



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

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Judgment No. 2023-UNAT-1405

**Yonas Negasa  
(Respondent/Applicant)**

**v.**

**Secretary-General of the United Nations  
(Appellant/Respondent)**

**JUDGMENT**

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Before:	Judge Nassib G. Ziadé, Presiding Judge Gao Xiaoli Judge Abdelmohsen Sheha
Case No.:	2022-1764
Date of Decision:	27 October 2023
Date of Publication:	15 December 2023
Registrar:	Juliet E. Johnson

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Counsel for Mr. Negasa: Shubha Suresh Naik, OSLA

Counsel for the Secretary-General: Angélique Trouche

**JUDGE NASSIB G. ZIADÉ, PRESIDING.**

1. Mr. Yonas Negasa contested a decision of the United Nations Department of Operational Support (DOS) not to select him to the Young Professionals Programme (YPP) (contested Decision).
2. By Judgment No. UNDT/2022/107, the United Nations Dispute Tribunal (UNDT) rescinded the contested Decision, ordered that the Administration had to set a new written assessment to be taken by Mr. Negasa, and awarded compensation in lieu of rescission (impugned Judgment).<sup>1</sup>
3. The Secretary-General lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure<sup>2</sup>**

5. Mr. Negasa is a staff member of the United Nations Mission in South Sudan (UNMISS).<sup>3</sup>
6. On 10 June 2020, he sat for the Security Affairs Exam as part of the YPP competitive process.<sup>4</sup> The exam consisted of six parts. The first five parts—(i) United Nations Core Values; (ii) Summary & Conclusion; (iii) Security Technical Knowledge; (iv) Situational Judgment Part; and (v) Security Reasoning Part—were a written test comprising multiple choice questions (MCQs).<sup>5</sup> The sixth part—(vi) Security Report Drafting Part—required drafting.
7. On 11 February 2021, Mr. Negasa received the contested Decision.<sup>6</sup> In it, the YPP Examinations Team, Special Assessment Section, Human Resources Services Division, DOS, notified him that he had not attained the passing score in the written test that would enable him to proceed to the next phase of the YPP selection process. As a consequence, he would not be included

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<sup>1</sup> *Negasa v. Secretary-General of the United Nations*, Judgment dated 7 October 2022.

<sup>2</sup> Summarized from the impugned Judgment as relevant to the appeal.

<sup>3</sup> Impugned Judgment, para. 1. At the time of issuance of the impugned Judgment, he held a continuing appointment at the FS-5 level as a Security Officer at UNMISS.

<sup>4</sup> Impugned Judgment, para. 2.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, para. 3.

in the list of successful candidates in the YPP examinations and thereby not become eligible for subsequent consideration for appointment at the P-1 or P-2 levels in the United Nations Secretariat.<sup>7</sup>

8. On 12 February 2021, Mr. Negasa sought clarification on the breakdown of his results and the YPP Examinations Team explained that some of the questions had been deleted after marking the exams and as such that his remaining answers and scores did not reach the pass mark.<sup>8</sup> No specific breakdown of his scores was given.

9. On 17 February 2021, the YPP Examinations Team provided Mr. Negasa with the following explanation:<sup>9</sup>

We are happy to offer you some further explanation of the process though, as we do understand the confusion as to why your score on the Summary & Conclusion exam part is not a whole number score. The reason for this is that every question included in the test may not necessarily be included in the final scoring. We mention in the results letter that the “questions and results are carefully analyzed and reviewed” before being finalized, in an effort to “ensure accuracy and fairness of the exam”. After thorough analysis, a question may be removed from the final scoring if we find that it statistically advantages or disadvantages certain groups of applicants (i.e., causes a disparate impact based on gender, internal v. external status, etc.). This is a standard practice that we take prior to finalizing the results for all tests we administer, and do so in an anonymous manner (i.e., before we match names to test scores). So, depending on the total number of final questions included in scoring, one’s result is not always a number that divides neatly into the 100 points allocated for each MCQ exam part; this then translates into a score with decimal points.

