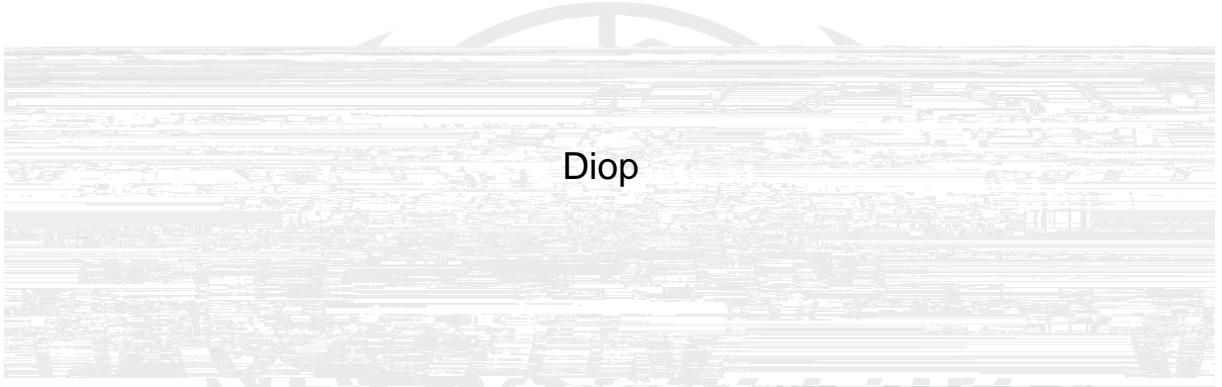
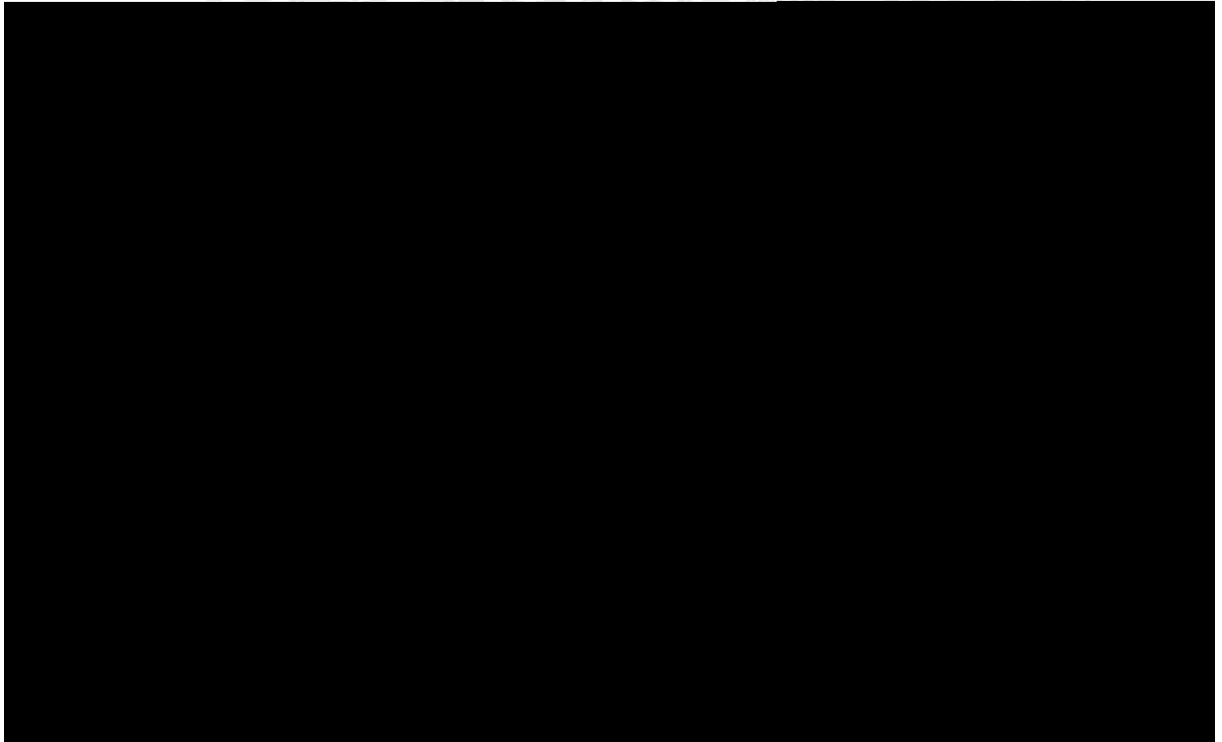




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES



Diop



JUDGE DIMITRIOS RAIKOS , PRESIDING .

