers from the Legal Support Office to the office of a staff member that was to be placed on administrative leave pending investigations and to order the staff member out.

27. Mr. Aqa's testimony is summarized below:

a. He was the CD for UNDP Sudan from August 2011 to June 2013.

b. On 29 February 2012, a regular CO CMG meeting was held in which it was decided that positions for which funds were available would be renewed for one year. He chaired the said meeting.

c. He knew about the aide memoire of 5 April 2012 prepared by Mr. Ghulam and confirmed that paragraphs 1, 2 and 6 which showed that Mr. Al-Zatari had told him that he did not want the Applicant in the Office no matter the result of the pending investigations against him, were what was told him by Mr. Al-Za'tari. Mr. Al-Za'tari also mentioned that he did not want any Pakistani in management.

d. Prior to the investigation, he was not aware that the Applicant had any problems with his colleagues in the office or that there were any complaints against him.

e. He was not satisfied with the manner in which the Applicant was treated when being placed on administrative leave. The way the Applicant was sent out of the office was most inhumane and he should have been given time to clear his things before leaving.

f. There was some irregularity in recruiting a replacement for the Applicant's position. As the CD, he was not part of the recruitment of the OM since Mr. Al-Za'tari had decided and made it clear that he would make all international post recruitments by himself.

g. Regarding the inclusion of Arabic into the VA for the post of OM, he was not consulted but his view was that the VA should not have been made until the investigations on the Applicant were completed. He objected also because Arabic was not a requirement for any other post in the CO.

Applicant's case

28. The Applicant's case, as per his oral and written submissions, is summarized below.

29. UNDP failed to afford him the basic duty of good faith and fair treatment in failing to extend his secondment by one year.

30. The decision to renew his secondment, along with those of other international staff members by one year was taken during the CMG meeting held on 29 February 2012.

31. After this meeting, his FRO, Mr. Mustapha Ghulam, sent an email to Human Resources to initiate the process of his extension of contract but Mr. Al-Za'tari halted that process.

32. As a result of the decisions taken at the 29 February 2012 meeting, he had a legitimate expectation that his appointment would be extended for a further period of one year. Minutes of the said meeting and notes taken by several officials who were in attendance show that the meeting approved one year extensions for all international professional staff including him.

33. Mr. Al-Za'tari's refusal to honor this prior firm commitment to extend his contract was motivated by improper considerations and was illegal. All international staff members whose contracts were reviewed during the CO CMG meeting had their appointments subsequently extended for one year as per the decision taken by the CMG except him.

34. Mr. Al-Za'tari's statement, that under regular circumstances UNDP would not have sought a further extension of his secondment, is contradicted by the records and unsupported by any evidence or authority since the maximum allowable duration for secondment for a staff member from UNICEF to another agency is generally four years. He had only completed three years and UNICEF had indicated its intention to consent to another one year of secondment if requested.

35. Generally, Mr. Al-Za'tari treated him unfairly since his arrival as the RR in March 2012. For instance, on 23 March 2012 at about 9.00 a.m., Mr. Al-Za'tari came into his office with a UNICEF Investigator, a Security Officer and two other officials and ordered other visiting colleagues who were in a meeting with him out of his office. The RR then asked the Investigator to read out some written allegations to him. He was then handed a letter placing him on administrative

leave and escorted out of the office by the Security Officer on the instructions of the RR.

36. The timing of Mr. Al-Za'tari's decision suggests that it was heavily influenced by the commencement of the investigation for which he was placed on administrative leave. Should his placement on administrative leave pending investigation of the complaints against him be the real reason behind the decision against the renewal of his appointment, this would be illegal as it predetermines the outcome of the investigation and violates his rights to due process.

37. When his former post at UNDP was advertised, Arabic was included as a requirement yet no other position in the CO required Arabic and all the international staff members are non-Arabic speakers. This was specifically calculated to exclude him from successfully applying to his former post. Consequently, he was not shortlisted for this position nor invited to compete for the post despite the fact that he had served in the position successfully and with excellent ratings for nearly three years.

38. Mr. Al-Za'tari recruited a former colleague and friend to this position and favored his friend by changing the competencies of the position to include Arabic since the friend was an Arabic speaker.

39. UNDP was aware that he needed to inform UNICEF six months in advance of the expiration of his secondment because he had informed his FRO, Mr. Ghulam about the six months' notice requirement for return to UNICEF.

40. UNDP denied him the opportunity to give this required six months' prior notice to UNICEF to enable him to find a position. The result of the Respondent's action is that he was separated from service after 16 years as he was unable to identify a suitable post in UNICEF for his re-absorption due to the short time afforded him. He has been unable to find alternative employment since.

41. Up until the date of the hearing of this Application, he is unemployed. He had been shortlisted for a job in Copenhagen but his candidacy was not considered due to the investigation started in the UNDP Sudan CO in March 2012

and which is yet to be concluded. UNICEF had also not considered him for a job because of the pending investigation.

42. As a consequence of the treatment he received, his career and reputation have suffered badly. He has been subjected to severe emotional distress, reputational damage and isolation.

43. The Applicant prayed for the following remedies:

- a. a declaration that the RR's decision not to extend his secondment by one year was improper;
- b. a finding that he is entitled to reinstatement; or compensation of one year's basic pay including lost benefits and entitlements; and
- c. an award of two years net base pay as compensation for moral damages.

Respondent's case

44. The Respondent's case is summarized below:

45. There is no evidence that UNDP Sudan had directly and personally promised the Applicant an extension of his secondment for an additional year. The evidence reveals that the status of contract renewals at the time of the meeting of 29 February 2012 was still at the recommendations stage, at least until April 2012, and that those recommendations were only non-binding advice.