More specifically, for Summary & Conclusion, four questions were eliminated, meaning the final exam part consisted of 16 questions for scoring. Each question was worth 6.25 points, and as you answered 6 of the 16 questions correctly, you received a score of 37.5 points out of 100. We would like to also point out that while a bare minimum threshold of 40 points was set for each of the MCQ exam parts, there was a total MCQ passing point set: 337.5 out of 500 (67.5%). Your total score on the MCQ exam parts was 285.36 out of 500 (57%). We mention this simply to point out that while the 37.5 points seems so close to the 40 points needed to meet the threshold, your total points still are not close to the total MCQ passing point.

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<sup>7</sup> Administrative Instruction ST/AI/2012/2/Rev.1 (Young professionals programme).

<sup>8</sup> Impugned Judgment, para. 4.

<sup>9</sup> *Ibid.*, para. 5.

10. On 4 March 2021, the Office of Staff Legal Assistance (OSLA) sought a breakdown and further clarification of Mr. Negasa's scores and of the basis of the contested Decision.<sup>10</sup> On 16 March 2021, the YPP Examinations Team responded to OSLA's query but did not provide a breakdown or justification for the basis of the cancellation of questions or the breakdown of his scores.

11. On 12 April 2021, Mr. Negasa filed a request for management evaluation.<sup>11</sup> On 29 May 2021, the management evaluation letter was issued, upholding the contested Decision.

12. On 25 August 2021, he filed an application with the UNDT.<sup>12</sup>

*The impugned Judgment*

13. By Judgment No. UNDT/2022/107, the UNDT rescinded the contested Decision and ordered that the Administration had to set a new written assessment to be taken by Mr. Negasa, without undue delay, and pay compensation in lieu of rescission at six months' net-base salary at the FS-5 level as per the salary scale in effect at the time of his application. The UNDT ordered that the compensation should bear interest at the United States prime rate with effect from the date the Judgment became executable until payment and that an additional five per cent should be applied to the United States prime rate 60 days from the date the Judgment became executable.

14. The UNDT found that the record showed that Mr. Negasa had not attained the passing score in the written test that would have enabled him to proceed to the next phase of the selection process.<sup>13</sup> He reached 50.80 points in part (i) of the written test, 37.50 in part (ii), 47.06 in part (iii), 66.67 in part (iv), and 83.33 in part (v), and a total of 285.36 points out of 500, i.e. 57.07 per cent. The minimum for each part was 40 per cent which he did not reach in part (ii). As to the total score of the written test, the Specialized Board of Examiners recommended that only candidates with 67.5 per cent (337.81 points) pass the test.

15. The UNDT observed that it had been admitted by the Secretary-General that certain questions had been deleted after the written test was administered on the grounds that "it statistically advantage[d] or disadvantage[d] certain groups of applicants".<sup>14</sup> ST/AI/2012/2/Rev.1

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<sup>10</sup> *Ibid.*, para. 6.

<sup>11</sup> *Ibid.*, para. 9.

<sup>12</sup> *Ibid.*, para. 11.

<sup>13</sup> *Ibid.*, para. 27.

<sup>14</sup> *Ibid.*, para. 30.

is clear that only changes relating to the format can be made to the exam, and even then, only prior to the exam. It does not envision deletion of any questions, let alone once the candidates have sat for the exam and after the papers are marked. What happened is contrary to UNAT jurisprudence.<sup>15</sup> The Administration's actions were therefore unlawful. Moreover, in the present case, the change was substantive and impacted the outcome of the examinations and interfered unduly with the selection process.

16. The UNDT was of the view that such practice was discriminatory and problematic.<sup>16</sup> The Administration's explanation shows that the practice does not safeguard anonymity as it inevitably requires identifying particulars of a group of candidates, e.g., gender, etc. The Secretary-General has not disclosed the specific assessment made, the specific questions deleted and the specific reason for each deletion, the way questions impacted the equality of the candidates, the results of the selected group, and, given that the deletion was made after the test had been administered, the caution and wariness adopted to prevent potentially breaching the candidates' anonymity or favouring specific groups of participants or specific candidates. If such disparities are to be identified, it could give rise to discrimination, manipulation, impropriety and opportunity for excluding the group. Furthermore, such action means that candidates of the other group, if they had scored correctly, are automatically prejudiced. There was an objective manipulation of the results and the entire process lacked transparency.

