



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/054

Judgment No.: UNDT/2013/101

Date: 6 August 2013

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NGOKENG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-Represented

**Counsel for Respondent:**

Steven Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant is a staff member of the International Criminal Tribunal for Rwanda (“ICTR”) based in Arusha, Tanzania, and serves as a Reviser on a P-4 post on a fixed-term appointment.

2. On 5 December 2012, he filed the present Application contesting two administrative decisions outlined as follows:

a) The decision to suspend the selection process for the position of Chief of the Language Services Section at the ICTR as advertised in job opening No. 12-ADM-ICTR-21952-R-ARUSHA (O) and to reject his application for the same so as to retain the incumbent beyond the retirement age.

b) The improper evaluation of his performance for the 2011/2012 performance cycle.

3. On 7 January 2013, the Respondent filed his substantive Reply which in addition refuted the receivability of this Application on primarily three grounds, namely:

a) The Application has been prematurely conceived as a final decision is still pending in respect of the contested selection process. Thus, there is no final administrative decision to be challenged under the Statute of the Dispute Tribunal.

b) The comments on the Applicant’s performance document do not constitute an administrative decision within the meaning of article 2.1(a) of the Statute of the Dispute Tribunal.

c) The rejection of the Applicant’s application for the post and the suspension of the selection process do not carry any direct legal effects on the Applicant’s contract of employment.

### **Factual Background**

4. On 16 February 2012, Job Opening No. 12-ADM-ICTR-21952-R-ARUSHA (O) (“Job Opening No. 21952”) was published for the post of Chief of the Language Services Section (“LSS”) at the ICTR. It is not in contention that at the material time of the publication of the job opening, the incumbent of the advertised position, Ms. Justine Ndong-Keller, was the Applicant’s direct supervisor.

5. Ms. Ndong-Keller was scheduled to retire and hence separate from the Organization on 30 April 2012. The recruitment for her post was initiated with the publication of Job Opening No. 21952 on 16 February 2012.

6. According to the Applicant, in addition to the stipulations on the eligibility

11. On 18 April 2012, Ms. Ndong-Keller, acting in her capacity as the Applicant's First Reporting Officer ("FRO"), emailed him his statistics for the two performance cycles of 2010/2011 and 2011/2012 by way of attachments and requested him to call on her on 19 April 2012 for discussions on his 2011-2012 performance cycle.

12. On 27 April 2012, Ms. Ndong-Keller finalized her evaluation of the Applicant for the 2011/2012 performance cycle and rated him as having successfully met performance expectations. However, in her overall comments on the Applicant's e-PAS, she indicated that the Applicant had a 'serious problem of output' and noted that the matter had been raised with him during the end of performance cycle discussions.

13. On 8 May 2012, Mr. Pascal Besnier, the Applicant's Second Reporting Officer (SRO) signed off on the Applicant's ePAS and made comments thereto thanking the Applicant for his contribution and commending him.

14. On 9 May 2012, the Applicant signed off on his ePAS and included therein observations disputing the First Reporting Officer's assessment of his performance in relation to output.

15. According to the Applicant, he further sent a memorandum to his FRO on 10 May 2012 in which he stated that her evaluation of his performance had been influenced by bad faith, discrimination and self-interest. This memorandum was copied both to the Applicant's SRO and to senior members of management at the ICTR.

16. The Applicant's FRO responded by an email dated 10 May 2012 in which she reiterated the Applicant's acknowledgment of her prerogative to evaluate her subordinates' performance and further stated that the other matters raised in the Applicant's memo were to be left to the appropriate quarters. She further invited the Applicant to see her for purposes of executing an improvement plan.

17. On 20 June 2012, the Applicant submitted a request for management evaluation of two decisions:

a)

22. In her amended evaluation effected through a Note for the File dated 11



specifically responding to matters of receivability as raised by the Respondent and a separate submission responding to the merits no later than 1 February 2013.



41. On 10 June 2013, hearing on the merits was conducted in this matter. The Applicant rested his case on his pleadings filed before the Tribunal. Ms. Justine Ndongo-Keller and Mr. Pascal Besnier were called to testify on behalf of the Respondent.