46. The Applicant was not entitled to a fourth year of secondment. While four years may be the maximum period allowed by UNICEF for secondments, it is only an internal policy within UNICEF which is not binding on UNDP. Going by the "Inter-Organization Agreement Concerning Transfer, Secondment or Loan of Staff among Organizations applying the United Nations Common System of Salaries and Allowances" ("the Inter-Organization Agreement"), secondments normally do not exceed two years and any extensions beyond two years are

subject to agreement by all parties concerned. As such, UNDP was at liberty to decide whether or not a secondment would continue.

47. The decision of 26 April 2012 to extend the Applicant's appointment for only three months pending on-going investigations against him was a valid exercise of managerial discretion and was not vitiated by any improper motives or discriminatory treatment.

48. The decision of Mr. Al-Za'tari to appoint Mr. Burawi to temporarily fill the Applicant's position during his administrative leave was properly taken.

49. The inclusion of Arabic as a language requirement for the post of OM for UNDP Sudan was necessitated by the shortage of Arabic speaking staff members within senior management in the CO. Arabic is a United Nations language and Sudan is an Arabic speaking country.

50. The Applicant's claim that the Arabic language requirement was targeted at barring him from the post and at favouring an "acquaintance" of the RR who is a native Arabic speaker is unfounded. Further, the inclusion of Arabic as a language requirement was endorsed and encouraged by the Office of Human Resources at Headquarters.

51. There is no evidence that the placement of the Applicant on administrative leave was the reason behind the non-renewal of his secondment for one year. The three-month extension offered to him was only meant to allow the completion of the investigation.

52. The Applicant has not appealed the decision to place him on administrative leave and as such he is not in a position to challenge its legitimacy and propriety since that matter is not properly before the Tribunal.

53. The Applicant is not entitled to any compensation as he has not provided any evidence of suffering, damage to his reputation or emotional distress. His claim that he was separated from service as a result of the Respondent's actions is untrue.

54. The Inter-Organization Agreement makes no mention of a duty to notify the releasing Organization six months in advance of the expiration of secondment and UNDP is unaware of such a requirement by UNICEF.

55. The Respondent prayed the Tribunal to reject the Application in its entirety.

Issues

56. The Tribunal has framed the legal issues arising out of this case as follows:

- a. Did the Applicant have a legitimate expectation of a one year extension of his secondment contract?
- b. Is there a United Nations/UNDP rule or policy that stipulates that secondments automatically expire upon completion of the third year?
- c. Was there an official UNDP policy that staff on secondment to the agency would be removed in order to accommodate displaced UNDP staff or those needing career progressions? Was the Applicant's post required to absorb displaced UNDP staff members?
- d. Was the Applicant treated with fairness, good faith and dignity by the new RR and UNDP? Was there discrimination or other improper motives on the part of the said RR? Is managerial discretion a legal basis for overturning a valid administrative decision?
- e. The role of management evaluation: is it that of advocate for the manager?

Considerations

Did the Applicant have a legitimate expectation of a one year extension of his secondment contract?

57. It is the case of the Applicant that he had a legitimate expectation that his secondment to the UNDP Sudan CO would be extended by a further year for the period July 2012 – June 2013. I shall hereunder review the evidence relevant to this question.

58. The Applicant testified that he had on 19 January 2012, informed UNICEF that UNDP would request a fourth year extension of secondment for him as shown in Annex 4. UNICEF had replied that the extension to be approved by the Office of the Executive Director (OED) would be the last approval since UNICEF did not allow its staff to be away for more than four years on secondment.

59. In support of his claim of a legitimate expectation of extension of his contract by UNDP, the Applicant testified also that he was present at a CMG meeting of the CO in his capacity as Operations Manager on 29 February 2012. The agenda of the said meeting included a review of the contracts of all professional staff members in the CO and a decision was taken to grant a year's extension of all such contracts at the CO including his own.

60. A witness for the Applicant, Mr. Mustafa Ghulam was the Applicant's supervisor and the Deputy Country Director in charge of Operations (DCDO). He testified that he was present at the CO CMG meeting of 29 February 2012. He told the Tribunal that at that meeting, the extension of staff contracts was discussed and that a firm decision was taken to extend international staff contracts including that of the Applicant. The contracts of both the Applicant and the Deputy Country Director, Programs (DCDP) who were present at the meeting were mentioned and a decision taken to extend them.

61. Although, according to the witness, no letter was given to the Applicant conveying the decision to extend his contract, the decisions taken were then followed up as usual by informing the Human Resources Office to process the

contract extensions. Thereafter, there was a temporary halt to the extensions because the new RR did not want the extension of a number of staff mainly of Asian origin. Eventually, all contracts were extended except that of the Applicant.

62. It was Mr. Ghulam's testimony also that the records of the 29 February 2012 meeting were shared with him and other attendees and kept in the electronic folder in the office for retrieval if necessary. In answer to a question by the Tribunal, the witness said that no subsequent management meeting took place to reverse the decisions taken on 29 February 2012.

63. When cross-examined, the witness said that the CO CMG meeting decided that all staff on extra-budgetary posts would be extended because the funding was stable and also that the Applicant was affected by that decision since he was on an extra-budgetary post. He said that an aide memoire, Annex 16, was made by him.

64. While making out the Respondent's case, the first witness for the Respondent, one Abusabeb El Sadiq of the UNDP Sudan Office, said that at the times material to this Application he served in that office as head of the MSU. He told the Tribunal that he was in attendance and took notes at the meeting of the CO CMG held on 29 February 2012 at which the subject of contracts extension was discussed among other agenda items.

65. He said that a list of all the staff at the CO including international positions was provided by the HR and examined at the meeting. He took notes on action points to be followed up later. His notes or minutes of the said meeting was titled "Key Action Points Summary of Management Meeting, Wednesday 29 February 2012" and was tendered before the Tribunal in the Applicant's bundle as Annex 5. The Applicant and another staff member present at that meeting were among those affected by the decision to extend the contracts of staff of the CO.

