



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/034

Judgment No.: UNDT/2024/012

Date: 11 March 2024

Original: English

Before: Sean Wallace

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

BHAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Manuel Calzada, MC LEGAL FZ LLC

Counsel for the Respondent:

Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat

Maria Romanova, DAS/ALD/HR, UN Secretariat

Introduction

1. The Applicant is a former Regional Administrative Officer working with the United Nations Support Office in Somalia (“UNSOS”). He filed an application with the United Nations Dispute Tribunal (“UNDT/the Tribunal”) in Nairobi on 23 March 2023 to contest the decision dated 23 December 2022 imposing on him a disciplinary measure of dismissal.
2. The Tribunal held a hearing on the merits from 22 to 25 January 2024 at which the testimonies of 11 witnesses, including the Applicant, were taken.
3. The parties filed their closing submissions on 14 and 16 February 2024 respectively.

Facts

4. The contested decision, taken by the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”), was conveyed to the Applicant by a letter dated 23 December 2022 from the Assistant-Secretary-General for Human Resources (“ASG/OHR”).
5. This disciplinary measure was based on a finding that the Applicant had engaged in a pattern of behaviour in the period between January 2019 and October 2021 involving multiple acts of sexual harassment and harassment affecting multiple victims—V01, V02, V03, V04 and V05—accompanied by multiple attempts at abusing his authority in respect of V01.
6. Specifically, in relation to V01, it was alleged that the Applicant engaged in one or more of the following acts between January 2019 and October 2021:
 - a. In January 2019, he requested that V01 enter into a romantic relationship with him, and told V01 that she would benefit from such a relationship as he could assist her to gain employment with the Organization;

- b. After V01 declined to have a relationship with him, the Applicant made unwelcome comments to her, continually requesting that she have a romantic relationship with him and seeking to engage with her in social settings;
- c. On or about 8 March 2019, the Applicant grabbed V01's wrist while he was trying to speak with her and told her that she would succumb to his advances;
- d. On several occasions, he knocked on V01's accommodation's door (i.e., her private living quarters) late at night and asked her to open it and let him in;
- e. On or about 14 January 2020, the Applicant shouted at V01 when she was promoted to the position of Camp Coordinator for a United Nations contractor, Almond Air and Logistics ("Almond"), and made rude and threatening remarks towards her and Almond; and/or;
- f. The Applicant attempted to limit V01's interactions with others at the camp at Jowhar, Somalia, particularly men;
- g. In or about July 2021, the Applicant attempted to enter V01's room (i.e., her private living quarters) without her permission;
- h. On or about 4 August 2021, the Applicant shouted at V01 and behaved in an aggressive and threatening manner towards her when she informed him of her upcoming leave, including threatening that V01 would not return to Jowhar if she took her leave; and
- i. Between August and September 2021, the Applicant attempted to have V01 removed from Jowhar without reason, including by pressuring V01's Almond supervisors to rotate V01 away from Jowhar.

7. In relation to V02, it was alleged that the Applicant engaged in the following conduct:

a. In or about the first week of February 2020, at about 10 p.m., the Applicant knocked on V02's accommodation's door (i.e., the door of her private living quarters), he opened it and tried to enter her room without V02's permission; and/or

b. In or about May 2020, at about 9.30 p.m. while V02 was in the camp taking her exercise, the Applicant requested that V02 come to his office.

8. In relation to V03, it was alleged that the Applicant engaged in the following conduct:

a. In March 2019, at about 10 p.m., the Applicant knocked on the door of V03's accommodation (i.e., her private living quarters) and called out her name;

b. In early 2020, the Applicant shouted at V03 for arriving late to the Tukul (i.e., the camp bar and cafeteria) to collect her dinner and continued shouting at V03 after she requested that he lowers his tone; and/or

c. On 26 August 2021, he sent V03 a series of WhatsApp messages at night that were personal in nature and seeking social closeness with her.

9. In relation to V04, it was alleged that on 30 October 2019, the Applicant engaged in the following conduct:

a. During a celebration at the Tukul, he informed V04 that he held a position of power and offered to facilitate her to obtain a job with the Organization. After V04 declined his offer, the Applicant placed his hand on V04's lap or upper thigh, followed V04 to the dance floor after she had removed his hand and walked away from him, and he danced close to and followed V04 around such as to make her feel uncomfortable and leave the party; and/or

b. He followed V04 to her room (i.e., her private living quarters) and knocked loudly on her door, asking repeatedly to be let in.

10. In relation to V05, it was alleged that on 30 October 2019, the Applicant engaged in the following conduct:

a. During a celebration at the Tukul, he danced closely to and followed V05 around such as to make her feel uncomfortable and leave the party; and/or

b. He knocked loudly on V05's door of accommodation (i.e., her private living quarters), asking repeatedly to be let in.

Consideration

Standard of review in disciplinary cases

11. According to the UNDT Statute, as recently amended, in reviewing disciplinary cases, “the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant's due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence” (Article 9, para. 4). The Statute generally reflects the jurisprudence of the United Nations Appeals Tribunal (“UNAT”), see e.g., *AAC* 2023-UNAT-1370, para. 38; *Miyzed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024).

12. UNAT has clarified that “When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse” (*Sanwidi* 2010-UNAT-084, para. 40).

13. The Appeals Tribunal has, however, underlined that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him” or otherwise “substitute its own decision for that of the Secretary-General”. In this regard, “the Tribunal is not conducting a “merit-based review, but a judicial review”, explaining that a “judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision” (*Samwidi, op. cit.*).

Whether facts were established by clear and convincing evidence

Basic jurisprudence on the evidentiary burden and how to assess evidence in sexual misconduct cases

14. In disciplinary cases, “when termination is a possible outcome”, UNAT has held that the evidentiary standard is that the Administration must establish the alleged misconduct by “clear and convincing evidence”, which “means that the truth of the facts asserted is highly probable” (*Negussie 2020-UNAT-1033*, para. 45). UNAT clarified that clear and convincing evidence can either be “direct evidence of events”, or may “be of evidential inferences that can be properly drawn from other direct evidence”.

15. Regarding the examination of evidence of sexual misconduct, the Dispute Tribunal held in *Hallal* UNDT/2011/046, para. 55, affirmed by the Appeals Tribunal in *Hallal 2012-UNAT-207*, that “in sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required”, because “[i]t is not always the situation in sexual harassment cases that corroboration exists in the form of notebook entries, email communications, or other similar documentary evidence, and the absence of such documents should not automatically render a complaining victim’s version as being weak or meaningless”. The Dispute Tribunal also held that “[a]s is always the case, any witness testimony should be evaluated to determine whether it is believable and should be credited as establishing the true facts in a case”.

The Applicant's submissions

16. The Applicant's position is that the Respondent has not proven the allegations to the required standard of clear and convincing evidence, and that even if the acts alleged are said to be proven, they cannot be characterized as sexual harassment or abuse of authority.

17. He contends that:

[t]his is a case of characterization by rumour and innuendo within a small circle of mainly non-United Nations personnel and contractors, where the Applicant never used any sexual terms in his communications with the alleged victims; where there was no physical touching or contact of any person. Where no vulgarities or profanities were ever used or claimed to have been used by the Applicant. Where no emails or messages with sexual content were sent. Where the word 'sex' or any of its possible connotations or permutations were never used. Where no threats are alleged to have been used by the Applicant for any purposes, let alone any sexual motivation, and where the Applicant, a Field Services Office Grade 4 was never in a position to negatively influence the career of any of the alleged victims involved, and where he could not and did not retaliate against any of the alleged victims.

Applicant's submissions concerning V01.

18. Regarding the first alleged victim, V01, the Applicant submits that her allegations are not true. He claims that they were self-serving to protect herself from legitimate delivery concerns the Applicant expressed over annual leave arrangements two years after the alleged incident is said to have taken place. Also, that whatever words were exchanged two years prior have been purposely misinterpreted to fit a sexual harassment narrative intended to protect the commercial interests of the Contractor, and also of V01.

19. The Applicant further denies that he approached V01 as alleged. He submits that this allegation arose only in August 2021 and in the context of the Applicant requesting UNSOS contract management for a temporary replacement of V01 during her absence on annual leave, and that of her proposed replacement when this person went on sick leave at the same time as V01 was on leave. At no stage in the correspondence from

the Applicant is there any indication that he sought for V01 to be fired or relocated elsewhere in UNSOS.

20. The Applicant, however, does not deny that he invited V01 to the Tukul Friday events. He, however, states that these invitations were not restricted or focused to V01 but that they were extended to every compound resident. V01 was not the sole resident invited, and the events were for all residents. V01 does not allege that the Applicant sought any private dinners or like events. V01 was invited to public events along all compound residents.

21. The Applicant elaborates that, in fact, the main allegation against him is not really of harassment of a sexual nature. He is alleged to have politely requested V01 to engage “in a relationship”, which she declined. At no stage is it alleged that he inappropriately persisted, or that he used any vulgar proposal, or sexual speech or actions.

Applicant’s submissions concerning V02

22. In relation to V02, the Applicant states that he does not recall at all going to knock at her door. He further avers that he could have expressed himself in a more polite and less authoritarian manner, but that in itself is not retaliation against any particular individual, let alone harassment or sexual harassment. He underscores that with his military background, when he speaks, someone may think that he is screaming, although he is not.

Applicant’s submissions concerning V03

23. Regarding V03, the Applicant vehemently denies knocking on her door. He states that his residence was close to V03’s accommodation, so there was no need of knocking as he could have called out and she would have heard his voice.