1. Ms. Diamilatou Diop appeals against Judgment No. UNDT/2019/018, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 5 February 2019, which dismissed her application contesting the decision not to renew her appointment upon its expiry on the ground that she did not meet minimum educational requirements for her position. We affirm the UNDT Judgment.

Facts and Procedure

2. The following facts are uncontested:

The Applicant was initially appointed on 15 January 2012 on a one[-]year fixed-term appointment with the United Nations Mission in Liberia (UNMIL). Effective 31 August 2013, the Applicant was reassigned to [the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)] as an Associate IT Officer. The position required an advanced university degree (Master's degree or equivalent), or first-level university degree with qualifying experience in lieu of the advanced degree.

On 16 December 2014, the United Nations Reference Verification Unit (RVU) initiated the verification of the Applicant's work and academic qualifications in accordance with [the] Standard Operating Procedure (SOP) on Staff Selection System for Peacekeeping Operations and Special Political Missions.

In her Personal History Profile (PHP), the Applicant had indicated, under the section titled Education, that she had obtained a *Maîtrise* degree from the Institute Pascal in 1995 and *Brevet d'études Supérieures Spécialisées* from the institution Group IPG/ISTI in 1992, which she indicated as equivalent *licence* degree. On

Communication and Information Technology of the Group IPG/ISTI stated *inter alia*, that the diploma obtained by the Applicant after two years was the equivalent of a BTS (*Brevet de Technicien Supérieur*) whereas a Bachelor's degree required three years of study to complete, which would result in awarding a *diplôme*.

Between November 2017 and May 2018, the Office of Internal Oversight Services (OIOS) conducted an audit of the recruitment and selection of international staff in MINUSMA. It discovered three staff members, including the Applicant, whose reference checks had not been positively verified. On 10 April 2018, the OIOS Resident Auditor provided MINUSMA with a list of staff members with negative reference checks, which included the Applicant.

On 8 June 2018, the RVU informed the Applicant that the educational titles listed in her PHP are not at University degree level and are not accepted as fulfilling the minimum requirement for, or in lieu of, a first-level post-secondary degree (Bachelor's degree) for the purposes of recruitment to the Professional level. The RVU stated that the Applicant did not meet the minimum educational requirements for the position she encumbered. On 27 June 2018, the Applicant wrote to the RVU disputing its findings. On 29 June 2018, the RVU reiterated that her case had been closed as negative.

On 6 July 2018, MINUSMA's Director of Mission Support (DMS) issued the impugned decision whereby the Applicant was notified that her appointment would not be renewed because she did not meet the minimum educational requirements for the position. The decision stated that the educational title listed in her PHP was not at a university degree level and that the institution from which it was obtained is not accredited to confer degrees.

On 10 July 2018, the Ministry of Higher Education, Research and Innovation, Republic of Senegal, transmitted to MINUSMA a certificate of authenticity of the Brevet d'Études Supérieures Spécialisées (BESS) in the Specialized Profession: Analyste Programmeur conferred on the Applicant by Group IPG/ISTI.

On 16 July 2018, the Applicant sought management evaluation of the decision not to renew her fixed-term appointment beyond 14 January 2019. The Management Evaluation Unit (MEU) upheld the contested decision in its letter dated 10 September 2018.

3.

4. On 1 October 2018, MINUSMA informed Ms. Dipta that her case had been referred to the appropriate bodies for determination of whether she had made a misrepresentation in her

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12. Ms. Diop was given notice of her non-renewal on 6 July 2018, more than six months prior to the expiry of her fixed-term appointment on 14 January 2019. She did not present any evidence before the UNDT to support a finding of legitimate expectation of renewal beyond that date. The Appeals Tribunal has previously held that in instances where eligibility criteria have been wrongly applied, the Administration has a duty and is entitled to, rectify its own error. The UNDT therefore correctly found that Ms. Diop did not show unfairness, unjustness, lack of transparency or inappropriate motive on the part of the Administration.