66. Mr. Sayed Aqa was the UNDP Country Director at the times material to this case. He was called by the Tribunal. He testified that on 29 February 2012, the regular CMG meeting of the CO was held and chaired by him. There, staff contracts were reviewed and a decision taken that for positions where funds were available, they were all to be renewed for one year but for project staff whose

posts were dependent on funding, they would be dealt with case by case based on the availability of funding. Since the Applicant was part of the CO staff, it was decided that his contract would be extended by one year like the others.

67. When cross-examined by the Respondent's Counsel, the witness said that staff members all over the country were worried at the time about their contracts and so the office tried to inform them in good time about their contractual status. He said also that the process of decision-making with regard to the early extension of staff contracts had started months before the decision was taken on 29 February 2012 to extend them. The CO CMG meeting decided that all international staff would be extended for one year and the Applicant knew of the decision.

Was the country office management group meeting of 29 February 2012 irregular? Did the said management group meeting lack the authority to take decisions on its agenda items?

68. Mr. Al-Za'tari told the Tribunal that he took the decision that the Applicant's contract would not be renewed. He testified that before his arrival, a meeting was held on 29 February 2012 which he learnt about later. When he saw the minutes, he found that they were not conclusive and that they were not professional in dealing with personnel issues. The witness said there were no specific decisions on specific individuals made in the 29 February meeting. He had reviewed the staffing table to ensure clarity. In answer to a question in cross-examination, Mr. Al-Za'tari said he could not tell if the CO CMG later reversed any of its former decisions.

69. All the witnesses who were called by both parties and the Tribunal, excepting Mr. Al-Za'tari, testified that they were present at the said CO CMG meeting when a decision was taken to extend the contracts of all the international staff members in the country office for one year including that of the Applicant. The four witnesses further corroborated each other when they each told the Tribunal that the Applicant was present at that meeting and knew of the decision to extend his contract and that of others. The decision was not conveyed to the Applicant personally.

70. Although Mr. Al-Za'tari said he queried the CD who had been the *ad interim* RR before he was appointed, as to why a CMG meeting would be held a day before he arrived in Sudan; it was not the Respondent's case that the CMG in taking decisions at its meeting of 29 February 2012 had acted wrongfully or irregularly. There is no suggestion on the part of the Respondent that the CO CMG had acted *ultra vires* or outside its powers in considering personnel issues and taking decisions on the extension of staff contracts. In fact, there is evidence before the Tribunal that all the staff contracts that the said CO CMG meeting of 29 February 2012 had decided to extend were all eventually extended except that of the Applicant.

71. The Applicant's supervisor, Mr. Ghulam, who at the times material to this Application was the DCD in charge of Operations, testified that he followed up as usual by informing HR of the decisions taken at the meeting by an email on 3 April 2012 and directing it to process the contract extensions. He said that Mr. Al-Za'tari did not consult him with regard to the non-extension of the Applicant's contract. His account is not challenged by the Respondent.

72. In considering the question of whether a legitimate expectation was created in respect of the extension of the Applicant's contract, it is note-worthy that all the five witnesses who appeared before the Tribunal including Mr. Al-Za'tari are agreed that a CO CMG meeting took place in the Sudan CO on 29 February 2012, two days before the new RR came on board. All the five witnesses agree that personnel issues were discussed at the said meeting.

73. The Respondent's Counsel argued that although the Applicant attached minutes from the 29 February meeting with additional handwritten notes of the CD and acting RR who chaired the meeting, all these do not constitute evidence that the Applicant was promised that his secondment would be extended by one year. He argued further that what were reflected in the minutes were discussions and agreements which at best reveal an intention to renew but cannot constitute a firm or official commitment to the Applicant that his secondment would be renewed.

74. He also submitted that the fact that the Applicant was a participant at the meeting and was mentioned in the notes of other senior staff members present at the said meeting cannot constitute an official notification or a promise to him that his secondment would be extended.

75. In other words, the Respondent's case on this issue is that although a decision was taken to extend the Applicant's secondment at the CMG meeting of 29 February 2012, that decision did not constitute an "official" or "firm commitment" to the Applicant with regards to his contract extension.

76. Counsel for the Respondent cited the decisions in *Ahmed*, 2011-UNAT-153; and *Abdallah*, 2011-UNAT-138 in support of his argument that the Applicant had no expectancy of renewal. In both cases, the Appeals Tribunal held that

unless the Administration has made an 'express promise' ...that gives a staff member an expectancy that his or her appointment will be extended, or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member's appointment is not unlawful.

77. The argument of the Respondent is that "the circumstances of this case as described do not reveal any such firm commitment of the Administration."

78. There is clearly an agreement between all the parties in this case that the CMG meeting did take the decision to extend the Applicant's contract. While the new RR, Mr. Al-Za'tari, struggled to convince the Tribunal that the minutes of the 29 February 2012 meeting lacked clarity and that no decision was taken to extend the Applicant's contract, the case made out by the Respondent is that that decision is not a 'firm commitment' or an 'express promise' to the Applicant to extend his secondment contract.

79. The minutes of the CO CMG meeting are recorded and were tendered before this Tribunal. Typically, the minutes of a meeting are written records showing those who were present, issues discussed and decisions taken. There is no evidence that the relevant minutes in this case are secret or classified

documents. Even those staff members who were not at the meeting could have access to the minutes if they so desired.

80. This Tribunal finds that the decision taken at a regular and proper CO CMG meeting to extend the contract of a staff member, which decision is embodied in open recorded minutes and accessible to staff members, carry far greater weight than any 'express promise' that can be made to the said staff member about extending his contract. In *Kasmani* UNDT/2012/049, the Tribunal referred with approval to the view of the Secretary-General in a management evaluation review, that the promise made by Mr. Kasmani's supervisor created an expectancy of renewal of the Applicant's contract.