### **Applicant's Case**

42. The following contentions form the pillars of the Applicant's case:

a) The entire selection procedure revolving around Job Opening No. 21952 was a sham and not in actual fact aimed at identifying a competent successor to the incumbent of the post.

b) The Job Opening was part of a procedural sham that was published ostensibly to conform to the Organizational rules governing selection whereas the ultimate, improper and unlawful goal was to justify the extension of Ms. Ndongo-Keller's contract. This blocked the Applicant's considerable chances of promotion to the post of Chief, LSS.

c) The unprecedented eligibility criteria in the Job Opening limiting eligibility to interpreters by requiring eligible candidates to have a 'demonstrated ability to interpret' was improperly motivated by the incumbent's desire to secure the extension of her contract beyond her retirement age, contrary to the rules of the Organization on the retention in service of staff members beyond the mandatory age of separation.

d) Further, the eligibility criterion of a 'demonstrated ability to interpret' must be understood within the context of the ICTR draw down process where senior managers had projected the complete halt of ICTR trial activities in 2012 and which in fact did halt in July 2012. The Applicant contends in this regard that the functionality of interpreters was only to service court hearings and that after July 2012, the bulk of the work of the LSS would consist of translation and not interpretation. Under these circumstances, limiting the eligibility of the post to interpreters was highly suspect.

e) The review and subsequent amendment of the eligibility criterion of a demonstrated ability to interpret in Job Opening No. 21952 to merely a desirable asset in Job Opening No. 23993 corroborates the Applicant's

rating was 'exceeds performance expectations', he could not in all likelihood have had an output problem as alleged by his supervisor.

l) The Applicant further maintains that his FRO's initial evaluation of the 2011/2012 cycle is invalidated by both its inconsistency with the opinions of the SRO and the discrepancy between his overall performance rating and overall comments.

m) The Applicant further claims that the use of statistics by his FRO to evaluate his performance was unreasonable on the following grounds:

- i) His FRO had discontinued her predecessor's method of using statistics to measure output.
- ii) In the course of the 2011/2012 performance cycle, Ms. Ndongo-Keller failed to raise any output problem or other performance shortcoming for that matter during mid-point review or at any other point.
- iii) Ms. Ndongo-Keller's use of statistics was discriminatory with respect to the Applicant.



46. It is the Respondent's case that interpretation Services are required until the closure of the ICTR and one of the functions of the Chief of the Language Services Section is to supervise and evaluate interpreters. It was reasonable

53. On the matter of the Applicant's performance for the 2011/2012 cycle, the Respondent argues that Ms. Ndongo-Keller evaluated the output of all revisers in LSS for the 2011/2012 cycle on the basis of output statistics.

54. On the matter of Ms. Ndongo-Keller's retention in service beyond the mandatory age for her separation, the Respondent submits that the Registrar of the ICTR has the discretion and authority to extend her beyond retirement age.

55. The Respondent further contends that the Applicant's performance for the 2011/2012 performance cycle was fairly appraised and that the comments in his performance document on his output complained of in this Application are a fair and balanced evaluation of his performance because the Applicant deliberately refused to work and produced well below the normal output expected of him.

56. It is also the Respondent's case that the roll-backs of the Applicant's ePAS were neither irrational nor unfounded and were effected to address the inconsistencies between the overall performance rating of the Applicant and the comments by the Applicant's First Reporting Officer in accordance with the relevant administrative issuance on the performance evaluation of the staff members.

### **Issues**

57. Upon its review of the entire record of the case before it, the Tribunal has framed the issues arising for its consideration of this matter in the following questions:

- a) Was the inclusion of the requirement for a "demonstrated ability to interpret" in Job Opening No. 21952 motivated by improper purposes?
- b) Did the Hiring Manager have the discretion to reject all pre-screened candidates sent to him by OHRM in respect of Job opening No. 21952 and thereafter suspend the recruitment process for the post of Chief of LSS at the ICTR?

c) Was the Applicant's performance evaluation properly and lawfully carried out by his First Reporting Officer for the performance cycle of 2011/2012?

d) Was the extension of contract for Ms. Ndongo-Keller as Chief of the LSS beyond the mandatory age of retirement lawful?

e) Is there is a nexus between the suspension of Job Opening No. 21952 the Applicant's performance evaluation for the 2011/2012 performance period and the non-retirement of Ms. Ndongo-Keller as at 30 April 2012?