17. The UNDT found that Mr. Negasa's interest in challenging the deletion of four questions was valid.<sup>17</sup> He had the right to be evaluated on all 20 questions in part (ii). Therefore, the Secretary-General should have demonstrated that even replacing the four removed questions, i.e. administering four additional questions to the candidates, he would not have reached the minimum score required (40 per cent). Moreover, the breakdown of his test results shows that three questions from part (iii) and two questions from part (v) were also deleted, i.e. nine questions were deleted from the whole test.<sup>18</sup> This adversely affected his overall score in the written test.

18. The UNDT noted that, concerning the total score, the Administration seemed to be correct that even adding 45 points, Mr. Negasa could have reached only 330.36 points for the written exam

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<sup>15</sup> The UNDT referred to *Virendra Singh Chhikara v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1014, para. 18.

<sup>16</sup> Impugned Judgment, para. 41.

<sup>17</sup> *Ibid.*, para. 53.

<sup>18</sup> The UNDT referred to Annex R/7 to the reply.

which was lower than the minimum required score of 337.5.<sup>19</sup> Nevertheless, many questions were deleted after the written test, the grading methodology was developed after the test and even the passing grade was determined after the test. Therefore, his candidature was not given full and fair consideration.

19. As to the remedies, the UNDT was of the view that Mr. Negasa could be freshly evaluated on his answers to the questions that were deleted.<sup>20</sup> He has to be placed in the same position he would have been in if the illegality had not occurred, that is, he has to be granted an opportunity to be fairly considered. The amount of compensation in lieu of rescission must be set considering the nature of the dispute, the length of service and the chances of success in the selection process. No evidence of moral harm has been offered by him.

#### *Procedure before the Appeals Tribunal*

20. On 6 December 2022, the Secretary-General filed an appeal of the impugned Judgment with the Appeals Tribunal, to which Mr. Negasa filed an answer on 6 February 2023.

### **Submissions**

#### **The Secretary-General's Appeal**

21. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment and to uphold the contested Decision.

22. The Secretary-General argues that the UNDT erred in law and in fact in finding that Mr. Negasa had not received full and fair consideration. The UNDT failed to recognize that he was unsuccessful in the YPP examination due only to his own failure to reach the overall passing mark for the MCQs. The elimination of some questions in the written test was not the cause of his lack of success. The UNDT applied an incorrect standard of review. The criteria were the same for all applicants and were applied equally. The UNDT should have applied the presumption of regularity.

23. The Secretary-General explains that even as the questions prepared for the YPP examination go through several stages of internal review annually before the examination is

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<sup>19</sup> Impugned Judgment, para. 63.

<sup>20</sup> *Ibid.*, para. 69.

administered, involuntary bias in the questions may still go unnoticed. Such bias can result in a category of candidates failing a question to a disproportionate extent. This does not mean that other candidates would be widely successful with the same question. The statistical analysis conducted by the Administration is a best practice in the recruitment industry.<sup>21</sup>

24. The Secretary-General submits that the eliminated MCQs were identified as biased. The practice pursued a legitimate interest. The UNDT's findings are speculative. Mr. Negasa has not demonstrated that he was treated any differently from the other candidates and that any of the Administration's actions were to his detriment. The UNDT incorrectly assumed that he had answered all the deleted questions correctly. The UNDT's calculation of, and reasoning on, his score are manifestly erroneous.

25. The Secretary-General contends that the UNDT erred in law by finding that ST/AI/2012/2/Rev.1 did not allow for eliminating questions. The elimination of some questions was not a change of format. Moreover, the UNDT erred in fact and in law by implying that the passing grade should have been determined prior to the written test. It is within the Administration's discretion how to conduct the YPP examination. The determination of the passing grade is informed by the required size of the roster to be filled and, in turn, the anticipated needs of the Organization.

26. The Secretary-General states that the UNDT erred in law by transposing to the YPP context the requirements for competitive processes where candidates are selected for a particular job opening. Instead, the YPP aims to fill rosters in specific work areas and involves thousands of candidates. The facts of the present case are materially different from those in *Chhikara*<sup>22</sup>. The UNDT's finding that anonymity was not respected was not based on the evidence.

27. The Secretary-General argues that the UNDT erred in law in awarding compensation in lieu of rescission. The UNDT disregarded the principle that where there was no chance of selection, no rescission shall be ordered and no compensation shall be awarded, even in case of irregularity of procedure.<sup>23</sup> Mr. Negasa had no chance of success in passing the written test, had the questions

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<sup>21</sup> The Secretary-General refers to the "Principles for the Validation and Use of Personnel Selection Procedures" (Handbook), p. 24 (Annex 11 to the appeal).