81. In the said *Kasmani* case, the Applicant's supervisor or FRO had assured him that his three-month temporary contract was likely to be renewed since a regular VA had not yet been issued for the post. In the instant case, it was not just the case of a promise by an FRO, but a decision taken by the Country Office's Core Management Group which only remained to be implemented. In fact, there is evidence that after the decision of the CMG, the Applicant's FRO directed the HR office to process the contract extension of the Applicant and others affected by the decisions made at the meeting of 29 February 2012. All of the contract extension decisions were later implemented except that of the Applicant.

82. In answer to the question as to whether there was a legitimate expectation on the part of the Applicant that his secondment would be extended for another year at the UNDP Sudan Country Office, the Tribunal finds and holds that the Applicant did in fact have a legitimate expectation of the extension of his contract.

83. This expectation was unequivocally created by virtue of the decision taken at the CO CMG meeting of 29 February 2012, which decision-making the erstwhile CD, Mr. Aqa, had testified, started months before 29 February 2012. That decision of the CO CMG carried far greater weight than any "express promise" that could be given by any individual officer to the Applicant.

Is there a United Nations/UNDP rule or policy that stipulates that secondments automatically expire upon completion of the third year?

84. The Applicant testified that, in January 2012, he was informed by the CO Management of its intention to request a fourth year of secondment based on the programmatic requirements of the UNDP Sudan office. The Applicant stated that he then informed UNICEF of this development and asked about the possibility of UNICEF agreeing to a fourth year extension of the secondment. UNICEF informed him by email that as soon as UNDP submitted the request in writing, it would be passed on to senior management for approval. Annex 4 is the email chain showing the communication on this issue between the Applicant and UNICEF.

85. Whereas at the CO CMG meeting of UNDP Sudan in February 2012, it was decided that the Applicant's contract would be extended for a fourth year, the new RR, Mr. Al-Za'tari, had subsequently in a letter dated 26 April 2012, advised the Applicant while he was on administrative leave, that "under regular circumstances, UNDP would not have sought a further extension of his secondment". He thereupon informed the Applicant that his secondment would not be extended for a fourth year but only by three months to complete on-going investigations against him. He made it clear that the only and sole reason for the offer of a three-month contract extension was to allow time to conclude the investigations which could lead to disciplinary action against the Applicant.

86. The subject of secondments within the United Nations system at the times material to this Application and up till the present time is governed by a document published by the Chief Executives Board (CEB) Secretariat of the United Nations System dated 25 June 2003 and titled "Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the UN Common System of Salaries and Allowances."

87. At its paragraph 2(d), "secondment" is defined as the "movement of a staff member from one organization to another for a fixed period, normally not exceeding two years... The period of secondment may be extended for a further period by agreement among all the parties concerned".

88. In view of the foregoing provisions of the Inter-Organization Agreement concerning secondments and other movement of staff, no policy within the United Nations Common System stipulates that a secondment would automatically expire upon the completion of its third year. After a period of two years, a secondment may be further extended where the parties agree.

89. In other words, there is no automatic expiry of a secondment after its third year within the United Nations Common System if the parties to the secondment are agreed on an extension.

Was there an official UNDP policy that staff on secondment to the agency would be removed in order to accommodate displaced UNDP staff and those needing career progressions? Was the Applicant's post required to absorb displaced UNDP staff members?

90. While replying to the Applicant's letter of 28 April 2012, the RR, Mr. Al-Za'tari, wrote on 2 May 2012 that UNDP had staff members in need of placement or career progression and so the prospect of another year's extension for the Applicant was out of the question. He further told the Tribunal in his testimony that UNDP had a policy that favoured its staff over other staff members that were with the agency on secondment. He said the UNDP always had the issue of its staff that were displaced and ways of re-absorbing them into the system.

91. While being cross-examined, the witness said he could not cite any written authority or policy of UNDP that embodied these claims but that he believed such a policy existed. In reply to yet another question, he said he did not cite the said policy or authority when he wrote to the Applicant.

92. Mr. Al-Za'tari in response to other questions told the Tribunal that a staff member on secondment "is not a UNDP staff member per se." He also admitted in cross-examination that Mr. Burawi who he chose to replace the Applicant had been known to him since 1999 and that he had served as Mr. Burawi's referee. He responded also that at the time that the said Mr. Burawi replaced the Applicant in the CO, he was still the Operations Manager for the DDR project and was not displaced or his position in UNDP abolished.

93. Still in cross-examination, the witness who had earlier testified that UNDP Sudan lost donors and resources and had to scale down the DDR project; told the Tribunal that he could not remember how many DDR staff members he had absorbed into other positions in UNDP Sudan.

94. Clearly, no official policy exists in the United Nations or UNDP that favours any category of staff members over others. There is evidence that the Applicant had competed for the position of Operations Manager at the UNDP Sudan CO in 2009 and was selected. He opted to be seconded to UNDP since he was at the time a staff of UNICEF.

95. For the lawful duration of that secondment, the Applicant was not a “second-class” staff member of the UNDP who could be shown the door whenever other staff of UNDP were displaced or needed career progression. The Tribunal agrees with the Applicant’s argument that Mr. Al-Za’tari’s position that a seconded staff member did not have the right of extension of his contract offended the stated policy of the United Nations to encourage mobility.

96. It is also not in any doubt in this case that at the time that the new RR, Mr. Al-Za’tari, unilaterally over-turned the lawful decision of the CO CMG of the Sudan CO to extend the Applicant’s secondment by one year, no staff of UNDP Sudan was displaced and needed placement.

97. The Tribunal finds it difficult to appreciate how a staff member, who has not attained the pensionable age, can be refused a renewal of his employment contract because another staff member needs career progression. Nowhere in the Organization’s rules or practices does such a bizarre reason exist to deny the extension of a contract.

Was the Applicant treated with fairness, good faith and dignity by the new RR and UNDP? Was there discrimination or other improper motives on the part of the said RR? Is managerial discretion a legal basis for overturning a valid administrative decision?