13. Finally, since there is no illegality, there is no basis for her request for remedies. Ms. Diop is also not eligible for a one-time amnesty under Section 6.4 of ST/AI/2018/5, as correctly found by the UNDT, since Section 6.4 applies to staff members who requested a review of their degrees under Section 4 of ST/AI/2018/5, with respect to which Ms. Diop presented no evidence of having done so.

14. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

Considerations

15. The UNDT rejected Ms. Diop's application contesting the decision not to renew her contract, and she appeals that decision on the grounds that the UNDT committed substantive errors that led it to reach a manifestly unreasonable decision. For the reasons that follow, this Tribunal determines that the Disputes Tribunal's conclusions are correct.

16. Section 3.3.4 of the United Nations 2015 Applicant's Manual, Instructional Manual on the Staff Selection System (Inspira) states that the educational requirements indicated in job openings reflect the minimum organizational standard requirements for a given level and job title and that an applicant for the Professional higher level positions is normally required to have an advanced university degree (Master's degree equivalent). Applicants with a first level university degree combined with additional qualifying years of experience (earned after receipt of degree) are also considered to have met the educational requirements equivalent to a Master's. A first level university degree may not be substituted by relevant experience.

17. Section 2.2 of ST/AI/2018/5 stipulates that a recognized degree is one that was accredited, at the time of its issuance, by the competent authority in the country in which the issuing institution is based.

4.5 The Executive Office or local human resources office will contact the relevant accreditation authority and submit the request to the Assistant Secretary-General for Human Resources Management for determination whether the degree is a recognized degree. While the review is pending, the staff member may continue to list the degree(s) in job applications but should indicate that the review of confirmation of the accreditation is pending. This caveat can be removed only when the review by the Executive Office or local human resources office and the Office of Human Resources Management has been completed.

20. Finally, in Section 6 under the title Outcome of the review, ST/AI/2018/5 prescribes:

6.1 Upon completion of the review specified in section 4.5, staff members will be notified in writing of the outcome of the review. The notification will be included in their official status file.

6.2 If the degree is recognized, staff members may list their degree and its equivalent as indicated in the notification and are no longer required to include the caveat that it is pending review.

6.3 If the degree is not recognized following the review specified in section 4.5, the staff member must remove the degree from the official record and may not list the degree in job applications. Failure to comply with this instruction may result in administrative and/or disciplinary measures, including dismissal, pursuant to staff rule 10.1.

6.4 As a one-time amnesty for staff members who have requested a review in accordance with sections 4.4 and 4.5, if a degree is not recognized and the staff member has no other recognized degree required to meet the minimum academic qualifications for the encumbered position, the staff member may remain in that current position and level. The Office of Human Resources Management will also consider the staff member as having the minimum academic qualification to apply and be considered and selected for other positions at that current level if the staff member satisfies all other minimum requirements. However, the staff member shall not be eligible to apply for job openings at a higher level until the staff member meets the minimum required academic qualifications with a recognized degree.

6.5 For all staff members, listing a degree that is not recognized may result in administrative and/or disciplinary measures, including dismissal, pursuant to staff rule 10.1. However, a degree that is not recognized may be listed in specific circumstances when the Office of Human Resources Management has considered that the staff member possesses the minimum academic qualification as set out in section 6.4.

21.

25. Finally, the UNDT, having regard to these ~~actual~~ findings, the general knowledge that a *Brevet* denotes vocational studies and not a university degree, and the fact that the information that the qualification attained by Ms. Diop was ~~not~~ ^{conterminous} with a Bachelor's degree was obtained at the source--it was primarily the ~~authorities~~ ^{regulation} which determined that Ms. Diop did not possess a degree, and not the ~~Administrative~~ ^{tribunal} that came to the conclusion that Ms. Diop did not meet the minimum educational requirements for positions at the P-2 level.

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