### **Considerations**

*Was the inclusion of the requirement for a "demonstrated ability to interpret" in Job Opening No. 21952 motivated by improper purposes?*

58. The applicable legal framework governing the recruitment, placement, promotion and mobility of staff is ST/AI/2010/3 (Staff Selection System). Section 4.5 thereof provides as follows:

*The job opening shall reflect the functions and the location of the position and include the qualifications, skills and competencies required. Job openings, to the greatest extent possible, shall be based on generic job profiles approved by OHRM, a previously published job opening or a previously classified individual job description reflecting the actual functions of the position (emphasis added). The evaluation criteria of job openings created on the basis of individually classified job descriptions require approval by a central review body.*

59. Evidence before the Tribunal clearly shows that Job Opening No. 21952 was drafted by the Applicant on the instructions and under the supervision of Ms. Ndongo-Keller.

60. In Job Opening No. 21952, the section on 'Work Experience' stipulated as follows:

A minimum of twelve years of progressively responsible experience in translation and revision in the language services of an international organization, a national administration or a large

scale private organization, with at least five years within the United Nations. Sound experience in the planning, coordination and supervision of translation services. Demonstrated ability to interpret. Training skills and experience would be an asset.

61. One of the issues raised by the Applicant is that the requirement of work experience as an interpreter in Job Opening No. 21952 was unprecedented in the



The Hiring Manager is responsible for the accuracy of the evaluation criteria. However, he/she



organization or national administration, or a large-scale private organization. Sound experience in the planning, coordination and supervision of translation services.

73. In VA 07-CON-ICTR-408807-R-ARUSHA issued on 10 January 2007 for the position of Chief, Language Services Section (“LSS”) at the ICTR, P-5, on which Ms. Ndong-Keller was selected, the requirements for work experience were detailed as follows:

**Work Experience**

At least 12 years’ experience in translation and revision at responsible level, in the language services of an international organization or national administration, or a large-scale private organization. Sound experience in the planning, coordination and supervision of translation services.

74. On 10 June 2013, Ms. Ndong-Keller testified that the ‘interpretation requirement has always been in the VA’ for the post of Chief, LSS. This piece of testimony on her part is not borne out by the facts or corroborated by the available documentary evidence. In the absence of any vacancy announcements or job profiles for that matter tendered before the Court in support of Ms. Ndong-Keller’s claims, the Tribunal finds that Ms. Ndong-Keller was being economical with the truth when she testified that the requirement for work experience in interpretation has always been included in the vacancy announcements for the post of Chief, LSS.

75. Do the reasons given by the Respondent to explain the deviation from the previous job openings accord with the evidence on record?

76. Neither Mr. Besnier nor Ms. Ndong-Keller testified as to the base document they used to establish the evaluation criteria for Job Opening No. 21952 and the requirement for work experience as an interpreter. Instead, in his witness statement, Mr. Besnier stated that three of four previous Chiefs of LSS have had a demonstrated ability to interpret and that the inclusion of the ability to interpret as a requirement in the Job Opening reflected the experience of the ICTR in recruiting for the position and identifying the experience required to oversee the provision of the language services to the Trials and Appeals Chambers. He also

stated that the incumbents of the equivalent position of Chief of Language at other international tribunals have experience in interpretation.

77. His oral testimony of 10 June 2013 however differed. He told the Tribunal that the requirement for work experience as an interpreter was included in Job Opening No. 21952 because it was an important part of the work of the Section and a 'good idea' in addition to it making 'sense' for the Chief of the Languages Section to be able to interpret because the interpreters at the ICTR are engaged in interpretation work both during court sessions and at other regular meetings at that Tribunal.

78. On her part, Ms. Ndongo-Keller testified that when the Applicant raised the issue of the inclusion of the work experience as an interpreter in the said Job Opening, she told him that work experience in interpretation for the Chief of Language Services has always been a requirement in the preceding vacancy announcements. She further testified that the ICTR staff members were leaving *en masse* and that when the ICTR recruited more staff, some interpreters would have to be trained and oriented in their duties and the Chief of the Language Section consequently needed experience in interpretation. She said further exigencies could arise necessitating the Chief of LSS interpreting in Court.



85. The Tribunal has carefully reviewed Job Opening No. 21952 and concludes that nothing therein required the successful candidate to provide any interpretation services as Chief of LSS.