24. On 26 August 2021, two years after the 2019 incident, the Applicant sent what can be described as sad WhatsApp messages suggesting that they share tea. There was nothing vulgar, or insulting, or of a sexual nature in the communication. Nothing could

be read to cause humiliation to V03. V03 declined the offer without consequences or follow up.

25. V03 “perceived” this single exchange as a sexual approach, although nothing substantiates any sexual content or intent. Given the extensive talk and gossip among the women in the compound, it would not be unreasonable for V03 to form this perception, despite whatever the Applicant’s words or intentions were. It is certainly possible that the Applicant could have sought platonic friendship. There is no evidence of the contrary.

Applicant’s submissions concerning V04 and V05

26. In relation to V04 and V05, the Applicant submits that no allegation has been made by the purported victims of any sexual talk, or touching, or of sexual innuendo or requests of any kind, or of any vulgarities, or suggestions whatsoever. Neither V04 nor V05 had cause to warn the Applicant of any form of sexual impropriety.

27. V04 and V05, international police officers, do not fall under the Applicant in terms of any reporting lines, and were by their own accounts well trained in sexual exploitation and sexual abuse (“SEA”) and sexual harassment matters. One could well argue that their pre-deployment training geared them towards expecting to be sexually harassed and could have made them interpret any form of social exchange as being of a sexual nature, particularly when coupled with the prevalent gossip about the Applicant within the social group that developed among the alleged victims.

28. In any case, the Applicant denies the interpretation of the events on that day and has no recollection of a number of elements. In respect of the allegation that he “danced too close” and in the absence of any allegation of improper touching or physical contact, or sexual talk or suggestions, or requests of any kind, the allegations are too far-fetched to constitute any form of misconduct, let alone sexual misconduct or harassment.

29. Finally, the Applicant maintains that it is grossly unfair to in any way conclude that his alleged conduct with respect to the alleged victims could in any conceivable way be reasonably considered sexual harassment, or retaliation or that the statements and evidence gathered meet the required evidentiary standards to justify any disciplinary action.

Respondent's witnesses at the hearing on the merits

30. The Respondent called 11 witnesses at the hearing: the five alleged victims, five other people who worked at Jowhar camp or with contractors assigned there, and the Office of Internal Oversight Services ("OIOS") investigator. Their testimony will be examined below.

V01's testimony

31. First, the Tribunal heard from V01 who worked for a Jowhar contractor, Almond. She initially started working at the camp in 2019 as a Logistics Officer for water distribution pursuant to that contract. At that time, she was the sole female contractor in the camp and the only other women were police officers.

32. Her supervisor at Almond was Francis Habil, and the Engineering Section of the Organization evaluated the performance of Almond under the contracts.

33. The Applicant was the Regional Administrative Officer ("RAO") at the Jowhar camp. He frequently would tell others that "This is my camp. I am in charge. I can do whatever I want in this camp".

34. Almond later obtained contracts to provide laundry and cleaning services at the camp, and V01 was appointed as Almond's lead Team Coordinator for all these contracts.

35. V01 said that shortly after her arrival, the Applicant told her that he was interested in her and wanted to have a relationship with her. He said that, if she agreed to be in a relationship, then he would cover for her in the camp and help her to get a

job with the United Nations. The Applicant also told her that “he ran the camp” and she would benefit from the relationship because he would protect her and make her comfortable.

36. V01 responded that she was not interested in a relationship and considered herself to be married. She also said that she did not make a complaint at that time because, in her view, he was permitted to request a relationship and when she declined “he backed off”. So, there was no problem at that time.

37. However, when the Applicant later told V01 that “I am just giving you time”, V01 was offended and humiliated. According to her, the Applicant then began to apply pressure on her to succumb to his demands for a relationship.

38. The Applicant kept asking her to meet up with him or to have a drink with him. He told her that she was cute, and she looked good. On about three occasions, the Applicant grabbed V01’s hand and pulled her towards him saying “you will succumb to this passion” or “eventually you will bow down to my advances”.

39. V01 admitted that in his advances and requests to begin a relationship with her, the Applicant never said “sex” or used vulgar terms.

40. The Applicant also came to V01’s accommodation on several occasions, where he knocked on her door and shouted for her to let him in. This happened both in the late evening and in the early morning.

41. The Applicant required V01 to report to him because he was the RAO, even though her evaluation was to be done by the Engineering Section. At times he would pound on the table when speaking with V01.

42. The Applicant also threatened V01 saying that she was just a contractor, and he had power in the United Nations. He said he had worked for the United Nations for a long time and his mother was “a big shot” in the Organization. V01 did not know if this was true, but knew that the Applicant said it all the time to people in the camp.

43. The Applicant told V01 that he had influence over the Almond contracts and “just a phone call from him” would affect the contract. He also said that “with the click of a finger, I can make a call to Mogadishu” and threatened to end the Almond contracts.

44. In 2020, Almond lost the water contract although V01 cannot say if the Applicant actually made a call as he had threatened.

45. V01 reported this to her evaluator in the Engineering Section and was told that, although she only reported to that evaluator, the Applicant had power. V01 also reported the threats to Ms. Anne Marie Ndiokubwayo, an Electoral Officer who worked for the United Nations Assistance Mission in Somalia (“UNSOM”) at Jowhar. Ms. Ndiokubwayo also said that Almond only reports to the Engineering Section.

46. At one point, the Applicant told V01 that he was monitoring her movements and watching with whom she had contact. He said: “I know everything that is going on and who comes to your room. Why are you talking to these other people and not to me?”

47. Once, the Applicant came to V01’s room uninvited and unannounced, saying that he wanted to see what she needed in her room, so he would get it for her. When she blocked his entry, he said “I know you let other people into your room, why are you not letting me in?” Again, the Applicant said that he started the camp, he is in charge of the camp, and he decides what happens at the camp.

48. V01 also began to notice that other people in the camp were no longer talking to her. She felt that she was being isolated and asked several people why they were not speaking to her. They told her they had been warned that, if found speaking to her, they would be removed from the camp. V01 conceded that she could not say definitively if the Applicant had said this to them because she was not present. However, several people reported to her that the Applicant had said this.

49. Over time, several of the men with whom she interacted at the camp were removed from their contracting positions in the Jowhar camp. Again, V01 admits that she does not know the details behind these removals, but she believes that the sequence of events indicate that it was fulfilment of the Applicant's threats.

50. When V01 announced that she was taking leave approved by her employer, Almond, the Applicant was very angry. He said that she could not go on leave without his approval because he was in charge of the camp.

51. After she left on leave, the Applicant told others at Jowhar that "she is not coming back". He also contacted Almond to say he did not want V01 to come back to the Jowhar camp. Since there were no reported problems with her performance or that of other Almond employees she supervised, Almond allowed her to return to the Jowhar camp at the end of her approved leave.

52. V01 said that she was "tired and mentally drained" by the Applicant's treatment of her after she refused his advances.

53. The Tribunal notes that at the beginning of her testimony, V01 indicated that she was ill, on bed rest, and needed to be excused regularly to vomit. Nonetheless, she wanted to give her testimony. After about 45 minutes, the Tribunal suggested to break and continue her testimony later when she was feeling better. Four hours later, V01 returned to continue her testimony. At this time, she was much more focussed and better able to testify.

V02's testimony

54. Next, V02 testified that she joined the Jowhar camp in mid-January 2020. She is a police officer and was there to give training.

55. Within days after her arrival, the Applicant knocked and tried to enter V02's room at 9 p.m. She stood up and blocked him at the entrance to her accommodation. The Applicant introduced himself as "Aamir" and said he knew the person who had been staying in the room before and that they had transferred to another area.

56. V02 blocked the Applicant from entering her room. "I didn't give him a chance to say anything sexual because what I had heard about him". She also did not give him a chance to say anything about a relationship. Then the Applicant left. V02 thought the Applicant's behaviour was suspicious, in part because he admitted knowing that the prior woman had already moved from her room.

57. In May 2020, between 9 and 10 p.m., V02 was exercising by walking around the camp. As she walked past the Applicant's office, he blocked her on the roadway and said that she should come to see him in his office at night. V02 responded "okay", but she did not go to see him, again because of the rumours she had heard about him.

58. Thereafter, anytime that the Applicant saw V02, he would engage her in an argument. She described one incident in particular in which he entered the kitchen where she and others were cooking. The Applicant came in and started screaming at everyone in the kitchen.

V03's testimony

59. V03 testified that she joined the Jowhar camp in 2019 as a Regional Engineer. She did not report to the Applicant but would work with him because, as the Camp Administrator, he would bring various areas together.

60. V01 reported to V03 regarding the Almond laundry and cleaning contracts. Thus, V03's duties included performance evaluations for Almond on their contracts and monitoring the performance of V01. During the relevant time period, V03 viewed Almond's performance to be good and V01's performance as professional and helpful.

61. On the night V03 arrived at the camp, the Applicant came to her private room at about 10 p.m. He knocked on her door and called out her name. She did not answer his knocking and calling out because it made her uncomfortable and nervous.

62. The next day, V03 confronted the Applicant about coming to her room late at night. He acknowledged coming to her door but when she asked him why, he had nothing to say. She then told him that if he had anything that was either an emergency or work-related that they needed to discuss, he should put it in an email to her.

63. Then in May 2020, the Applicant sent V03 several WhatsApp messages after working hours. Those messages said, *inter alia*, “hi, are u sleeping ... I am feeling so lonely ... we must get together socially ... no work talk, we need a break, no office talk just exclusive, personal, what do u say, in between us”. V03 did not respond to these messages.