98. It is the case of the Applicant, that in his exit from UNDP, he was not afforded the basic duty of good faith and fair treatment that is an inherent part of the Staff Regulations and Rules. He argued that the Respondent's claim of administrative discretion applied by the RR in over-turning the earlier decision to extend his secondment cannot be unfettered and that there is a duty on the Organization to act fairly, justly and transparently in its dealings with staff members.

99. The Applicant cited the decision in *Shashaa* UNDT/2009/034 in which it was held that a universal obligation exists on the part of both employer and employee to act in good faith towards each other including acting rationally, fairly, honestly and in accordance with due process. He also cited the case of *Kasmani* UNDT/2009/017 where the Tribunal held that unfettered administrative discretion is inimical to the rule of law.

100. It was submitted on behalf of the Applicant that this Application showcases a series of unfair administrative actions and decisions, including the decision to place him on administrative leave pending investigations over the allegations of some disgruntled staff members.

101. On the part of the Respondent, it was argued that the decision to extend the Applicant's secondment for three months rather than one year, pending investigations, was a valid exercise of managerial discretion and was not vitiated by discriminatory treatment or other improper motives.

102. It was the Respondent's case also, that had the Applicant not been placed on administrative leave pending investigations, UNDP would not have offered to further extend his secondment at all.

103. In considering the issue as to whether the Applicant was unfairly treated by the new RR, and by extension UNDP, it is clear that the question relates to the actions and decisions and a pattern of conduct towards the Applicant in the UNDP Sudan CO following the assumption of duty of the new RR, Mr. Al-Za'tari, on 2 March 2012. At paragraph 32 of the Applicant's pleadings, it is stated that since the arrival of the new RR, there was a pattern of unfair treatment meted out to him. The Tribunal will examine these questions under four sub-headings.

a. *The Applicant's physical removal from the UNDP Country Office in Sudan*

104. On 23 March 2012, exactly three weeks after the assumption of duty of the new RR, the Applicant was placed on administrative leave on the recommendation of the said RR as a result of a string of complaints made against the Applicant by some female staff members alleging sexual harassment in previous years. It is necessary at this juncture to note that neither the merits of the said administrative leave nor the merits of the investigation are the subject-matter of this Application.

105. The Applicant gave testimony, however, as to the manner in which he was informed of the decision to place him on administrative leave and the treatment he received thereafter. According to the Applicant, on 23 March 2012, Mr. Al-Za'tari entered his office while he was in a meeting with colleagues from the Copenhagen office. The RR was accompanied by a number of officers which included an investigator, a security officer, the country director and another senior staff member.

106. The RR proceeded to order the staff members from the Copenhagen office to leave the Applicant's office and then asked the investigator that he brought with him to read the allegations made against the Applicant to him. The Applicant was immediately given a list of allegations and a letter placing him on administrative leave. After that, the RR asked the security officer to escort the Applicant out of the office, ordering that he must not be allowed to talk to anyone.

107. The then CD, Mr. Aqa, told the Tribunal that the RR had called him on the day in question and asked to go with him (RR) and others to the Applicant's office to inform the Applicant that he was being placed on administrative leave. The witness said that he thought that the way in which the Applicant was sent out of the office was most inhumane.

108. In answer to a question from the Tribunal, Mr. Al-Za'tari stated that he was told that it is the procedure of UNDP for the RR to lead other senior officers to the office of the staff member to be placed on administrative leave and to order the staff member out.

109. The Tribunal notes that it is this Organization's legal position that placement on administrative leave is not a disciplinary action by itself nor does it constitute a finding of guilt.¹ It is further noted that every staff member is entitled to the basic human right to dignity especially in the work place. It needs to be properly under-scored that no manager, however highly placed, should breach a staff member's right to dignity in the workplace, especially when the staff member in question does not become unruly, noisy or constitute a nuisance; by ordering a security officer in the full view of others to march him out of the work premises.

110. Mr. Al-Za'tari told the Tribunal that he had been in the service of UNDP since June 1980 and had held high positions even at the regional level and at headquarters. He was in fact the Deputy Director at the UNDP Bureau of Management (BOM) at UNDP Headquarters in New York before his posting to the Sudan CO. It beggars belief that such a long-serving and highly-placed officer of UNDP would need advice from undisclosed sources or anyone for that matter to treat a staff member so inhumanely in the process of sending him or her on administrative leave.

111. The UNDP Legal Framework for addressing non-compliance with UN standards of conduct (UNDP Legal Framework) does not stipulate or imply in any way that staff to be placed on administrative leave be humiliated publicly. In fact,

¹ UNDP Legal Framework For Addressing Non-Compliance With UN Standards of Conduct, 6 November 2007.

the action of making the Applicant a public spectacle by the unwarranted display conducted and supervised by Mr. Al-Za'tari breached the duty of confidentiality in investigations as the treatment of the Applicant in the circumstances was no better than being placed in handcuffs in public view. It did not speak well either for the humanitarian image of UNDP.

b. Unduly protracted investigation of the Applicant

112. The Applicant pleaded at paragraph 32 of his Application that in spite of being removed from his post and being placed on administrative leave for three months, the investigation against him was never finalized. The Respondent at paragraph 36 of his Reply stated that the refusal of the Applicant to accept a three-month offer of the extension of his secondment with UNDP pending investigations prevented the process from being brought to completion. He did not explain how he came about that position.

113. However, Annex 9 of the Application shows emails between the Applicant and the investigator dated 19 May 2012 in which the Applicant gave information that he was travelling to his home country for a certain period and gave details as to how he could be reached and also stating that if he was needed earlier by the investigator, he would return. The Respondent did not make any case that the Applicant had delayed the investigation.