<sup>22</sup> *Op. cit.*

<sup>23</sup> The Secretary-General refers to *Vangelova v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-172, paras. 17-19; *Bofill v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-174, para. 28; and *Dualeh v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-175, paras. 18-19.

not been removed. Even if he had been successful in the entire YPP examination, he would have been placed on roster, which does not create an expectancy of selection for a position. However, even if compensation in lieu of rescission was to be awarded, the award of six months' net-base salary was excessive, i.e. beyond the economic equivalent of any harm suffered. Furthermore, taking the examination again would not guarantee the same circumstances, competitors, availability of positions or other factors that must be considered when deciding on the remedy.

**Mr. Negasa's Answer**

28. Mr. Negasa requests that the Appeals Tribunal dismiss the appeal and uphold the impugned Judgment.

29. He argues that the Secretary-General has not demonstrated that the UNDT erred in law or in fact when it held that he was not given full and fair consideration. The UNDT did not reverse the burden of proof or place an undue burden of proof on Appellant. Appellant identifies no substantial evidence reflecting a misapprehension of the facts by the UNDT. Concerning the elimination of questions, Appellant has failed, even on appeal, to produce details on the specific assessment made, the specific questions deleted and the specific reason for each deletion, the impact on the selected group, and measures to prevent bias and potentially breaching the candidates' anonymity.

30. Mr. Negasa submits that assertions that the process was anonymous and the "best practice of the industry" are incorrect. Each candidate's gender, United Nations staff status and economic grouping was revealed.<sup>24</sup> Contrary to Appellant's contention, the "Principles for the Validation and Use of Personnel Selection Procedures" (Handbook) states on page 24 that such analyses "are not a routine or expected part of the selection procedure development and validation process in employment settings". It defies reason as to why such assessment of questions had not been conducted before the written test.

31. Mr. Negasa questions the legal standing of the Special Assessment Section to recommend substantive changes. Furthermore, he points out that the Specialized Board of Examiners did not have among its functions, as stated in Annex II of ST/AI/2012/2/Rev.1, the authority to delete questions, or to determine the passing percentage. Moreover, the

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<sup>24</sup> Mr. Negasa refers to the Item Analysis Guide (Annex R4 to the reply before the UNDT).



Specialized Board of Examiners committed an error in calculating the passing score by including the removed questions in the total number of points (500).

32. Mr. Negasa submits that administrative inconvenience should not hamper the attainment of the requisite standards for selection exercises. The standard should be applied to the YPP examination. It is a new argument by Appellant that if the passing grade was to be determined beforehand, it would result in several hundred successful candidates.

33. Mr. Negasa contends that Appellant has not demonstrated any error of the UNDT in awarding compensation in lieu of rescission. The irregularity was of such a nature that, had it not occurred, he would have had a foreseeable and significant chance of promotion. Appellant fails to take into consideration the other irregularities established by the UNDT. Due to the many years of experience and expertise in the field of security, he would likely have been successful in the subsequent stages of the YPP competitive process and would have been rostered.

### Considerations

34. UNAT jurisprudence has long established that the Secretary-General is obligated, in employment selection processes, however conducted, to provide “full and fair consideration” to all applicants.<sup>25</sup>

35. The requirement to provide full and fair consideration is subject to review and enforcement by the UNDT and the Appeals Tribunal:<sup>26</sup>

(...) It is well-established that tribunals should avoid substituting their own preferred appointment or eligibility criteria for those chosen by the Administration. *Nonetheless, the discretion to introduce criteria in the interests of operational requirements or efficiency is not unfettered and must be exercised lawfully, reasonably and fairly.* The choice of eligibility criteria and their application must be reasonable, or at least rationally based, in the sense, *inter alia*, of not being arbitrary, capricious, improperly motivated or based on irrelevant considerations.

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<sup>25</sup> *Chhikara* Judgment, *op. cit.*, para. 18. See also *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, paras. 30-32.

<sup>26</sup> *Smith v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-785, para. 30 (emphasis added, internal citation omitted).

36. The UNDT, after careful consideration, determined that the Secretary-General failed in this obligation when it administered a written multiple-choice examination and then, without prior notice, eliminated from consideration nine questions in that examination and evaluated applicants based on their scores without considering the results of those nine questions. The UNDT determined that the elimination of the questions “was a substantive change, which impacted the outcome of the results and interfered unduly with the selection process”.<sup>27</sup>

37. To the extent that the UNDT’s assessment was based on its factual determinations, we observe that “[t]he Dispute Tribunal has broad discretion under Article 18(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision”.<sup>28</sup>

38. The Secretary-General contends that the UNDT erred in law and fact in the standard of review it applied to the selection process here. In this regard, the Secretary-General emphasizes decisions of this Tribunal establishing a “presumption of regularity” to selection decisions.<sup>29</sup> We note, however, that this standard merely establishes a presumption, which can be overcome by, *inter alia*, a showing that the applicable Regulations and Rules were either not applied or were applied in a manner which was not fair, transparent and non-discriminatory.

39. The issue presented here bears a strong similarity to that decided by this Tribunal in *Chhikara*<sup>30</sup> addressing “basic minimum standards that must apply when administering a written test”.<sup>31</sup>

40. *Chhikara* details the following “minimum standards”, which are relevant here:<sup>32</sup>

a. Generally, while the Administration enjoys a broad discretion on how to administer a written test, it must nevertheless do so in a reasonable, just and transparent manner; otherwise, a job candidacy would not receive full and fair consideration;

b. As also stated in the Manual [for the Hiring Manager on the Staff Selection System], any assessment must be undertaken on the basis of a “prescribed performance scale and

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<sup>27</sup> Impugned Judgment, para. 40.

<sup>28</sup> *Diop v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-950, para. 26.

<sup>29</sup> E.g., *Lemonnier* Judgment, *op. cit.*, para. 32.

<sup>30</sup> *Chhikara* Judgment, *op. cit.*

<sup>31</sup> *Ibid.*, para. 18.

<sup>32</sup> *Ibid.*

response guide” and on a “predetermined passing grade”. Accordingly, before a written test is administered, a proper and reasonable grading methodology must be adopted and shared with the graders;

c. If subsequent to the administration of the test, it becomes clear that mistakes were made in this methodology, or the written test turned out to be pointless in that no job candidates managed to pass it in accordance with the predetermined passing grade, then (a) a new written test must either be administered or (b) variations must be made to the assessment methodology that do not prejudice any specific job candidates (the reverse impact of “the no difference principle”).

41. The administration of the written Security Affairs Exam in the present case did not meet these minimum standards. There is no provision in the Administrative Instruction applicable to the Young Professionals Programme (ST/AI/2012/2/Rev.1), which contemplates the deletion of questions and answers after a test has been administered. The unannounced and *ex post* deletion of nine questions from the written examination, after it had already been marked, on its very face violated the obligation to administer the test in a “reasonable, just and transparent manner”. Applicants taking a written exam are entitled to be advised how the examination will be scored. During any written examination, candidates inevitably allocate time among various questions, and time dedicated to particular questions impacts their ability to properly answer others. The after-the-fact deletion of certain questions in this case tainted the examination process and made it unreasonable, unjust and plainly not transparent.

42. Although *Chhikara* did not involve the same selection process as used for the YPP program in the instant matter, the analytic framework applied in *Chhikara* regarding the Administration’s core responsibility in providing a “reasonable, just and transparent” process is applicable here. As this Tribunal stressed in *Chhikara*, it is incumbent on the Administration, “before a written test is administered”, to adopt “a proper and reasonable grading methodology”.<sup>33</sup> Here, the Secretary-General did the reverse—it first administered the test, analyzed the results, and only then decided that certain questions should be eliminated from consideration. The Secretary-General did not argue, and has presented no evidence, that it could not have better analyzed the test for these perceived flaws prior to its administration. Instead, it elected to field test the examination on Mr. Negasa and the other applicants. Even crediting the Secretary-General’s stated purpose of avoiding “unvoluntary bias”, this process was not reasonable, just or transparent.

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<sup>33</sup> *Ibid.*, para. 18.b.

43. In this regard, the Secretary-General contends that it simply followed “a best practice in the recruitment industry”. The support for that contention is unconvincing and does not establish manifest error by the UNDT. The Handbook upon which the Secretary-General relies, states that while differential item functioning (DIF) “analyses may be particularly useful” in certain circumstances, “DIF findings should be viewed with caution. DIF analyses are not a routine or expected part of the selection procedure development and validation process in employment settings”.<sup>34</sup>

44. The Secretary-General contends that the *Chhikara* analysis should be disregarded because the present matter involves the use of a test to select a “roster” of candidates from which multiple hiring decisions can be made, whereas *Chhikara* involved the selection of candidates for a particular job opening. This distinction is not material to the core issues here. The written tests in both this instance and *Chhikara* were designed to screen out certain candidates and create a manageable pool for consideration. In *Chhikara*, the written test was given to fourteen shortlisted candidates, and only those “who had successfully passed” the test were invited to an interview.<sup>35</sup> In the present matter, the multiple-choice test was given to 743 candidates, and the 64 applicants who passed were then eligible for their essay examination to be considered with the purpose of creating the roster for potential interviews.<sup>36</sup> In both cases, the test screened out some applicants, leaving the remainder eligible for further consideration. The obligation to provide a fair and transparent process is the same in both instances.

45. The Secretary-General correctly notes that when, as here, the examination is used to select a roster of a certain size, there must be some flexibility in determining the test score which will yield the appropriate number of applicants. But no principle of justice would permit such flexibility to create a possibility of manipulating test results after the fact, and we decline to proceed down that line of reasoning.

46. The Secretary-General likewise takes issue with the UNDT’s determination that the elimination of nine questions was a “change in the format” of the examination which was required to be “communicated to all examinees (...) prior to the actual examination” under

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<sup>34</sup> Annex 11 to the appeal, page 24, “DIF refers to analyses that identify items for which members of different subgroups with identical total test scores (or identical estimated true scores (...)) have differing item performance”.

<sup>35</sup> *Chhikara* Judgment, para. 3.

<sup>36</sup> 11 November 2020 memorandum from the YPP Specialized Board in Security Affairs (Annex 7 to the appeal).

ST/AI/2012/2/Rev.1, Section 5.4. Because we find that the conduct of this examination process violated the more fundamental obligation of a reasonable, just and transparent process, we need not reach a determination on that narrower objection.

47. The UNDT also determined that Mr. Negasa had been adversely impacted by the challenged action. The Secretary-General argues that if the deleted questions had been considered, rather than excluded, Mr. Negasa would still not have met the threshold score to receive further consideration. But the Secretary-General has not demonstrated that the UNDT's decision was manifestly unreasonable. The UNDT noted that "the Applicant had the right to be evaluated on 20 items, that is the same number of questions foreseen—and administered—in the competition from the beginning", "a number that the Administration (...) found fair for the assessment".<sup>37</sup> The UNDT observed that, in order to uphold the non-selection of Mr. Negasa in the instant case, "it would be necessary to exclude that, even administering four additional questions to the candidates (replacing those ones removed) the candidate would not have reached the minimum score".<sup>38</sup> This counterfactual, of course, cannot be established by the Secretary-General, nor is it the role of this Tribunal to engage in speculation. We have determined that the process was unfair and not transparent. The unfairness tainted the results and perforce adversely affected Mr. Negasa in this case.

48. This leaves the remaining question of whether the UNDT's award of compensation in lieu of rescission was appropriate. This Tribunal has held that "remedies for irregularities in non-selection decisions are invariably context specific. They are discretionary in nature and should be tailored to the peculiar circumstances of the case".<sup>39</sup> The UNDT's remedial award was consistent with Article 9(1)(a) of the UNAT Statute and our reasoning in *Sobier*.<sup>40</sup> This Tribunal perceives no substantial reason to overturn that aspect of the impugned Judgment.

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<sup>37</sup> Impugned Judgment, para. 54.

<sup>38</sup> *Ibid.* para. 55.

<sup>39</sup> *Rhyan Ramsaroop v. Secretary-General of the United Nations & Miksch et al. v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1165, para. 33.

<sup>40</sup> *Hatim Mahmoud Sobier v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1208, para. 37.

**Judgment**

49. The Secretary-General's appeal is dismissed, and Judgment No. UNDT/2022/107 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> day of October 2023 in New York, United States.

*(Signed)*

Judge Ziadé, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 15<sup>th</sup> day of December 2023 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar