





the Respondent's motion to consider the issue of receivability as a preliminary issue, finding, *inter alia*, that the determination of whether the Applicant's case is receivable would likely require further submissions and oral evidence (see Orders No. 92 (NY/2012) and No. 95 (NY/2012)).

5. On 21 May 2012, the Applicant filed the present case on the merits, registered as Case No. UNDT/NY/2012/011, following which both parties filed various motions and counter-motions regarding case management. Following the filing of the Applicant's application on the merits, the Tribunal issued seven case management orders (Orders No. 142 (NY/2012); No. 187 (NY/2012); No. 242 (NY/2012); No. 257 (NY/2012); No. 265 (NY/2012); No. 24 (NY/2013); No. 60 (NY/2013)) and held a case management discussion on 5 December 2012. Since the filing of her original application for suspension of action, the Applicant was represented consecutively by three outside counsel. She is currently self-represented.

*Applicant's motion of 27 January 2014*

6. On 27 January 2014, the Applicant filed a motion for the withdrawal of the present case and for the redaction of "her identity from all the documents which are publicly available on the [Tribunal's] website", including Judgment No. UNDT/2009/096. The Applicant refers to art. 11.6 of the Tribunal's Statute, which states that "[t]he judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal". She further states that the citation of her name in Judgment No. UNDT/2009/096 is, *inter alia*, harmful to her professional reputation and her family safety and security because of her professional work and that it discloses her health status. The Applicant further states that she "would like to mention that the right to the protection of private and family life is a fundamental human right



of 27 January 2014 applies to both matters and indeed all documents publicly available on the Tribunal's website.

10. On 1 February 2014, the Applicant also filed, without leave of the Tribunal, a correction to her motion of 27 January 2014. She stated in this document that she was "confused at the moment [as to] how many cases" she had with the Tribunal, as she believed that Cases No. UNDT/NY/2009/143 and No. UNDT/NY/2012/011 were "one case renumbered due to chronological reasons". The Applicant states that, if she has two cases pending, she wishes to withdraw both of them "fully and finally and requests the Tribunal to redact her identity from all the documents which are publicly available on the [Tribunal's] website or which will become publicly available".

*Applicant's submission of 15 February 2014*

11. On 15 February 2014, the Applicant filed, without leave of the Tribunal, a submission seeking clarification from the Tribunal as to how many cases she has before it. She states that "should the Tribunal confirm that the Applicant has two cases, the Applicant seeks further directions from the Tribunal on whether the Applicant should file a separate Request for Case Withdrawal for Case No. UNDT/NY/2009/096 or the Tribunal accepts the Applicant's submission of 1 February 2014 as a request for UNDT/NY/2009/096 Case Withdrawal". The Applicant also requests expeditious consideration of her requests for case withdrawal by the Tribunal.

**Consideration**

12. The Applicant has had two registered cases before the Tribunal. The first case (Case No. UNDT/NY/2009/143) was closed as a result of the issuance of Judgment No. UNDT/2009/096, when the application for suspension of the decision not to

renew her appointment was denied. The second case (Case No. UNDT/NY/2012/011) is the pending substantive application contesting the decision not to renew her appointment.

### *Withdrawal*

13. The Applicant seeks a “full and final” withdrawal of the present case. The Respondent does not object to what is termed an “unequivocal withdrawal” in his reply, and, indeed, the Applicant in her unsolicited response to the reply does not challenge that the withdrawal is unequivocal and independent of the issue of redaction of her name. The Tribunal accepts that the Applicant has decided not to proceed further with her application and has filed a motion withdrawing the matter fully, finally, and entirely, including on the merits.

14. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/2011) and *Goodwin* UNDT/2011/104). Equally, the desirability of finality of disputes in proceedings requires that a party should be able to raise a valid defence of *res judicata*, which provides that a matter between the same persons, involving the same cause of action, may not be adjudicated twice (see *Shanks* 2010-UNAT-026bis, *Costa* 2010-UNAT-063, *El-Khatib* 2010-UNAT-066, *Beaudry* 2011-UNAT-129). As stated in *Bangoura* UNDT/2011/202, matters that stem from the same cause of action, though they may be couched in other terms, are *res judicata*, which means that the applicant does not have the right to bring the same complaint again.