64. Forty minutes later, at 9.26 p.m., the Applicant again wrote to V03 “u done with your report, I am having tea if u want”. V03 then responded, “Dear Aamir ... No Thanks ... Not appreciate at all”.

65. The Applicant immediately wrote back “plz do not take me wrong I never meant to offend u, it’s just as colleagues to another colleague as sometimes work talk is boring and normal life talk is important ... hope u understand, may be u took it wrong”. V03 responded “Colleague to Colleague: Im telling you that its not possible ... Its late and I have a work target to meet”. And the Applicant then said “no not now it’s ok”.

66. According to V03, she understood the Applicant’s message as an invitation to his room, which she felt to be a sexual advance, inappropriate, and in violation of United Nations rules. “The thought of inviting a female colleague at that hour was not appropriate”. V03 said that the Applicant knew what he was saying and that is why he tried to back down after she said it was not appreciated.

67. On one occasion, the Applicant shouted at V03, accusing her of being late to the cafeteria. In fact, she had arrived about 45 minutes before the cafeteria closed, and the Applicant had arrived and gotten behind her in the food line. He kept going on and on about how she was late. When she asked him to lower his voice, he said “No”. So V03 kept quiet, stepped back and sat down. She felt targeted by him for previously refusing his advances. She was hurt and began to cry. As “tears started rolling down my eyes” a colleague came to comfort her.

68. The Applicant incorrectly complained about V03’s performance to her supervisor and requested that she be removed from Jowhar. She thought that this was his retaliation for her not accepting his advances. In V03’s view, that was one of the ways that he was trying to “personally pin [her] down for rejecting him or rejecting his advances”.

69. According to V03, the Applicant’s influence on contracts was “quite big” because he knew a lot of people in the Mission. He was the RAO and had access to speak with directors of the various contracting companies. He also told people that his mother was a United Nations employee and had been recalled to sit on a committee for the COVID pandemic.

70. V03 said that the Applicant had a normal speaking voice in meetings, which was calm and pleasant. But at other times he would address people in a loud and disrespectful way. In particular, he did so in dealing with V01 and the International Police Officers (“IPOs”), both men and women. She said that the Applicant was always trying to dominate and impress others with his power. He would shout at people, addressing them as if they were children.

71. V03 also observed tension between the Applicant and V01, which seemed to be the result of a personal issue. The Applicant never complained to V03 about V01’s performance, but V03 later heard that the Applicant was refusing to allow V01 to go on leave. One time, the Applicant tried to blame V01 for something that was not her responsibility.

72. V03 testified that V01 seemed to be in a state of constant fear for her job due to confrontations with the Applicant. She said that V01 feared going on leave and not being allowed to come back to work at Jowhar.

73. V03 said that she thought “in his mind [the Applicant] felt he had the authority and would use his influence to have contractors moved to other stations or removed from Jowhar”. She said that the Applicant tried to prevent contractors from returning after going out on leave because, in her opinion, their personal relations had gone wrong.

74. For example, the Applicant threatened a contractor named Philemon Omwange because he was speaking to V01. Mr. Omwange feared that he would lose his job and, ultimately, he was relocated from Jowhar. V03 knew that Mr. Omwange’s work ethic and performance were “on point”. Something similar happened with another contractor named Benjamin. V03 said that she had not reported poor performance by any of these contractors, but she observed that any man who had contact with V01 was removed from the camp at the Applicant’s insistence.

75. V03 said that she was not at the birthday celebration in the Tukul in 2019 but heard others talking about it. They told her that the Applicant had approached the birthday celebrant and made advances to her. However, V03 is not able to confirm this personally.

76. V03 said that, when confronted with his misconduct, the Applicant would back off and initially be very apologetic. But later he would do it again.

77. V03 testified that speaking about the Applicant’s conduct makes her emotional because he should not have behaved in the way that he did. She felt targeted and that it was inappropriate to mentally torture someone like her. She would stay in her room to avoid confrontation with the Applicant and the sexual advances that he made.

V04's testimony

78. V04 works for the African Union as a Protection Officer at the P-3 level. She and V05 came to Jowhar on 29 October 2019 to conduct a training for uniformed personnel regarding human rights, protection of civilians, and protection from sexual exploitation and abuse. They met the Applicant upon their arrival, and she testified that “when he received [them] he was very professional”.

79. The following day was the birthday of her colleague, V05, and a celebration was arranged for that evening in the Tukul bar. The Applicant attended the celebration.

80. At the party, the Applicant sat down close to V04 and began talking about his power. He said that he would look for a better job for V04 in the United Nations. She told him that she was happy with her job at the African Union and not planning to re-join the United Nations any time soon.

81. The Applicant continued to tell her that her African Union job does not suit her and that he could get her something even better. The Applicant claimed to know people in New York who could quickly get her a job, even in Kismayo where she was then based. He said “Don’t be afraid. I will protect you. You tell me anything that they will do to you in Kismayo and I can handle it”.

82. During this time, V04 noticed that the Applicant had changed since she met him earlier in the day. He was drinking alcohol and, as his alcohol consumption increased, he started touching V04 on her lap or thigh. The touching was in a manner that felt to her like it was not accidental. V04 removed his hand and would not let the Applicant touch her again.

83. V04 went to the dance floor to get away from the Applicant. However, the Applicant followed her and began trying to dance with V04 “very close in a way that you cannot dance with a married woman ... Like you want to be all over me”. The Applicant’s body was touching V04’s body, not accidentally, and it was attracting attention. V04 was uncomfortable with these actions and so she decided to leave the

party. She was not happy about the situation because “I am a married woman and I respect my husband”.

84. When she got back to her room, V04 realized that the Applicant had apparently followed her from the party because he began to knock at her room and shout for her to open the door.

85. At the time, V04 was on the phone with her husband, and he asked “who is that?”. The Applicant continued knocking for 5-10 minutes and then stopped. V04 later learned that some colleagues from Jowhar had come and taken the Applicant away from her room.

86. V04 testified that she was unhappy with the Applicant’s conduct but never opened her door “because of the way he was”.

87. The next day, V04 had intended to talk to the Applicant and explain to him that, when he takes alcohol, he becomes a different person and how this could really work against him. However, she did not meet the Applicant because the helicopter to take her back to her duty station arrived early.

88. However, she did tell others at the airstrip to “please tell him that he should never try what he did yesterday”. She explained that her job is to train soldiers not to do things like that, and if he tried it again, she would take it further. For now, she was just giving a warning for him to never do something like that to anybody again.

89. On hearing this, Mr. Wasonga (an Assistant at the United Nations Support Office in Somalia) responded to V04 that the Applicant was a bully and likes to make everyone fear him. Mr. Fred Oguto (a Civil Engineer) added that the Applicant was terrorizing everyone in Jowhar.

V05’s testimony

90. V05 came to Jowhar on 29 October 2019. She was a Human Rights Officer for the African Union and came to train the Burundian contingent in Jowhar. The training

covered human rights, protection of women and children, and international humanitarian work. It included sexual exploitation and abuse and sexual harassment training. V05 did the training along with V04.

91. A colleague of hers, Mr. Jackson Basoronga, was also stationed at the Jowhar camp. The evening following her arrival her colleagues had arranged a surprise birthday party for V05. The Applicant was present and sat at the table with them.

92. When the attendees started dancing, the Applicant was “touchy and clingy”, dancing closely and trying to touch V05, so she walked away. His conduct made V05 so uncomfortable that she left her own birthday party.

93. V05 left the party and went to her private room. The Applicant came to her room and knocked on her door. This knocking made V05 panic and put her in fear. She was uncomfortable having a man knocking on her door at that time of night. The knocking was “really hard” and the Applicant was talking loudly saying “open the door, I need to get in”. It lasted a couple of minutes but V05 did not open the door.

94. V05 also heard knocking on another nearby door and the next day learned from V04 that the Applicant had also knocked on her door. V04 told V05 that she had been uncomfortable and quite offended by the Applicant’s behaviour.

95. V05 had not observed any of the Applicant’s behaviour prior to the dancing. However, during the dancing the Applicant’s actions were beyond the regular moves of the dance, and when they became intrusive and uncomfortable, she pulled away. The Applicant’s touching of V05 felt purposeful and not accidental partly because it was done more than once.

96. V05 left Jowhar the next day and chose not to file a complaint, but to move on instead. She felt that the Applicant’s behaviour was significant to discuss with her colleagues, “but I made a choice to not get dragged into procedure”.

97. The next five witnesses were called by the Respondent to corroborate the testimony of the five alleged victims.

Ms. Anne Marie Ndiokubwayo

98. Ms. Anne Marie Ndiokubwayo is an Electoral Officer at UNSOM. She did not have any supervisory role regarding Almond but testified that she was the highest ranked UNSOM staff at Jowhar, and “they see me in the camp as the person who talked to everyone”. As a result, many of the staff would come to her when they had an issue to raise. The camp was very small and there were less than seven women residing in the camp at that time.

99. Ms. Ndiokubwayo testified that V01 came to her several times complaining about the Applicant. The first time, V01 came with Benjamin Emor. Mr. Emor was angry since he had been told that he had to leave the camp because he was talking to V01. Ultimately, Mr. Emor went to talk with the Applicant and “they sorted it out” so he was able to stay.

100. The next time, V01 came to complain that as she was preparing to take her leave, the Applicant had emailed her asking her to justify where she had distributed refrigerators. V01 was angry because the Applicant knew where the refrigerators were since they were distributed according to his orders.