114. The investigation on the Applicant's alleged misconduct was commenced by the UNDP Office of Audit and Investigations (OAI) when the Applicant was read a list of allegations by the investigator who escorted the RR to his office on 23 March 2012. As at the last date of the hearing in this case on 14-15 August 2013, about 17 months later, the said investigation had not yet been concluded. According to the Applicant's testimony, four of the complaints against him had been closed while the investigation is still open into one complaint. In answer to a question from the Tribunal, Mr. Al-Za'tari stated that he had received a letter in which he was informed that the investigation was concluded and the result forwarded to the UNDP Office of Legal Support (OLS).

115. Whereas the UNDP Legal Framework provides that to the extent possible, an investigation should be concluded within six months, this provision has not been complied with.

116. It is somehow ironic that within three weeks of taking up duties in Sudan, the RR had received and processed allegations of misconduct against the Applicant, recommended and obtained administrative leave against him and personally supervised his exit from the office; but 17 months on, neither the said RR nor UNDP have seen the end of the investigation they initiated.

117. This definitely amounts to unfair treatment because even though the Applicant has been separated from service, the lack of closure in relation to the investigation remains a constant and heavy load.

118. The Applicant testified that his professional reputation was affected as a result of the administrative leave and prolonged investigation as it has been difficult for him to find another job.

119. The Tribunal finds that harm was done to the Applicant by placing him under unending investigations for allegations that amount to criminal conduct. For how does a person, who has the sword of Damocles as it were, hanging over him in the form of an investigation for criminal conduct; stand any chance of finding other employment within or outside of the UN system?

120. Even as the Tribunal prepares to issue this Judgment, nearly two years after the investigation started, its inquiry to the Respondent's Counsel on whether the investigation report is out has been met with silence. Good faith and fair treatment require that both Mr. Al-Za'tari and the UNDP should have done their utmost best to see to the conclusion, one way or the other, of their investigation of the Applicant within a reasonable time.

Change in the competencies of the post formerly encumbered by the Applicant

121. With regard to the VA published to fill the post of Operations Manager previously held by the Applicant, it is the case of the Applicant that the change made by the RR to include Arabic language was targeted to exclude him and that

upon applying for the post, he was not even shortlisted. He testified that in the three years he had worked as OM in the UNDP Sudan CO, he was rated as having “exceeded performance expectations”.

122. The RR in his testimony stated that he discussed the inclusion of Arabic in the VA with the then Country Director Mr. Aqa and the Deputy Country Director/Director of Operations Mr. Ghulam who was also the Applicant’s FRO. He said that Arabic is not required for the post of Director of Operations but because, according to him, a sizeable part of the Operations Manager’s functions involved dealing with the Foreign Affairs office in Sudan; by adding Arabic in letters to the Government, there was greater clarity instead of general statements.

123. Mr. Aqa stated that he was never consulted by the RR in making Arabic a requirement for the post of Operations Manager in the new VA that was published. He said he opposed the VA and expressed the view that many candidates would be excluded especially female candidates. He said he also objected because Arabic was not required for any other position in the CO.

124. Mr. Aqa continued that because of the inclusion of Arabic language as a requirement, the CO had to seek a waiver as there were no female candidates. He also stated that he took no part in the recruitment of the new Operations Manager, Mr. Burawi, as the RR made it clear that all international posts would be filled by him alone.

125. Mr. Ghulam for his part also denied Mr. Al-Za’tari’s claim that he had consulted him when he changed the job description for the post of OM to include knowledge of Arabic. The witness told the Tribunal that in his view, fluency in Arabic was not a requirement for the job as the office had existed for a long time and Arabic had never been a requirement. He said he sent his objections on the issue to the RR but was overruled.

126. The entire recruitment, he said, was handled by the RR and HR at the CO. According to him, the RR had made it clear that he did not want any consultation and that he would do things in his own way. The RR also said he was mandated

by top management to change things and so he took decisions alone. The RR, the witness said, marginalized supervisors and dealt with staff directly.

127. Evidence was heard by the Tribunal that only the new RR and Mr. Burawi the OM whom he newly recruited were native Arabic speakers. The RR stated in his testimony that he felt that knowledge of Arabic was needed for the post of OM because if the language was added in correspondence with the Sudan Government, it would make for greater clarity. This raises the question as to whether clarity in correspondence between UNDP and the Government was an issue in the CO. There is no evidence that such was the case.

128. If indeed knowledge of Arabic was so sorely needed for better performance of the CO, why did other officers of various ranks, who also had to exchange correspondence with the Government (considering UNDP's extensive work in Sudan and its partnership with the Sudanese Government in different areas), not require knowledge of the Arabic language?

129. Moreover, when the newly-recruited OM who knew Arabic started corresponding with the Sudanese Government in Arabic, how would the other international staff members in the CO, including the OM's supervisor the Director of Operations, be expected to understand such correspondence, supervise the OM accordingly and deal with such correspondence since none of them in the CO knew the Arabic language?

130. It is not enough on the part of the RR to state that he obtained the approval of headquarters in New York to make the Arabic language a competency for the post of OM. Granted that it is UNDP's internal business as to how it carries out its operations in order to achieve its mandates; where however it becomes apparent that its senior officers in New York have failed to ask the right questions before granting such far-reaching approvals as a change in language requirement, the Tribunal will not fail to examine the circumstances that appear to have been unduly manipulated in an effort to unfairly exclude a staff member's candidacy.

131. This Tribunal has no doubt, that the new requirement of knowledge of the Arabic language inserted by the RR into the VA for the post of OM, which post

was formerly encumbered by the Applicant, was done in bad faith and targeted at preventing the Applicant from competing for the said post.

132. Mr. Al-Za'tari had testified that he took the decision not to extend the Applicant's secondment and that the said Applicant was "not a UNDP staff member per se." The CD, Mr Aqa, also told the Tribunal that Mr. Al-Za'tari had told him that he did not want the Applicant in the CO irrespective of the outcome of the investigation against him.

133. Mr. Aqa also confirmed that the contents of Mr. Ghulam's aide memoire indeed reflected what Mr. Al-Za'tari told him. The said aide memoire's material contents, in spite of being shared with the Respondent ahead of the Tribunal's hearing of this case, mostly remain unrebutted.

134. The Respondent's Counsel had submitted that Mr. Al-Za'tari's decision to overturn the earlier decision of the CO CMG and deny the Applicant an extension of his secondment for one year was a valid exercise of managerial discretion and that UNDP is at liberty to decide whether or not a secondment should continue.

The place of managerial discretion

135. On the issue of managerial discretion, it was held in *Kasmani*² that "unfettered discretion is inimical to the rule of law." Also in the case of *Contreras*³, this Tribunal, while examining the meaning and limits of managerial discretion, had this to say:

Discretion while being the power or right to act according to one's judgment, by its nature involves the ability to decide responsibly. It is about being wise and careful in exercising a power. In public administration, both power and discretion must be used judiciously. The administrator does not exercise power for its sake or other extraneous reasons but only in furtherance of the institution's interest.

136. The prime questions here are: (a) whether the RR had discretion to unilaterally overturn an administrative decision already taken by a competent

² UNDT/2009/017, at para. 9.5.2.2.

³ UNDT/2010/154, at para. 74.

body such as the CO CMG?; (b) Did he also have discretion, to solely recruit an old friend for whom he was a referee or recommender, to an international post in the CO? Certainly, the answers are No!

137. This is because as soon as Mr. Al-Za'tari began to delude himself that he was UNDP rather than the officer to provide the UNDP office in Sudan with leadership, and that he did not need his management team to function and also that he could unilaterally overturn prior administrative decisions; he was acting for himself and abusing his authority. He was not acting in the interest of the agency or organization. Clearly this amounted to a lack of integrity.

138. United Nations core competencies for every staff member include communication and team work. Managerial competencies include leadership and building trust. Sadly, the evidence was stacked against Mr. Al-Za'tari that he lacked these competencies. He even testified that he by himself took the decision that the Applicant's secondment would not be renewed against an earlier decision by a competent core management team!

139. The Tribunal observes that it is most unfortunate that the RR discriminated so blatantly against the Applicant, sent him out of the workplace with unnecessary force and drama while unilaterally overruling the CMG's decision to extend his contract.

140. He then sought to clutch at straws when he stated in his testimony that the decision taken by the CMG on 29 February 2012 to extend staff contracts, lacked clarity. It is in evidence that he did not convene another CMG meeting of the CO to overturn its earlier decision. In condoning all of these actions of Mr. Al-Za'tari and in fact trying to defend them, as was evident from the defensive stance adopted in the management evaluation review, the UNDP leadership in New York cannot escape the blame and vicarious liability arising from Mr. Al-Za'tari's unfair treatment of the Applicant.

141. Having weighed and reviewed the totality of the evidence with regard to whether the Applicant was treated fairly by the RR and the UNDP office in Sudan, the Tribunal makes no hesitation in finding and holding that the Applicant

was not afforded the basic duty of fair treatment, good faith and the right to dignity in the workplace to which every staff member is entitled.

The role of management evaluation or review: is it that of advocate for the manager?

142. General Assembly resolution 62/228⁴, which established the new internal justice system, emphasizes the need to have in place a process for management evaluation that is efficient, effective and impartial.⁵

143. Similarly, in section 10 of ST/SGB/2010/9 (Organization of the Department of Management), the role of the Management Evaluation Unit is defined to include the conducting of impartial and objective evaluation of administrative decisions contested by staff members in order to assess whether such decisions were made in accordance with the applicable rules and regulations.

144. Clearly, that the process of administrative review or management evaluation ought to be independent, fair, responsible and impartial are pivotal requirements in the internal justice system. While UNDP may have a separate management evaluation and review body from that of the Secretariat, the requirements of independence, fairness, responsibility and impartiality are cross-cutting in the United Nations system and these standards are binding on UNDP.

145. A paragraph from the management evaluation response that the Applicant received from UNDP dated 28 June 2012 reads as follows:

As a preliminary matter, it bears noting that your secondment would not have been extended beyond its current expiry on 30 June 2012 as outlined in the Resident Representative's letter of 26 April 2012. The Resident Representative had to take into account that UNDP has staff members on UNDP letter of appointment, not on secondment, who need placement. In particular, by way of example, as you are aware, the Decommissioning, Demilitarization and Reintegration project (DDR) in UNDP Sudan is coming to an end by the end of 2012. As a result, many UNDP staff members are already displaced, and many more will be by the end of the year.

⁴ (Administration of justice at the United Nations), adopted on 22 December 2007.

⁵ Ibid, at para. 50.

146. Gauging from this paragraph alone, it becomes evident to the Tribunal, that the management evaluation was conducted with a total lack of independence, undue partiality and a bias towards justifying the contested actions of the concerned manager, Mr. Al-Za'tari.

147. It is apparent the management evaluation had simply reproduced the untrue reasons given by Mr. Al-Za'tari for his decision and argued a case for him. The DDR project has not ended even as this judgment is issued but was scaled down by 2013. Mr. Burawi, who was brought in to replace the Applicant, was not a displaced staff member, his position had not been abolished at the material time and Mr. Al-Za'tari even testified to this.

148. The Tribunal's jurisprudence is very clear that the reasons given for non-renewal of a contract must be accurate. At the time that the Applicant was first told by the RR in a letter of 26 April 2012 that his secondment would not be extended, the reason given him was that UNDP "under regular circumstances" would not extend his secondment for a fourth year.

149. Following the Applicant's response that the CO CMG had decided earlier that his secondment be extended, the RR wrote to him to say that he could not be extended because UNDP had staff members in need of placement and career progression. The management evaluation did not objectively examine the issue of different reasons given by the RR on different occasions.