15. The object of the *res judicata* rule is that “there must be an end to litigation” in order “to ensure the stability of the judicial process” (*Meron* 2012-UNAT-198) and that a party should not have to answer the same cause twice. Once a matter has been resolved, a party should not be able to re-litigate the same issue. An issue, broadly speaking, is a matter of fact or question of law in a dispute between two or



*Request for redaction*

Scope of the Applicant's request for redaction

17. Based on the wording of her filings of 27 January, 1 February, and 15 February 2014, the Tribunal accepts that the Applicant's request for redaction refers to all documents that are publicly available in the present case and Case No. UNDT/NY/2009/143, including Judgment No. UNDT/2009/096, rendered on 31 December 2009. The Tribunal notes that the Applicant's filings of 1 and 15 February 2014, albeit filed under Case No. UNDT/NY/2012/011, specifically refer to Case No. UNDT/NY/2009/143, and that the two matters are indeed related to each other. Therefore, the Tribunal finds it appropriate to dispose of the motion of 27 January 2014 and subsequent filings in one judgment under the present case number.

Applicable rules

18. The relevant provisions in the Dispute Tribunal's Statute and Rules of Procedure are the aforementioned art. 11.6 of the Tribunal's Statute (see also art. 26.2 of the Rules of Procedure), regarding the protection of personal data, and art. 9.3 of the Statute (see also art. 16.6 of the Rules of Procedure), regarding the Tribunal's oral proceedings.

19. Specifically, art. 11 of the Tribunal's Statute states:

**Article 11**



20. Article 9 of the Tribunal’s Statute states:

**Article 9**

...

3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

21. The Dispute Tribunal’s Practice Direction No. 6 on Records of the Dispute Tribunal (27 April 2012), available on the Tribunal’s website, states:

**General principles**

4. Public nature of the Tribunal’s work. The work of the Tribunal should be open and transparent, except insofar as the nature of any information that is deemed sensitive.

5. The Tribunal has the power to grant, refuse or restrict access to its records.

6. Access to the records of the Tribunal shall be subject to the need to protect personal data.

...

**Access to the records by parties**

...

13. Access to materials other than judicial issuances pertaining to cases other than the ones to which one is a party can only be granted by a Judge. Written requests to this effect should be submitted through the Registrar using the generic form available on the Tribunal’s website, or some other means acceptable to the Registrar.

...

**Access to the records by the public**

16. Access to non-confidential issuances of the Tribunal such as judgments and orders is publicly available through the website of the Tribunal and at the Registry of the Tribunal.

22. The term “personal data” is not defined in the Tribunal’s Statute, Rules of Procedure, or Practice Direction No. 6.

Practice of the Tribunal

23. The granting of anonymity by international tribunals dealing with international civil servants has been the subject of some debate and divergent practices among various tribunals. Some of the concerns expressed regarding the redaction of applicants' names were that

[i]ncreased granting of anonymity will inevitably encourage those with grudges to bring meritless claims and specious accusations under cover of anonymity, wasting Tribunal resources and risking injustice at no reputational cost to the concealed applicant. Increased anonymity will also counter productively foster the impression that resort to the tribunal is a dangerous or shameful act. This is an easily avoidable trap. The commendable healthiness and greater sense of dignity is found in the traditional, openly adversarial system where named applicants know the stakes and conduct themselves in the case accordingly.<sup>1</sup>

24. In the United Nations context, both the United Nations Dispute Tribunal and the United Nations Appeals Tribunal in their published rulings generally identify the applicants bringing cases before them. The Dispute Tribunal has previously stated that, even though motions for confidentiality must be decided on a case-by-case basis, the granting of same without sufficient reason has the potential to not only invite requests of this kind in every matter, but to negate a key element of the new system of administration of justice—its transparency (*Abubakar* UNDT/2011/219, *Raffii* UNDT/2012/205). Transparency is a key element of the new system of justice, but it is an element that must be balanced against the necessity to do justice in individual cases, including by granting certain measures of confidentiality in respect of a party's identity where it is found to be justified for

of transparency, unless the Tribunal determines that a competing interest outweighs it.