Later, V01 and her Almond supervisor told Ms. Ndiokubwayo that the Applicant had asked the supervisor not to send V01 back to Jowhar.

101. According to Ms. Ndiokubwayo, the Applicant also limited V01’s interactions with other men in the camp. She said that a contractor named Philemon was Mr. Emor’s predecessor and had to leave Jowhar because he did not follow the Applicant’s instructions not to interact with V01.

102. V01 showed Ms. Ndiokubwayo a WhatsApp message where the Applicant had invited her for a drink. V01 perceived that as an unwelcome invitation. And after that, the Applicant tried to remove her from the camp. Ms. Ndiokubwayo felt that all the Almond staff were performing professionally.

103. She also recalled an episode where one of the ladies who were on a mission to Jowhar was angry because the Applicant came to knock on her door when she was talking to her husband on the phone. She also said that women used to joke amongst themselves that they were getting fridges because the Applicant came to knock on their doors in the evening. They said that it was only in the night that he realized that female colleagues need fridges and microwaves and then knocks on their doors about it. Those ladies also considered these to be unwelcome advances from the Applicant.

104. Ms. Ndiokubwayo was present at the birthday party for V05. Jackson, a colleague of the visiting ladies of the African Union Mission to Somalia, sent a WhatsApp invitation and everyone gathered at the Tukul to dance, drink and celebrate. The birthday lady left, but came back very angry. She said that the Applicant had knocked on her door and that this made her feel very uncomfortable. V05 was still angry the next day and complained about the incident to another colleague as they were leaving for Mogadishu.

105. Ms. Ndiokubwayo saw the Applicant drinking that night, and observed the next day that he had an injury on his forehead. When she asked him what happened, the Applicant could not recall.

106. She did not see any misconduct at the party, and the only complaint she heard was about the Applicant knocking on V05's door. She also said that the Applicant never misbehaved towards her.

Mr. Benjamin Emor

107. The next witness, Benjamin Emor, was based in Jowhar camp from November 2019 until October 2022 as the site engineer for Deeqa, a contractor. He testified that,

at one point, the Applicant complained to Mr. Emor's administrator that he was frequenting V01 too often. The administrator told Mr. Emor that "when Aamir starts talking like this, it's not a good sign" because of other people that the Applicant might have punished before.

108. Mr. Emor told V01 about this and she was furious, so they both went to speak to Ms. Ndiokubwayo. Then, Mr. Emor went to talk to the Applicant. The Applicant told him: "I am just cautioning you". Mr. Emor said that he was not trying to have a relationship with V01. And he testified that "I realized that he didn't want me to speak to her [V01]—that was his target".

109. Later, Mr. Emor went on vacation and when he returned, he was told that the Applicant had spoken to the contract administrator to say that the temporary replacement should stay at Jowhar. He also asked, "Why do you need Ben back when this guy can take over?"

110. The contract administrator said there was no problem with Mr. Emor and that Mr. Emor has no issues. Then, the Applicant said that Mr. Emor should not live in the Jowhar camp but go to a nearby camp. However, the contract administrator did not succumb to this pressure from the Applicant to remove Mr. Emor. So, according to Mr. Emor, "the guy never accepted his plea".

111. Mr. Emor also recounted an occasion when his assistant had some sort of run-in with the Applicant. The next day, the assistant was removed from the camp and never returned to Jowhar.

112. According to Mr. Emor, his contract administrator said that the Applicant had the power to remove someone if he wanted. "If he wants to remove you, he can remove you at any time he wants, if he doesn't like your face". So Mr. Emor feared for his job.

Mr. Benson Kioko

113. The next witness was Mr. Benson Kioko, product manager for cleaning at Almond Air and Logistics Company. Almond provided services under contract at Jowhar camp.

114. V01 was assigned to provide those services at Jowhar and she reported to V03. V03 never reported any complaints about V01's work, nor did anyone else. Mr. Kioko assessed V01's performance as good.

115. In August 2021, the Applicant called Mr. Kioko and said that Almond needed to replace both V01 and a sick employee at Jowhar. When Mr. Kioko asked what the problem was with V01, the Applicant did not specify.

116. The Applicant followed up the phone conversation with an email in which he said: "by next week 12 Sept, kindly ensure that you send new Almond supervisor to replace [V01]". He then called Mr. Kioko again and said he wanted a permanent replacement of V01.

117. Mr. Kioko did not understand the reason why the Applicant was seeking to replace V01. He asked the Applicant if there was an issue with her cleaning, and the Applicant said he had no issue with cleaning. Mr. Kioko also consulted with Mr. Francis Habil, V01's second supervisor, and Joseph Atiana, the Almond team leader at Jowhar. Both said there were no complaints or issues. Mr. Kioko asked the Applicant to explain in writing the reason he was seeking to remove V01, but the Applicant never did so.

118. Mr. Kioko said that despite the Applicant's email, there was no staffing problem: "the work was getting done". He also stated that V01 had never complained to him of sexual harassment by the Applicant.

Mr. Francis Habil Anindo

119. Mr. Francis Habil Anindo testified that in 2021, he was working in Mogadishu as a project manager for Almond. In that role, he supervised V01.

120. Mr. Habil said that V01's performance at Jowhar was excellent. The company never had any issues with her and he added that "she's an asset for us". Mr. Habil promoted V01 to be Almond's camp coordinator at Jowhar in 2020, and he thinks she should be promoted to the program manager level.

121. In August and September 2021, Mr. Habil received multiple requests from the Applicant to replace V01. The Applicant did not explain why; "he stated he just wanted her out of the camp". The Applicant threatened to write an email that would force the United Nations to remove [V01] from Jowhar and force her to be fired.

122. As the Applicant's requests and threats continued, Mr. Habil contacted V01 to ask what was causing these requests for her replacement. V01 became emotional and was unable to talk at that time, so Mr. Habil ended the conversation.

123. Mr. Habil later called her back and V01 said that the issues had been happening from the first day she arrived in Jowhar. "She mentioned sexual harassment, bullying, being shouted at". When Mr Habil asked her why she had not complained earlier, V01 said the Applicant had threatened to interfere with the Almond contract, telling her that he had a connection and could make sure that Almond lost their contract.

124. V01 said that when she told the Applicant that she was going on leave, he was not happy because he was not involved in the decision and insisted that he was the one to decide. Mr. Habil said that it was not the Applicant's decision as to when an Almond employee goes on leave, that is between the staff and Almond.

125. According to Mr. Habil, the Applicant “had insisted that he wanted to see me and my colleague upon his arrival in Mogadishu and that he wanted the lady out. He was not going to back down and if we don’t remove her, he was going to take steps”. In Mr. Habil’s eyes, “that was a ticket for [V01’s] dismissal”.

126. Mr. Habil contacted the United Nation’s Conduct and Discipline Office to seek advice about what should be done. He was told that no United Nations staff member has the right to interfere in the operations of a company or demand the transfer of employees.

127. A United Nations Conduct and Discipline Officer called him back to the office soon thereafter and asked him to give details of the issue. Mr. Habil explained that the Applicant was threatening to interfere with their contract. He also said that he was not there to complain on behalf of V01 because that was for her to do. The United Nations Conduct and Discipline Officer gave him their contact information to pass along to V01 so she could complain if she chose to do so. Ultimately, V01 did file a complaint.

128. Mr. Habil testified that it was not the Applicant’s duty to profile someone and decide that they should go. But the Applicant said that he had influence and that his mother was an important person in the United Nations.

Mr. Kinuthia Farag Mulima

129. Mr. Kinuthia Farag Mulima joined the Jowhar camp in 2017. He was originally employed by a contractor, PCL Clean Care, and then joined Almond as Team Leader. He worked with V01 from 2019 until she left in December 2023.

130. Mr. Mulima first met the Applicant and V01 in January 2020. He had just joined Almond, and she had just been appointed to be the Almond Camp Coordinator. Mr. Mulima observed that the Applicant seemed annoyed and, using a voice that was “a bit higher than ... he normally uses”, was questioning who appointed her to be the Camp Coordinator.

131. The Applicant said that he should be the one to appoint people because Jowhar is his sector and it is up to him to decide on the promotions. “I can choose who to work with. I tell any kind of work to be done, where and how”. V01 was frowning when they left the meeting and Mr. Mulima could see that she wanted to cry.

132. Mr. Mulima also said that the Applicant tried to limit V01’s interactions with men in Jowhar. He would meet someone along the walkway and warn them not to talk to V01. The Applicant said, “anyone who talked to [V01] could not survive”.

133. Several of the male colleagues who did interact with V01 were removed and transferred to other sectors. Mr. Mulima did not know the precise reason that the men were removed. He knew that one of these men did drink although he could not say if he drank too much. In Mr. Mulima’s opinion, “the place was not safe for these men”. They used to complain to him that they were under so much pressure from the Applicant.

134. Mr. Mulima’s accommodation was adjacent to V01’s room, and once he saw the Applicant trying to enter V01’s room before 8 a.m. The Applicant knocked and tried to open the door at the same time, but V01 resisted and said, “this is my room”. The Applicant apologized, but V01 seemed uncomfortable with his conduct.

135. The other females in Jowhar were mostly complaining. The Applicant “could knock [on their doors] anytime”. V02 complained that she was being harassed by the Applicant when he met her on the walkway. She said that she felt uncomfortable, and the Applicant was very harsh with her, talking in a high voice. “Very many people feared him”.

136. In August 2021, V01 was gone for vacation and Mr. Mulima was to stand in for her taking care of Almond duties in the camp. However, Mr. Mulima fell sick during this period and had to leave the camp in the care of another Almond colleague.

137. When he returned in October, Mr. Mulima passed by the Almond office in Mogadishu and was told by Mr. Benson Kioko that there were bad things in Jowhar and they should stop. Mr. Joseph Atiana said that both Mr. Mulima and V01 were supposed to be replaced because the Applicant did not want to work with them.

138. Mr. Mulima also said that when the Applicant “wants to do something, he will make sure it happens. He is an achiever. Anything that happens, he can fight for it to happen. He is a man of his word”. He also said that the Applicant had a loud voice and could come across as aggressive.

139. V01 did not say anything to Mr. Mulima about the Applicant sexually harassing her, or about the Applicant wanting her out of the camp while Mr. Mulima was away.

Ms. Meaghan Burton

140. Lastly, the Respondent called as his final witness Ms. Meaghan Burton, currently the Chief of the Operational Standards and Support Section for the Investigations Division of OIOS, based in New York. In 2021, she was an investigator and conducted the investigation into allegations about the Applicant. She interviewed 22 people, including the Applicant. The Applicant’s interview took place over two days.

141. During the interview, Ms. Burton asked the Applicant for suggestions as to who should be interviewed, He said “colleagues in Jowhar” without being particular or specific about which colleagues. He also suggested the Regional Coordinator for UNSOS who was not based in Jowhar, and the head of the African Union Mission to Somalia (“AMISOM”) Police Supervisory Unit. Ms. Burton testified that the Regional Coordinator and the Head of Mission were not interviewed as there was no indication that they were material witnesses to the matters under investigation, but there were obviously a number of Jowhar colleagues interviewed”. She said that she considered any witness suggestions that the Applicant made and whether they would be relevant witnesses.

142. The investigation lasted from late September 2021 until late July 2022. Ms. Burton considered the investigation to be thorough. “Essentially, anybody who had been identified as knowing anything about the matters that were being complained of were interviewed, and any documentary records that related to the event were reviewed, including emails between the Applicant and Almond supervisors and also Almond performance evaluations. From my point of view, every reasonable avenue of inquiry was explored”.

143. Ms. Burton described how the investigation process was methodical, with a framework and methodology. She said that five people came forward with incidents and each of their accounts was dealt with separately. The interviews were conducted with broad, open-ended questions to obtain the account without any interference. The account was then tested against other evidence, and there was corroboration of many elements of the accounts. Also independently, other women spoke of similar knockings on the door. No account was accepted at face value.

144. Ms. Burton said that V01’s credibility was not affected by the delay in coming forward because she formally complained only when she became concerned for her job, and “that was the straw that broke the camel’s back”. She also was not the person to trigger the complaint. This is not uncommon with victims in her experience.

145. Regarding an article about the allegations that was published on a Kenyan website, Ms. Burton said that the Applicant referenced it during the investigation. As she recalled, the article was vague and not specific about the allegations. And given the level of detail in the victim’s account, which was then corroborated by numerous other people, Ms. Burton did not believe that the article impacted on the investigation or the witnesses.

146. Ms. Burton also rejected any allegation that she was predisposed towards a given result. “All witnesses, whether they’re going to give inculpatory or exculpatory evidence must be interviewed”. The methodology was used in the way interviews were conducted.

147. Ms. Burton said that there were no prior accusations or charges on the Applicant's record. She also confirmed that United Nations staff members are under an obligation to cooperate with authorized investigations. If the staff member under investigation does not cooperate, then an adverse inference could be drawn against said staff member. Further, the staff member under investigation may not have legal representation during the interviews, but may have it during the disciplinary process.

148. Ms. Burton said that "the disciplinary process that is conducted following an investigation by the Office of Human Resources is a very robust process, and it's an independent process which reviews in detail every piece of evidence that was collected by the investigator and a determination is made at that point as to whether the evidentiary burden is met".

149. Ms. Burton said that she had no assumption that witnesses are telling the truth. She said, "you have to look at the credibility or reliability of a victim's account and one of the ways to do that is to triangulate it against whether it's been corroborated by those who were present or those who heard".

150. She said that this was not simply a case of the Applicant asking for a relationship. "I think that it's the behaviour that comes afterwards that adds more context ... [V01] said that he once told her that she would bow down to his advances, which is quite explicit". And there was evidence of retaliatory behaviour.

151. Then there was an extended debate between the Applicant's Counsel and Ms. Burton about what the evidence was and how much of it was hearsay.

Applicant's testimony

152. The Applicant then called himself as the sole witness in his case. He is 53 years old and a former Major in the Army of Pakistan. He is married with three young children that he supports via his pension.

153. He joined the United Nations in December 2000 and over his career he served in several peacekeeping missions and hardship posts in various locations. He was serving in Haiti when there was an earthquake. He was diagnosed with, and treated for, Post Traumatic Stress Disorder (“PTSD”). He testified that he would continue to have PTSD symptoms at times, including sleepless nights and memory loss.

154. By 2015, he was working for UNSOS and was sent to Beledweyne, Somalia as an RAO to start up in the region. Then, in 2017, he was sent to Jowhar to start another sector in eastern Somalia, and served there until he was separated as a result of the contested decision.

155. The area was one with active conflict involving Al Shabaab and terrorist activities. “It was hard, a lot of bombing around ... a lot of soldiers killed. It was very, very hard”.

156. The Applicant described the Jowhar compound regarding welfare and recreational facilities, including a Duty/Tax-Free Exchange (“PX”) facility, and a restaurant/bar facility called the Tukul. There were about 50 people residing in the compound including 15 international staff members, two to three AMISOM civilians, about 20 IPOs, and contractors’ employees.

157. Residents lived in 20-foot container accommodations that were very close together. They were not allowed to leave the compound. They are flown to a nearby airport and then moved into the compound. It had an outer perimeter guarded by Burundian soldiers and an inner perimeter. He said it was just like a concentration camp or detention facility.

158. When asked about the allegations in this case, the Applicant testified that “I always say that this is something which is totally false ... If, as a Regional Administrator, you are asking the contractors to work and if they are not performing, they come back and this is what they do with you. This is totally false”.

159. As for his management style, the Applicant said that his background as an ex-military officer from the Pakistan army remains in him. “Once an officer always an officer”. He said that he was sent there for a purpose and his aim was to make sure, within the United Nations parameters, that the desired goals are achieved and the tasks completed. According to him, one has to be authoritarian to make sure that things are done.

160. When he was sent to this location (Jowhar), he was the second person to reach the area since one security officer had preceded him. Then, he had to build the entire camp from scratch. He did this with some contractors and testified that “have been a little bit tough on them in a way that I want to make sure things are done whether you are a male or a female”.

161. The Applicant said that V01 never said anything to him that she had felt offended or humiliated or that he had said anything of a sexual nature to her. Nobody has ever made any kind of allegations of this nature against him before, and he has never been cited for any other form of misconduct.

162. He also denied making promises to women to entice them into a relationship. “This is totally false. I even gave a statement when I was interviewed by OIOS that, with my clean slate of working for 22 years, this is something which somebody is trying to make rumours about me and try to make a situation whereby I should be suffering. I mean my colleagues and my friends and whatever, who have been working with me for so many years can always say that about me, that I have never, ever done this in my entire career life”.

163. He said that his mother has never worked for the United Nations. “My mother has never worked. She is 74 years old. She has always been a housewife”. She had never had any kind of medical qualifications and never worked for a Non-Governmental Organization (“NGO”).

164. When asked if he shouted at V01 in the cafeteria, the Applicant said, “I don’t recall an incident like that”. Similarly, he said “I don’t recall any of this” about whether he retaliated against V01 when she rejected his advances by isolating her from other men in the camp. And he had the same answer when asked to comment on the allegation that he had men from other contractors removed from the camp.

165. As to the allegation that he screamed at people gathered in the communal kitchen, the Applicant said “I don’t remember screaming but I remember whenever I’ve checked somebody I always report to security” regarding COVID rules. “So I don’t do it directly. Whatever I do, I go through my security officer and he’s responsible within the camp to make sure that things are followed”.

166. The Applicant did not recall anything about the allegation of trying to enter V02’s room. Asked again about speaking to V02 in a loud or disrespectful manner, the Applicant testified that “as I said to you, I’m a military guy. My voice is, even if I talk normal, looks like I’m screaming kind of thing because I am a loud person. But I’ve never ever shouted, like a shouting thing, to anybody”. He also said that it is possible that others in the Jowhar camp may have found his normal tone of voice too aggressive or too assertive.

167. When asked about the WhatsApp messages allegedly sent to V03, the Applicant said:

Yes, ... before I say something. My room was I remember #5 and her room is #6. We are just three inches away with the wall. I mean, there’s just the container here and the container here just like this. I mean, even you cough in your room, the neighbour can hear you. It’s so that close. As I said to you initially, there was no engineer available there. We had a contractor, so I was also doing engineering works and my entire communication and interaction with that is totally professional ... I remember that I asked for some report and since you are living in a very, very close type situation, sometime if you have a visitor in your room or you go to somebody’s place to visit, there is the only place you can see it is either you sit in the Tukul or if you go in the room for some whatever personal things or social thing you have to sit in that small little container. There’s no other place you can sit or socialize with

somebody else with the permission, of course. So, this was very surprising for me as well because my entire tenure which I've been there, it was totally professional not even be there but everybody else.

168. The Applicant also stated that it was normal to work late at night at Jowhar. "Sometimes instead of sitting doing nothing, its better if you go to the office and do some work". He gave as an example that if there was a bombing in the vicinity and someone died, he would have to be present in the operations to receive anything, or he would have to run to a bunker. And if people did not respond, he would have to go and knock on their door to say "please come out". So, knocking on doors late at night was not unusual in the Applicant's view.

169. Regarding V04 and V05, he said that he was invited to the birthday party and attended. There were about 30-40 people present and "all of us were drinking, all of us".

170. The Applicant said that he did not recall if he touched V04's leg, but since there were benches where four or five people would sit together "this is normal that you touch". He said that, if he touched V04 it was not intentional. He also added "let me explain more that sometimes there's this culture that is very common within Africa and within the location like that, that when you come to see each other, you hug each other and say hello, how are you".

171. The Applicant was asked specifically about the allegation that V04 was uncomfortable in his presence, that he was touching her leg, and that when she moved to the dance floor he followed her. He said "I don't recall, but let me tell that was a party. Everybody was drinking, dancing, doing whatever. I mean, that's commonplace". He also said that everybody was dancing a group, not individuals.

172. The Applicant said that he did not recall the type of music that was being played, nor did he recall whether he was dancing too closely to V04 or V05. "I mean, too close, too far? Once you are dancing, you are dancing". He also did not recall that V04 felt uncomfortable and retreated to her room.

173. Regarding the allegation that he followed V04 and V05 to their rooms and knocked on their doors to be let in, the Applicant testified:

Let me explain one thing. We have an SOP [standard operating procedure] which is there to finish every party. First of all, it doesn't have to be loud. Nine o'clock there has to be closed down the Tukul because of the security environment. Everybody has to go back to his room. I mean, there is no way you can go to somebody's room or whatever. There's a requirement that you can't have loud music after 9 p.m. And as I said to you, the contractors and I live on the other corner of the camp, we live on the other side of the camp. Well, that's impossible, it can't happen.

174. Similarly, when asked about an allegation that he had previously had sexual relationships with two IPOs in the camp, the Applicant said

Before I, let me ... I want to comment, as I said to you in my initial comment, 22 years have been very clean slate for me. Twenty-two years serving in the UN ... So many IPOs, so many military, so many civilians living together. Never ever I heard this until when I came to Jowhar ... Because of my good work, whatever the DMS officially and I will send there now, I'm a very happily married man and never ever such a thing I've never heard. I'm a Muslim by faith and we don't do all this. Yes, we do socialize, but we don't do that, what I've been accused for, never.

175. The Applicant also said that he doesn't get involved with the police directly. "I always deal with their bosses ... So I have never, ever personally one-to-one interacted with anyone of them ... If there is anything, you go and you call their boss and then you talk with them". And he reiterated that he never had a sexual relationship with the two unidentified IPOs.

176. The Applicant was asked about the allegation that he tried to get rid of V01 between August-September 2021. He said that Almond had only four or five staff on site in Jowhar, so when V01 was on leave the camp needed a replacement. So, he emailed the Almond engineering office. He said that he never meant to have her replaced permanently. "My meaning of replacement means that if she or he is on leave,

somebody should cover for her or his work ... And once she comes back from leave then that's it. You can send this guy back and bring her back".

177. The Applicant said that he did not have a direct role in monitoring or assessing Almond contracts. "So not directly, but yes indirectly". He also said that he could not lobby to cancel or not renew an Almond contract. He only provided a monthly report describing how the contractors were performing.

178. Asked about how he thought the rumours about him originated, the Applicant again gave "a small statement" that he had 22 years of a clean slate and restated his accomplishments as "a doer ... the one who can make sure that it has happened". He said that some people do not like his work style and that he felt these were all false stories designed to get rid of him. "To me it is like a group of people getting together so that they can accuse me with this so I can be taken out of there and this is what exactly they achieved".

179. The Applicant also testified that "no witnesses from [his] end were interviewed and listened to". However, he did not identify any of these witnesses or how they would have been helpful to the investigation or his defence.

180. The Applicant said that a friend advised him that the complaint against him had been published on a Kenya media website. He reported it to OIOS and the Department of Security and Safety ("DSS") because his car and his family's car were followed three times. He deemed this a "life threat". He said "let me tell you one thing, this was not because that lady is supposed to be a Kenyan lady. I mean this". He said that "they" did this to him in both a professional and a personal way, so that he and his wife and children cannot be heard because "in their mind they thought I am after their work or some kind of thing, which is totally false".

181. The Applicant testified that he did not know if OIOS investigated the source of the allegations on the website. However, he hired a private lawyer to source it and was told that the website is such that "anybody who wants to put some fake or whatever

stories, you can always go to this guy, and he will publish”. Although the Applicant and his Counsel acknowledge that they have no evidence to support it, the Applicant suspects that the source of the story was “maybe this lady and the group of people who working is there ... They were chasing me, ... knowing where I live ... knowing my kids, where they’re living. They know my wife, but there’s all of this was done as a plan”.

Applicant’s cross-examination

182. On cross-examination, the Applicant confirmed that his mother was always a housewife, without a graduate degree, with no links to any NGO or the United Nations.

183. However, he was confronted with his statement to OIOS (Annex R-4, lines 452-459) wherein he said “My mother never used to work for United Nations. She used to have an NGO based in Pakistan and she was head of that. For that, she had to travel. She has been traveling a lot to Geneva and to US, so that’s her personal achievement ... NGOs are basically working with UN within Pakistan”.

184. Before the Tribunal, the Applicant said “this is something surprising for me because my mom has never ever worked. Never.”

185. Respondent’s Counsel then pointed out that in para. 108 of the Applicant’s comments on the allegations he wrote “she was once engaged with the Pakistani NGO, which may at some stage have tenuous links implementing UN programs in Pakistan”. Counsel also pointed out that this was also stated in the application, Attachment B, para. 20.

186. The Applicant replied: “I’m a little bit confused. You’re saying this response is written by me? ... It has never happened. My mom has never worked ... And this is very confusing for me”. Applicant’s Counsel interjected to point out that he had written the submission on behalf of his client.

187. Respondent's Counsel then read from para. 106 of the Applicant's comments to the allegations: "Of course, it could be argued that this is something that [the Applicant] could have lied about to inflate his ego and importance at the same time".

188. The Applicant said "why would I lie? ... I don't understand ... I want to be very straight ... My mom never worked for UN and I will not say something which she has not done it". He then went on to explain how he needed to list all the details about his parents on his Personal History Profile ("PHP") when he joined the United Nations, and if his mother had ever worked somewhere he would have mentioned it.

189. The Applicant then began another statement that the OIOS was "premeditated premature in their mind that Mr. Bham was wrong ... When I was interviewed like this, I was not given a chance to explain anything. My witnesses were not even asked and OIOS was to me pre-determined in their mind that he has to be put in blame, he has to be made accused for ... They were totally biased, they were totally against me for whatever reason".

190. The Applicant then confirmed that the statements he made to OIOS during his interview on 19-20 May 2022 were truthful and accurate. He also confirmed that Annex R-4, his comments to the allegations, were signed by him and both truthful and accurate. The Applicant confirmed that Attachment A of Annex 5 to his application was also true.

191. Next, Respondent's Counsel went through the specific allegations and asked the Applicant if he admitted or denied them. The Applicant denied the allegations, often saying "why would I do that?"

192. As for the allegation that he attempted to have V01 removed without reason by pressuring her supervisors, the Applicant said that he had sent an email (application, Annex 3, document 162) to the United Nations Engineering Section asking for a replacement but this was only until she came back from leave, not to fire her.

193. The Applicant agreed that his email was addressed to Mr. Benson Kioko, an Almond employee, and that in it he raised two issues: the pressing need due to people not being at the camp and/or being sick; and the replacement of V01. With respect to the replacement of V01, the Applicant's email actually stated "Dear Benson, Greeting, Bro as discussed yesterday we have on ground only 04 Almond guys out of which 2 are [a]way thus one is a laundry guy and for cleaning we are having only 3, which is becoming a nightmare already. Kindly ensure that u send Mulima replacement, the guy who left Jowhar as he was sick, on this coming Sunday, which is 05 Sept. Secondly, as discussed by next week 12 Sept, kindly ensure that u send new Almond supervisor to replace [V01]". Despite the language of his email, the Applicant said that he had never spoken to Mr. Kioko directly, but only to the Chief Engineer.

194. The Applicant estimated that there were about "four or five, maybe six" women in the camp during the period of 2019 to 2021.

195. The Applicant reiterated that he did not interact directly with IPOs. "I only deal with their bosses, not with them". He also stated that he did not know who was staying in what room because he would give the keys to a supervisor who then assigned the rooms.

196. He pointed out that some of the allegations date back to 2019 and were not reported until 2021. "As I said in my statement to OIOS and to you as well ... that I have been made a victim of making all of this story so that I should be kicked out".

197. As for the allegations that he sent a series of WhatsApp messages to V03, the Applicant said "I don't recall". When shown the messages (Annex R-3 to the Respondent's reply, documents 125-127), the Applicant agreed that some of his messages were not about work, that he said they should get together socially "exclusive, personal", and invited VO3 to have tea in his room.

198. He denied putting his hand on the leg and thigh of V04 and dancing too closely with either V04 or V05. He said that he did fall and injure himself that night, but it was unrelated to his drinking. “I just slipped on the floor”.

199. Although the Applicant initially did not recall inviting V01 for drinks in the Tukul, in his application he admitted inviting her for drinks. “I must have. I might have. But not as specifically only you. It’s a group of people all the time there”.

200. At that point in the cross-examination, the Applicant dropped off from the hearing. His Counsel then reported that he was communicating with the Applicant via messages on WhatsApp and that there was no power in the Applicant’s neighbourhood, so he was unable to connect to the Wi-Fi and Teams link. When Respondent’s Counsel said he would not object to continuing on the phone, Applicant’s Counsel said there was no 4G coverage for him to connect for phone calls.

201. Ultimately, Counsel agreed under the circumstances that they would waive the remainder of cross-examination and any redirect examination. Applicant’s Counsel then confirmed with his client that he would authorize this as well. Accordingly, the evidence was closed.

Credibility Analysis

202. In analysing the credibility of the witnesses,¹ the Tribunal finds the Respondent’s witnesses to be credible and the Applicant to not be credible. In each instance, the

¹ This Tribunal is cognizant of the decision in *AAC 2023-UNAT-1370* and has applied it in reaching this judgment. The *AAC* judicial panel acknowledged that “[w]e have digressed at length in this Judgment to make these remarks (*obiter dicta*) about the UNDT’s practice of fact-finding” (*AAC* at para. 62). However, it does not indicate what parts are *obiter dicta* and what are *ratio decidendi*. This Tribunal has not expressly discussed in this judgment all of the various factors that were used in analysing the credibility of each witness since it views that discussion in *AAC* to be *obiter dicta*. However, to be clear for purposes of appellate review, the Tribunal **did** consider all of those factors (in *AAC* para. 47) and other related factors, such as: viii) whether the witness has a motive not to tell the truth; ix) whether the witness has an interest in the outcome of the case; x) whether the witness’ testimony was consistent; xi) whether the witness’ testimony was differed from statements made by the witness on any previous occasion; xii) the intelligence and apparent understanding of the witness; xiii) whether the witness appeared to understand the questions clearly and answer them directly; xiv) whether the witness had any relationship with the administration or the applicant. *See generally*,

Tribunal found the candour and demeanour of the Respondent's witnesses, and the calibre and cogency of the testimonial performance by them to be probable and believable. On the other hand, the sole witness presented by the Applicant, i.e., himself, was far less than credible.

203. On the one hand, the victims all told similar stories about their interactions with the Applicant, to wit, the Applicant knocking on their doors late at night and demanding entry into their private rooms. This consistency is notable because the victims mostly do not know each other and their experiences were months or even years apart. The victims' testimony was consistent with their prior statements and corroborated by the testimony of other witnesses. Their testimony is also consistent with the Applicant's reputation for such conduct that was apparently common knowledge at Jowhar camp (or what the Applicant acknowledged to be the rumours about him).

204. On the other hand, the Applicant's testimony was contradicted by his own prior statements and the testimony of independent witnesses. For example, numerous witnesses testified that the Applicant would brag about his influence in the United Nations, including that his mother was quite important in the Organization. He denied this in his testimony and said that his mother was a housewife who had never worked at all, especially not with the United Nations. Yet, in his statements during the investigation, the Applicant said his mother was the head of an NGO that worked closely with the United Nations in Pakistan, for which she had to travel a lot to Geneva and the United States (or alternatively, that her NGO had "tenuous links implementing UN programs in Pakistan"). Either way, his statements and testimony are inconsistent.

pattern jury instructions on witness consideration/credibility from the U.S. 3rd, 5th, 6th, 7th, and 11th Circuits and the states of Maryland, Virginia, Nevada, Washington, and North Carolina. *See also*, references to methodologies, procedures, and findings of national and other jurisdictions in (*AAC* at paras. 42 and 63, and p. 15, footnote 11).

205. The Applicant also tried to attribute the allegations of him shouting at some of the victims as due to his loud voice and military background. However, before the Tribunal, the Applicant did not testify in a loud voice. Quite the contrary, he testified in a quiet and modulated tone that nobody would mistake for shouting.

206. The Applicant's testimony was also contradicted by his emails and WhatsApp messages on record. The emails demonstrate his effort to have V01 removed from the Jowhar camp and his attempts to initiate a personal relationship with V03.

207. The Applicant's response to all these allegations against him was a series of flat denials, lack of recall, the rhetorical question "why would I ... ?", and speeches about his 22 years of service.

208. For example, he could not recall raising his voice at V01 in the cafeteria, nor trying to isolate her, nor trying to have her removed from the camp, nor screaming at anyone, nor the kitchen incident with V03, nor knocking on the door of V02 at night, nor touching V04's thigh, nor dancing too closely with V04 and V05, nor following them to their rooms. The Tribunal views these claims of lost recollection to be feigned.

209. He testified that there may be times when it is appropriate to knock on the door of someone's private accommodations at night. This is undoubtedly true in the event of a bombing as he mentioned, but none of the justifications he described applied to the numerous times he was alleged to have done so this case.

210. The Applicant also claimed that everyone was biased against him and trying to get rid of him. This is contradicted by many facts in the case. For example, V04 and V05 had no contact with the Applicant other than the two days that they spent in Jowhar camp while they were conducting a training. They both left the next day and decided to "move on" without complaining. Thus, they had no bias and no motivation to get rid of him.

211. Similarly, V02 and V03 were present at Jowhar for longer periods than VO4 and VO5, but they did not work for or under the Applicant. So, they had no motive to get rid of him.

212. Although V01 was subject to the indirect authority of the Applicant, she also did not officially complain about his conduct until he tried to have her removed from Jowhar. Even then, her complaint was only occasioned by her company inquiring about why the Applicant wanted her replaced. According to V01 and her project manager, this resulted in her emotional explanation of how the Applicant had treated her. And it was the project manager, not V01, who approached the United Nations and ultimately instigated the investigation.

213. It is extremely unlikely that any of these witnesses were biased and making up false allegations to get rid of the Applicant.

214. In sum, the Tribunal finds the testimony of each and every of the Respondent's witnesses to be credible and the testimony of the Applicant to be not worthy of belief. Based on the credible testimony, and the other evidence in the record, the Tribunal finds that the Respondent has established by clear and convincing evidence that the Applicant committed the acts upon which discipline was imposed.

Whether the facts amount to misconduct

215. The Applicant submits that the alleged actions against him do not amount to sexual harassment or abuse of authority. He never engaged in any retaliation, he played no role in anyone's transfer, nor did he have the power or the capacity to influence these events. Absent any retaliation, there is no abuse of authority.

216. The Applicant argues that his interactions with the various victims were innocent and misunderstood by them. However, the fact that he did not use vulgarity or explicit sexual language in these advances did not make them permissible. Clearly, that was not his style or method of seduction.

217. Instead, the evidence indicates that the Applicant attempted to entice his intended paramours with promises of refrigerators, televisions, and career advancements. However, his intentions were clear to the victims and are clear to the Tribunal.

218. The evidence shows that sometimes the Applicant would back off when rebuffed. No doubt recognizing that he might be treading on thin ground, he covered his tracks by apologizing and saying that the victim misunderstood. However, the evidence also shows that other times the Applicant would retaliate.

219. After V02 rebuffed his advances, the Applicant “would give her an argument” and once screamed when she was cooking in the kitchen. With V03, after being rebuffed, the Applicant also shouted at her in front of others, bringing her near tears. He also complained about her performance to her supervisor and requested that she be removed from Jowhar.

220. With V01, perhaps because she was most under his control, the Applicant’s advances were more persistent and involved greater pressure. At various times, the Applicant would complement her on her physical appearance, invite her for drinks, shout at her, grab her wrist and tell her that eventually she would succumb to his pressure.

221. He tried to isolate her socially at Jowhar by threatening other men who interacted with V01. Several men told V01 about these threats, and she observed that these men subsequently were removed from Jowhar. The Applicant argues that there is no evidence that he sought to have these men removed. However, that is not true.

222. One of the men, Mr. Benjamin Emor, testified that his administrator told him the Applicant was complaining that Mr. Emor was “frequenting” V01 too often. The administrator said: “when Aamir starts talking like that it is not a good sign because others have gotten in trouble previously”. Mr. Emor then spoke directly with the Applicant who cautioned him about speaking to V01.

223. Mr. Emor testified that later the Applicant tried to have him removed from the camp by contacting his supervisors and asking, “why do you still need Ben back”. Mr. Emor’s administrator refused to move him because the Applicant gave no reason for such action. This testimony certainly constitutes evidence that the Applicant played a role in trying to have him removed, even if his efforts were unsuccessful.

224. Ultimately, the Applicant also threatened both V01 and her company, Almond. “With the flick of a finger, I can make a call to Mogadishu”. Later, Almond lost one of its contracts.

225. And when V01 went on leave, the Applicant tried to orchestrate her not being allowed to return. He called and emailed her project manager several times and asked for her to be replaced “permanently”. When Almond officials asked why she should be replaced, the Applicant did not give a specific reason. Again, this is evidence of the Applicant’s efforts to exert influence in attempting to get rid of contractors for reasons other than poor performance.

226. The Tribunal, therefore, finds clear and convincing evidence of sexual harassment and retaliation by the Applicant when women rejected his sexual advances. Thus, there is sufficient evidence of sexual harassment, harassment, and abuse of authority, all of which constitute serious misconduct.

Whether the staff member’s due process rights were guaranteed during the entire proceeding

227. The Applicant’s position is that the OIOS investigation was tainted *ab initio* by the malicious publication in a Kenyan website of the allegations to be investigated by OIOS. The information relayed and which has severely embarrassed and caused severe stress and damaged his relationship with his children and wife, could only have come from OIOS or one or more of the alleged victims. He says that it is unthinkable that OIOS would have been the source, so it is most likely that the information was relayed by V01 or V02. The article itself points out the victim as a female Nigerian police officer, a description fitting that of V02. The website article was widely distributed, no

doubt accessed by all residents of Jowhar compound, as many others in UNSOS, including UNSOS senior management, and all witnesses interviewed by OIOS.

228. The Applicant also argues that the publication is likely to have influenced and clouded witnesses' interviews, including the false claim that he engaged in numerous instances of indecent acts with unwilling females. There is not a single allegation of anything resembling any indecent acts or that they were forced on women.

229. The Applicant also submits that OIOS interviewed 22 persons, including UNSOS Headquarters supervisors from a compound population of 183, from which five alleged victims were identified as V01, V02, V03, V04, and V05. OIOS failed to interview or report on any witness who may have been able to support his version of events. Regrettably, OIOS focused its efforts, not in an objective assessment of the allegations and the supporting evidence, but instead on setting up the facts in support of the allegations, regardless of the weakness of the evidence, and disregarding his presumption of innocence.

230. The Applicant further attacks the investigation process on the ground that investigators accepted at face value the allegations without at any stage questioning the veracity or the interpretation of the claims against him. Clear evidence of this is the absence of any attempt by the investigators to undertake any analysis of the allegations of retaliation levied against him by V01. These are accepted at face value without dwelling whether there is any credible evidence to substantiate the charges.

231. The Applicant equally avers that his placement on administrative leave without pay ("ALWOP") and on administrative leave with pay ("ALWP") was well known by United Nations' colleagues. He claims that this created a clear impression of guilt as the actions of the Administration, although allowed under the rules, nonetheless created a public impression of guilt.

232. The Tribunal is of the view that the Applicant's claim that the investigation was tainted by the Kenyan website is based entirely on speculation. The Applicant admitted that he had no evidence as to the source of the website post. Although he guesses that it was either V01 or V02, his Counsel never asked either of them about the issue during their testimony.

233. Similarly, he did not question those witnesses that he speculates were "influenced and clouded" by the website if they had even seen the publication. Moreover, the investigator testified that the Applicant referenced the website himself during the investigation, but that the website was vague and non-specific about details. By contrast, the witnesses gave very specific details that were not referenced on the website. In the end, the investigator testified that the website did not influence her investigation or analysis of the case. The Tribunal finds this to be true.

234. Regarding the complaint that OIOS did not interview his witnesses, the Tribunal notes that this was not discussed in the Applicant's closing submission, but to the extent that it has not been abandoned, it will be analysed here. The investigator testified that, when she asked the Applicant during his interview if there were other people that he thought should be interviewed, he suggested only his supervisor, the head of UNMIS police, and vaguely "colleagues in Jowhar camp". The first two did not seem to have any information as to the veracity of the claims being investigated, and unnamed "colleagues" is too vague to consider.

235. In addition, the Tribunal notes that the Applicant did not call any witnesses except himself. If there were any witnesses that possessed relevant information and could have supported the Applicant's version of events, one would think he would have called them to testify on his behalf or even mentioned them by name. Yet, he did not.

236. The Applicant also claims that the investigator accepted the allegations at face value without examining their veracity. In his closing submission, he expands on this by alleging that "the OIOS Manual for sexual harassment investigations works on the

principle of the assumption of the veracity of a complainant”. However, there is no evidence in the record to support this claim.

237. Moreover, the investigator testified credibly that she did not proceed with any such assumption. To the contrary, she testified that she followed a methodical approach, interviewing each witness, considering the accounts separately and then seeing what statements were supported by other evidence and what were not. That testimony was credible and negates the Applicant’s claim.

238. Finally, the Applicant avers that placing him on ALWP and ALWOP created a public impression of guilt. However, there is again no evidence to support this. The record indicates that the Applicant was placed on ALWOP on 16 September 2022, which was after the investigation was completed. He had earlier been placed on ALWP on 25 November 2021. By then, interviews had been conducted of V01, V04, V05, and several of the independent witnesses. Thus, it was chronologically impossible for these interviews to have been affected by his ALWP. In addition, there was no testimony that anyone else was aware of the ALWP status nor that it affected the investigation in any way.

239. Also, the Tribunal takes note of the Appeals Tribunal decision in *Muteeganda* 2018-UNAT-869, which observed that “a decision to impose ALWOP in sexual misconduct cases is not disproportionate ... Any limitation on the right to be presumed innocent is accordingly reasonable in light of all the relevant factors” (para 41).

240. Accordingly, the Tribunal concludes that the Applicant’s due process rights were respected in the investigation and disciplinary process.

Whether the sanction is proportionate to the gravity of the offence

241. The Applicant contends that the punishment imposed on him, is excessive, exceedingly punitive, disproportionate, and misaligned with most recent outcomes of disciplinary processes for sexual harassment and abuse of authority allegations.

242. He claims that according to the Practice of the Secretary-General in Disciplinary Matters and Cases of Criminal Behaviour from 1 July 2009 to 31 December 2019 (Compendium of Disciplinary Cases), in more than 69% of cases of harassment, sexual harassment and abuse of authority, staff members were issued with non-termination disciplinary sanctions and their livelihoods were not unduly affected.

243. Accordingly, the Applicant prays a disciplinary sanction befitting the facts of the case which should be at the lower end of severity of a written censure or deferment, or as the Tribunal may otherwise deem proportionate and just.

244. The Tribunal rejects the Applicant's factual assertion that in over 69% of similar cases the sanction was less than termination. A close examination of the record indicates that this is incorrect.

245. First, the chart upon which this number is based (Annex 7 to the application) is an incomplete listing of disciplinary measures. For example, it does not include cases number 1, 2, and 20, each of which were sexual harassment cases that resulted in dismissal.

246. Second, the chart contains at least one significant error. The chart lists case number 317 as resulting in a "Financial Fine", when in fact the sanction was "separation from service" along with a fine.

247. Third, the analysis includes five cases (in the total of 42), where no disciplinary measure was imposed because the staff member had already separated from service. These cases seem to have been treated by the Applicant as "deferments" and calculated as non-termination sanctions. They should be excluded from the analysis or, if included, be treated as "self-terminations".

248. Fourth, the analysis includes cases that are substantially different from the instant case. Only one of the non-termination cases (number 99) mentions sexual harassment and it involved a single unwelcome sexual advance. The other cases involve non-sexual

harassment such as “name-calling” (case number 25), insulting language (case number 98), or shouting (case numbers 135, 136, and 137). Such cases are not factually analogous to the instant case at all.

249. Finally, the Applicant’s entire analysis is based on outdated information. The Compendium that the Applicant relies on in his Annex only lists cases through 2019. The most recent compendium lists disciplinary measures through 31 December 2022.² Thus, the Applicant’s argument omits the most recent three years of data.

250. In that regard, this Tribunal notes that just last year, the Appeals Tribunal observed that “there has been a shift in social mores in the workplace, as is the case with conduct of a sexual nature in the current climate, and ... the Organisation has communicated unequivocally to staff members that a very high standard of behaviour is expected of this in such regard (*Szvetko* 2023-UNAT-1311, para. 57).

251. All that can be deduced from the evidence on record is that the Organization’s practice is to punish sexual harassment at the upper end of the sanction range for “harassment, sexual harassment and abuse of authority category of cases. This upper end includes termination, particularly in light of the Organization’s “zero tolerance” policy for sexual harassment.

252. With respect to the sanction in this case, the sanction letter (and its annex) spells out the analysis that the Organization undertook in determining an appropriate sanction for the Applicant’s conduct. This included consideration of the Applicant’s multiple acts of sexual harassment against multiple victims over the course of about two years and his abuse of authority in connection with that harassment (including retaliation for rebuffing his advances).

² Since neither party asked the Tribunal to take judicial notice of the most recently published compendium, the Tribunal will not consider it in reaching this judgment, other than the observation that the Applicant’s dataset is incomplete and that the more recent disciplinary measures are dramatically different from those listed in the compendium that is in the record.

253. The analysis also considered mitigating factors such as the Applicant's 22 years of service, his previously clean disciplinary record, and his diagnosis of PTSD. However, the Organization appropriately found that these do not justify his conduct nor minimize the gravity of the Applicant's actions.

254. As the Respondent points out, the Appeals Tribunal has held that; "when abuse of authority is coupled with the sexual harassment of two female staff members, the combination clearly warrants the imposition of the harshest sanction available to the Agency" (*Khan* 2014-UNAT-486, para. 47).

255. And the Appeals Tribunal language in last year's decision is particularly apt:

Hence, while the conduct in this case was less egregious than other instances of sexual harassment that have led to dismissal in the past and may reasonably have been sanctioned with a lesser penalty, it does not follow that dismissal was not reasonably appropriate in light of the damage to confidence it caused. In these circumstances, the decision to impose the sanction of separation fell within the reasonable range of disciplinary options and was one to which the UNDT ought to have deferred (*Szvetko*, at para. 58).

256. Accordingly, the Tribunal finds that the sanction of dismissal was neither unfair nor unjust. Instead, the Tribunal finds that the sanction was appropriate and proportionate under all of the circumstances and evidence.

Conclusion

257. In view of the foregoing, the Tribunal DECIDES to deny the application in its entirety.

(Signed)

Judge Sean Wallace

Dated this 11th day of March 2024

Entered in the Register on this 11th day of March 2024

(Signed)

René M. Vargás M., Officer-in-Charge, Nairobi