86. The Tribunal therefore finds as a fact that the inclusion of the requirement of work experience as an interpreter in Job Opening No. 21952 was unprecedented as it was never part of the previously published job openings under which Ms. Ndong-Keller or her predecessors were recruited under as Chief of the LSS at the ICTR.

87. With regard to the drafting of the competencies of the Job Opening in issue, the Tribunal is of the view that Mr. Besnier unprofessionally abdicated his responsibility as a Hiring Manager and allowed the incumbent of the post, Ms. Ndong-Keller, to unlawfully amend the competencies of the Job Opening for the self-same post she was to retire from effective 30 April 2012. It is indeed curious that these amendments and the resulting Job Opening were published only about two months to Ms. Ndong-Keller's due retirement date.

88. The Tribunal now turns to examine whether the inclusion of the "demonstrated ability to interpret" as a core requirement in Job Opening No. 21952 was actuated by improper and extraneous considerations on the part of Ms. Ndong-Keller and Mr. Besnier.

89. It is interesting to note that subsequently, Job Opening No. 23993 for the post of Chief, LSS, which was published on *Inspira* on 24 August 2012, differed critically from Job Opening No. 21952. Under work experience, it was stated as follows:

**Work experience**

A minimum of 12 years of progressively responsible experience in translation and revision in the language services of an international organization, a national administration or a large scale private organization, with at least five years within the United Nations. Sound experience in the planning, coordination and supervision of translation services. *Demonstrated ability to interpret desirable.* Training skills and experience would be an asset.

90. It is easy to see that in Job Opening No. 23993 which was published after the cancellation of Job Opening No. 21952, the requirement for a demonstrated ability to interpret was stated as merely desirable rather than a required competence.

91. Mr. Besnier testified that he gave the approval for the change in the evaluation criteria for Job Opening No. 23993 'a few days before August 2012'. Further, in his witness statement, he stated that the delay in posting the revised job opening was occasioned by the management evaluation process initiated by the Applicant.

August 2012 removing the requirement of interpretation which was evidently introduced by Ms. Ndong-Keller. In doing so, Mr. Besnier finally paid heed to the proper functions of a Hiring Manager which was to be later expounded in the Organization's Hiring Manager's Manual published in October 2012. At paragraph 5.5, it is clearly stated:

The required work experience is defined in such a way as to attract a suitable pool of qualified applicants. Job openings that are too generally defined might attract a large pool of applicants who are generally qualified but do not necessarily meet the specific requirements of the position. Alternatively, *if the required experience is too spf -20b r.26irien3(.24 -1.7(205.3233 Tn)625ir)5ectl5ir)5y 3(e of 205ir)5e*



100. The Tribunal consequently holds that the inclusion of a “demonstrated ability to interpret” as a decisive requirement in Job Opening No. 21952 was unlawful.

*Did the Hiring Manager have the discretion to reject all prescreened candidates sent to him by OHRM in respect of Job Opening No. 21952 and thereafter suspend the recruitment process for the post of Chief of the Language Services Section at the ICTR?*

101. It is in evidence that 17 applicants applied for Job Opening No. 21952 for the post of Chief, LSS. Of the 17 applicants, 12 of them were screened out by *Inspira*, as they failed to meet the eligibility requirements. The remaining five applications for the post were then forwarded by Office of Human Resources

The hiring manager *shall* further evaluate all applicants released to him or her and *shall prepare a shortlist of those who appear most qualified* for the job opening based on a review of their documentation.

106. In a memorandum to the Chief of the Human Resources and Planning Section (HRPS) dated 4 April 2012 and copied to the then Registrar of the ICTR and the Chief of the Division of Administrative Support Services, Mr. Besnier

In the event the assessment panel concludes that none of the applicants were found suitable for the position, the assessment of the applicants will be properly recorded in Inspira by the Hiring Manager. The Hiring Manager will then submit to the Senior Recruiter a request to cancel the job opening, along with a detailed written justification explaining the reason why none of the applicants were found suitable.

110. The Respondent's reliance on paragraph 6.10.6 of the Hiring Manager's Manual above is as erroneous as it is premature. The reference to an assessment panel in that paragraph envisages that the recruitment process would have progressed beyond the shortlisting of eligible candidates and that an assessment

a. Not Suitable - these applicants are rated unsatisfactory in *any one* of the three areas (academic, language or experience). No general comments are required; however, it must be self-evident as to why the applicant is not suitable.

b. Long List - *these applicants seemingly meet the basic evaluation criteria but may not meet the desired qualifications as outlined in the job opening. They are considered qualified for the job and should be placed on the long list for further consideration and possible movement to the short list.* A rating is required for each area (academic, language and experience) but a general comment is ONLY required for staff members of the United Nations Secretariat.

c. Short List - these applicants seemingly meet the basic evaluation criteria as well as all defined desirable qualifications as outlined in the job opening. They are considered the most promising applicants for the job and should be convoked to an assessment exercise and/or interview to be conducted by the assessment panel. A rating is required for each area (academic, language and experience) and a general comment is required for ALL applicants.

113. Nowhere, either in ST/AI/2010/3 or in the Hiring Manager's Manual, is it open for the Hiring Manager to completely reject the list of *eligible* candidates forwarded to him by OHRM. OHRM is the Organization's only entity charged with the provision of professional and proficient human resources management services. Its legal mandate means that the forwarding of the five applicants as eligible candidates to Mr. Besnier in the present case was done within the context of advice by a professional unit with the necessary expertise.

114. If Mr. Besnier was genuinely of the view that OHRM had made a monumental error in sending the names of the five prescreened candidates as to render the recruitment process an absurdity, nothing would have been easier than to contact OHRM and inform them of this monumental blunder on their part and seek their guidance accordingly. Instead, Mr. Besnier exceeded his mandate and initiated the cancellation of the job opening even where he had no authority to do so and certainly without any reference to the Registrar of the ICTR. ST/AI/2010/3

does not contemplate suspension of the recruitment process for the reasons given by Mr. Besnier.

115. In the case of *Contreras*, UNDT/2010/153, the Programme Manager cancelled an initial vacancy announcement. He informed the Executive Director that none of the candidates met the criteria for the vacancy announcement. Before the Tribunal, he sought to explain that he cancelled the vacancy because his assistant was not available and that he was swamped with work. The Dispute Tribunal held that the cancellation of the vacancy announcement was in contravention of the applicable legal issuance and held that the manager had no 'such prerogative, power or discretion' to do so. This decision was subsequently affirmed on appeal before the Appeals Tribunal in *Contreras*, 2011-UNAT-150.

116. In the instant case, the Tribunal finds that the Hiring Manager, Mr. Besnier, erred in rejecting all the applications of the five eligible candidates to Job Opening No. 21952. It further finds that Mr. Besnier's cancellation of the said Job Opening was done *ultra vires* the legal issuance vesting him with the powers and duties of a Hiring Manager.

117. With regard to the particular circumstances of this case, the Tribunal is not in any doubt that the cancellation of Job Opening No. 21952 was effected as part of a greater scheme aimed at ensuring that Ms. Ndongu-Keller was retained in service beyond the mandatory age limit of separation. This sophisticated manipulation of the recruitment process was nevertheless unlawful, and consequently vitiates the decision to suspend Job Opening No. 21952.

118. The Tribunal makes no hesitation in finding and concluding that the recruitment process for Chief, LSS through Job Opening No. 21952 was a complete procedural sham and was intended as a perfunctory means of satisfying the requirements of ST/AI/2010/3. This conclusion is further buttressed by the fact that after retaining Ms. Ndongu-Keller beyond retirement age on the claim that none of the five candidates satisfied the new criteria for the job, another Job

*Was the Applicant's performance evaluation for the performance cycle of 2011/2012 properly and lawfully carried out by his First Reporting Officer?*

119. It is in evidence that in the Applicant's ePAS for the 2011/2012 performance cycle, which was finalized on 27 April 2012, the Applicant received an overall performance rating of "successfully meets performance expectations." In the overall comments section, the Applicant's FRO, Ms. Ndonga-Keller stated as follows:

Staff member is one of the French Revisers at the LSS. There is a serious problem of output. We talked about it during the end of cycle discussion and I trust that he will endeavor to solve it.

120. The Applicant has raised allegations of bad faith and improper motives on

during the midpoint review in ‘October 2012.’ Additionally, she stated that during the Applicant’s end of term discussion with her for the 2011/2012 cycle that was

The SM [staff member] is a top-notch material with tremendous





135. Section 10.2 of ST/AI/2010/5 further provides for the preparation of a written performance improvement plan where the performance shortcoming is not rectified and the staff member receives a rating of “partially meets performance expectations.” Section 10.4 provides that a performance improvement plan should be initiated not less than three months before the end of the cycle.

136. In light of the foregoing review of the evidence and the law, the Tribunal



and the competency and core value ratings, she downgraded the 'fully competent rating' that she had originally given the Applicant in the core competencies of team work and communication to 'requiring development.' She also commented that he had failed on several occasions to exhibit the expected team work and communication spirit essential to a harmonious work environment.

147. In the roll back to the ePAS, she maintained the same overall comment that the Applicant has serious output problems. In this instance, Mr. Besnier who was the Applicant's SRO concurred with Ms. Ndongo-Keller's evaluation, contrary to his congratulatory remarks to the Applicant in the ePAS finalized on 27 April 2012. It is the considered opinion of the Tribunal that the action by Ms. Ndongo-Keller to approbate and reprobate her evaluation of his performance for 2011/2012 was done in utmost bad faith to punish the Applicant for his audacity in applying for a post she did not intend to relinquish through Job Opening No. 21952 and in his request for management evaluation in respect of her actions against him. It speaks to a high degree of incompetency and a lack of leadership on the part of Mr. Besnier that he willingly followed wherever his supervisee, Ms. Ndongo-Keller, led.

148. The situation is further compounded by the request by Ms. Kagwi-Ndungu to the HR Helpdesk on 8 November 2012, presumably under the instructions of

150. The Tribunal holds that Ms. Ndong-Keller's entire evaluation of the Applicant's 2011/2012 performance cycle was unlawful for having been motivated by bad faith, improper motive and abuse of power.

*Was the retention of Ms. Ndong-Keller as Chief of the LSS beyond the*



referred him to the guidelines issued on the subject of retention in service beyond retirement age as well as a memorandum from the ASG/OHRM, Ms. Catherine Pollard, directing that ‘there are no more exceptions to extend anybody beyond retirement age.’ Ms. Kilemi also noted that a break of three months is required

2012 memorandum seeking her retention, Mr. Besnier had striven to give assurances of the high quality of Ms. Ndongo-Keller's services, her willingness to perform her tasks, her multitasked expertise and the significance of the French translations in the judicial work of the ICTR as exceptional factors which suggested that it would be in the interest of the ICTR to retain Ms. Ndongo-Keller. In other words, he was of the view that she was indispensable to the ICTR.

162. Section 3.2 of ST/AI/2003/8 expressly forbids the extension of an incumbent's contract beyond retirement age if the anticipated vacancy is not advertised in accordance with ST/AI/2010/3. Mr. Besnier's decision to recommend the retention of Ms. Ndongo-Keller beyond her age of retirement in flagrant violation of the applicable rules speak to his improper motives and bad faith when he approved an unnecessary new core competency inserted by Ms. Ndongo-Keller for the VA and aborted the entire selection process for Job Opening No. 21952.

163. The Tribunal finds and holds that Mr. Besnier deliberately and willfully violated and subverted all legal and mandatory procedures for the retention of a staff member in service beyond retirement age. He completely disregarded the mandatory criteria for such a retention set out in ST/AI/2003/8. In the process, he threw all caution to the winds and even rejected sound legal advice from the Chief of the Division of Administrative Support Services, Ms. Kilemi, in order to proceed with the retention.



This was in itself most irresponsible on her part as a senior manager in the

to retain her and block the career aspirations of others in her section clearly speak

US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

177. The Tribunal nullifies the entire evaluation of the Applicant's performance for the 2011/2012 performance cycle and all purported amendments thereto and orders the ICTR Administration to make suitable arrangements for a fresh evaluation of the Applicant's performance in the 2011/2012 cycle within two months of the date of this judgment and with due regard to the entirety of the provisions of the relevant legal issuance regulating performance management and evaluation.

178. The Tribunal directs that the ICTR Administration make suitable arrangements for the future performance evaluation of the Applicant that do not include any of the persons who took part in his performance evaluation for the 2011/2012 performance cycle.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 6<sup>th</sup> day of August 2013.

Entered in the Register on this 6<sup>th</sup> day of August 2013

*(Signed)*

Abena Kwakye-Berko, Acting Registrar, Nairobi.