25. As the Dispute Tribunal stated in *Abubakr*, unless there are unusual or exceptional circumstances, particularly arising from the evidence presented at a hearing before the Tribunal, motions for confidentiality and redaction should be discouraged. For instance, in *Oummih* UNDT/2013/045, the Tribunal found that an applicant's name should be redacted only in exceptional circumstances showing valid reasons to grant special treatment to the applicant as compared to other staff members filing applications. The Tribunal further found in *Oummih* that "a case of conflict between a staff member and her supervisor ... can in no way be considered exceptional" as to justify a redaction of the applicant's name.

#### Restricted confidential and personal data

26. In many domestic jurisdictions court records and pleadings in civil actions are generally available to the public. The sealing and redacting of records is normally done under specific statutory provisions and pursuant to established grounds justified by compelling privacy or safety interests that outweigh the public interest in access to the court record.

27. For instance, in the United States, the Federal Rules of Civil Procedure, as well as the rules of civil procedure of many states, contain provisions on the protection of sensitive personal information from unnecessary disclosure in court filings. The types of data considered restricted personal information include, *inter alia*, social security numbers, dates of birth, financial account numbers, and driver's license or identification card numbers.<sup>2</sup> It is important to note that the names of

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<sup>2</sup> See, .e.g., FED. R. CIV. P. 5.2(a); S.R.C.R. 1 (Nevada Supreme Court Rules Governing Sealing and

parties to a civil case, including the name of *dominus litis*, are generally not considered to be confidential pe



Conclusion regarding the Applicant's motion for redaction

33. The Tribunal finds that the present Judgment and Judgment No. UNDT/2009/096 do not deal with the Applicant's medical history, disclose any sensitive personal information, or refer to matters of a confidential nature. Whereas the present Judgment concerns the issue of withdrawal and redaction, Judgment No. UNDT/2009/096 concerned a request for suspension of action of the non-renewal of the Applicant's contract, the reason given being lack of funds. The proceedings in that case were conducted in an open session and there was no application by the Applicant for a closed hearing or for anonymity. Even if the presiding Judge were not deemed *functus officio*, the fact that Judgment No. UNDT/2009/096 has been publicly available for four years and has been cited in approximately 30 unrelated publicly available rulings of the Tribunal, with no requests for redaction of that judgment until January 2014, is reflective of its rather ordinary nature.

34. There is no suggestion that the Applicant's claims were frivolous or specious. Access to justice and recourse to the Tribunal is not a "dangerous or shameful act". Like so many applicants appearing before the Tribunal, it was the Applicant's lawful right to institute action, and subsequently to withdraw it at her instance. Her withdrawal is no indication as to the weakness or strength of her case. She has simply chosen to withdraw her application.

35. The Applicant has therefore failed to persuade the Tribunal that the matter of non-renewal of her contract and the information disclosed in the published Judgments is of such a nature as to outweigh the guiding principle of transparency in judicial proceedings and published rulings.

36. Having considered the grounds furnished by the Applicant and the Respondent's objections, and in view of the considerations above, the Tribunal

finds that the Applicant has not established sound and valid reasons for redacting her name from the published rulings of the Tribunal.

**Order**

37. The Applicant's motion for redaction is rejected.

38. The Applicant has withdrawn this case in finality, including on the merits, with the intention of resolving all aspects of the dispute between the parties. There no longer being any determination to make, this application is dismissed in its entirety without liberty to reinstate.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 28<sup>th</sup> day of February 2014

Entered in the Register on this 28<sup>th</sup> day of February 2014

*(Signed)*

Hafida Lahiouel, Registrar, New York