150. The UNDP management evaluation again ignored the earlier decision of the CO CMG to extend the Applicant's contract which was unilaterally overruled by the new RR and the implications of such an action. Rather, a defence of how reasonable it was for the RR to want to review staffing decisions regarding international staff members was made.

151. The entire management evaluation response is replete with examples of efforts at justifying the contested actions rather than conducting an independent, objective and impartial assessment of whether or not the applicable rules and practices were complied with in the actions of Mr. Al-Za'tari. There appeared to

be no efforts made at ascertaining the truth of the happenings in the far-flung Khartoum office.

152. Interestingly, the arguments, explanations and conclusions employed in the management evaluation were copied almost in their entirety and pasted to become the Respondent's Reply to this Application.

153. It needs to be emphasized that those officers within the United Nations, who are tasked with conducting management evaluation in emerging disputes, must discharge this function with the highest sense of objectivity and responsibility. This is because the core reason for affording management an opportunity to review its contested actions and decisions before they would be brought before the Tribunal is so that it can reconsider such actions and decisions and correct its errors where necessary and in that way minimize litigation.

154. In this case, the management evaluation had only devoted its efforts to defending the contested actions of the RR. This stance must be thoroughly condemned by the Tribunal as dishonest and irresponsible for its inability to stand up to scrutiny. Instead of an independent and impartial review, what the UNDP management evaluation has done is to subvert and demean its role in the internal justice system.

Accountability of United Nations' Managers

154. It has often been stressed 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. The Tribunal accordingly refers Mr. Al-Za'tari to the Administrator of the UNDP for the purpose of considering what action should be taken in respect of his unwarranted public humiliation of the Applicant in the UNDP Country Office premises in Sudan on 23 March 2012; and for his lack of integrity in the process leading up to his unilateral non-renewal of the Applicant's secondment and his replacement.

Findings/Conclusions

155. The summary of the Tribunal's findings are as follows:

a. The Country Office's Core Management Group meeting of 29 February 2012 decided that all international staff, including the Applicant, would be extended for one year and the Applicant knew of the decision. The Applicant therefore, had a legitimate expectation of a one-year extension of his secondment contract.

b. The decision taken at a regular and proper Country Office's Core Management Group meeting to extend the contract of a staff member, which decision is embodied in open recorded minutes and accessible to staff members, carries far greater weight than any 'express promise' that can be made to the said staff member about extending his contract.

c. There is no automatic expiry of a secondment after its third year within the United Nations Common System if the parties to the secondment are agreed on an extension.

d. At the time that Mr. Al-Za'tari unilaterally over-turned the lawful decision of the Country Office's Core Management Group to extend the Applicant's secondment by one year, no staff of UNDP Sudan was displaced and needed placement. Nowhere in the Organization's rules or practices does such a bizarre reason exist to deny the extension of a contract.

e. Placement on administrative leave is not a disciplinary action by itself nor does it constitute a finding of guilt. Every staff member is entitled to the basic human right to dignity especially in the work place. No manager, however highly placed, should breach a staff member's right to dignity in the workplace, especially when the staff member in question does not become unruly, noisy or constitute a nuisance; by ordering a security officer in the full view of others to march him out of the work premises.

f. The UNDP Legal Framework does not stipulate or imply in any way that staff to be placed on administrative leave be humiliated publicly. The action of making the Applicant a public spectacle in the unwarranted display conducted and supervised by Mr. Al-Za'tari breached the duty of confidentiality in investigations as the treatment of the Applicant in the circumstances was no better than being placed in handcuffs in public view. It did not speak well either for the humanitarian image of the UNDP.

g. The UNDP Legal Framework provides that to the extent possible, an investigation should be concluded within six months, this provision has not been complied with.

h. Harm was done to the Applicant by placing him under unending investigations for allegations that amount to criminal conduct.

i. The new requirement of knowledge of the Arabic language inserted by Mr. Al-Za'tari into the VA for the post of OM, which post was formerly encumbered by the Applicant, was done in bad faith and targeted at preventing the Applicant from competing for the said post

j. Mr. Al-Za'tari discriminated blatantly against the Applicant, sent him out of the workplace with unnecessary force and drama while unilaterally overruling the CMG's decision to extend his contract.

k. The Applicant was not afforded the basic duty of fair treatment, good faith and the right to dignity in the workplace to which every staff member is entitled.

l. The management evaluation was conducted with a total lack of independence, undue partiality and a bias towards justifying the contested actions of Mr. Al-Za'tari. The management evaluation simply reproduced the untrue reasons given by Mr. Al-Za'tari for his decision and argued a case for him. Instead of an independent and impartial review, what the UNDP management evaluation has done is to subvert and demean its role in the internal justice system.

m. Mr. Al-Za'tari displayed a lack of integrity in the process leading up to the non-renewal of the Applicant's appointment.

Judgment

156. In view of the foregoing, the Tribunal grants the following reliefs:

a. The Applicant is entitled to nine month's basic pay for the occasioned separation from service as a result of the unilateral decision of Mr. Al-Za'tari to overrule the earlier decision of the CO CMG to extend his secondment by one year.

b. The Applicant is entitled to USD16,000 as compensation for moral damages occasioned by humiliation caused him in the workplace and the burden and consequences of a two-year old investigation.

157. It is also ordered that the report of the investigation commenced by the UNDP in March 2012 into allegations of prohibited conduct against the Applicant be officially issued by or before 28 February 2014.

158. The monetary reliefs awarded the Applicant are to be paid within 60 days from the date the Judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the 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.

159. The case is referred to the Administrator of UNDP 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. Al-Za'tari for his unwarranted public humiliation of the Applicant in the workplace and lack of integrity in the process leading up to the non-renewal of the Applicant's secondment.

(Signed)

Judge Nkemdilim Izuako

Dated this 17th day of February 2014

Entered in the Register on this 17th day of February 2014

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi