

UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/015

Judgment No.: UNDT/2015/048

Date: 11 June 2015

Original: English

for: Nkemdilim Izuako

ist: obi

gistr: Abba Kwakye-Berko

MAIGA

v.

SECRETARY-GENERAL

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Introduction

1. The Applicant is a former staff member of the United Nations Entity on Gender Equality and the Empowerment of Women (“UN Women”). She became the Country Programme Manager (CPM) in Côte d’Ivoire at the P-4 level on 1 April 2010. In 2012, her post was upgraded to the P-5 level and advertised. The Applicant applied for the post and was not selected, resulting in her separation.

2. In her Application dated 22 April 2013, she contests that decision on the grounds that it was tainted by bias, improper consideration of performance appraisals and procedural error.

3. The Respondent’s Reply was filed on 20 July 2013, the Respondent having been granted an extension of time by the Tribunal to do so.

Facts

4. The Applicant joined the United Nations Development Fund for Women (“UNIFEM”) on 1 April 2010 as the Country Programme Manager of the Côte d’Ivoire office at the P-4 level. She headed the country office which before her arrival had been headed by Ms. Matenin Coulibaly, the National Programme Officer (NPO). UNIFEM was the predecessor of UN Women.

5. In May 2010, the Applicant reported orally and in writing to the Regional Director, Ms. Odera, who headed the West Africa Regional Office (WARO) of UN Women based in Dakar, Senegal, that the NPO in the Cote d’Ivoire office seemed to have been involved in inappropriate transactions with Non-Governmental Organizations (NGOs) that

15. For 2012, the RCA process was not completed until after the contested decision and the Applicant's separation from the Organization. On 25 April 2013, the Applicant informed the Chief of Human Resources at Headquarters that she wished to contest her performance appraisals for 2011 and 2012.

16. On 8 October 2012, the Chief of Human Resources verbally informed the Applicant of the decision not to select her for the upgraded Post and, on 17 December 2012, the Applicant received written notification of the said decision.

17. On 28 December 2012, the joint investigation report of OAI/DOS was issued and transmitted to the UN Women Management.

18. The Applicant was separated from service upon the expiration of her contract on 31 December 2012.

19. She requested management evaluation of the decision not to select her for the upgraded post on 6998n tthe ment evaluata796 Tm (e)-24(v)3i.998i62na796 Tm (e)-24(v)3i.998i62na

c. She had concerns about some of the NGO partners. One project funded by UNFPA was shown on the records to be implemented by four NGOs. She realized that the activities were not carried out by the NGOs and so could not get the report across to UNFPA. The NPO explained that she implemented the NGO activities herself which meant that the NGOs were only a conduit used to receive money which they handed to the NPO to carry out the activities. There were no proper terms of reference for these projects.

d. She was worried about accountability and the violation of financial rules because the NPO was managing NGO money and so reported to the WARO and personally to the Deputy Director and was assured that action would be taken. Nothing was done about her report even though the Regional Operations Manager (ROM), after his mission in August 2010, recommended that WARO find someone to manage the financial aspects of the office. This was ignored and instead the Applicant was directed not to deal with any personnel-related issues.

the Applicant that she was more suited to the technical side of matters but not representation. In June 2012, Ms. Odera conducted a managerial mission during which she told the Applicant that she would not recommend her for the upgraded post.

h. She was given a very short interview for the upgraded P-5 post and the telephone line was bad. On 8 December 2012 she was told that she was not selected. She filed a management evaluation request and applied for other positions in the United Nations. She needed her RCA which was yet to be finalized. She suffered loss of income.

i. At the Ministry of Women Affairs in Mali where she is now working, she earns USD300 to 400 per month. Her separation impacted her family negatively and it was a tough time for her. Ms. Odera finalized her RCA after she had left the Organization and rated her as having met performance expectations.

25. Ms. Odera's testimony.

a. She is the Regional Director, West and Central Africa Regional Office (WCARO), UN Women, at the D-1 level, based in Dakar, Senegal. At the times relevant to this Application, she was the Regional Programme Director, West African Regional Office (WARO) of UN Women.

b. Prior to the Applicant joining UN Women, the office was headed by an NPO. When the Applicant came on board, she and the NPO had a difficult relationship.

c. Her impression of the Applicant was that she was committed but had very little managerial and operational experience. At no point did she give the Applicant a negative performance appraisal.

d. In or around June 2010, the ROM undertook a mission to the Cote d'Ivoire office. After the mission, she was debriefed by the ROM. He confirmed that the UNDP office assured him that all of the project funds

had been accounted for. She was told also by the NPO's previous supervisor that the matter of the project funding had been settled.

e. Her impression was that progress was slow in the Cote d'Ivoire office and that it was not working well due to relations between the Applicant and the NPO. For the Applicant's 2011 RCA, she noted in the mid-term review that the Applicant needed to improve on interpersonal relations.

f. When on 24 December 2011 the Applicant submitted a summary of the situation related to the management of the UNFPA-funded project, she did not see any need to pursue the matter since the Applicant was not raising anything new.

g. On 9 May 2012, she informed the Applicant that her post would be upgraded and be subject to a competitive recruitment process as part of organizational restructuring. On 2 June 2012, she signed off on the Applicant's 2011 RCA.

h. From 11-14 June 2012, she conducted a managerial support mission to Côte d'Ivoire. This mission was undertaken because of the complaint the Applicant had raised with headquarters, the concerns about the management of the office and the discontent expressed by partners with the Applicant's management. She met with the Applicant, project partners, the Government and the United Nations Country Team (UNCT). She also met with the RC/HC. The staff told her that the relationship of the Applicant and the NPO caused tension and hurt their work and the image of the organization.

i. She had been told that the Applicant abused or shouted at staff but she felt that she could improve because she had other strengths. In 2010, she had already received reports of the Applicant's behaviour with her colleagues and a complaint from a Minister. She discussed her concerns with the Applicant and she promised to improve.

j. She was surprised at the RC/HC's testimony because he had told her that the Applicant was not ready for a representative role. She did not tell him that the Applicant would not get the upgraded job. She was surprised that the RC/HC would tell the Applicant about their discussions.

k. UNCT colleagues told her that the Applicant was intelligent, articulate and committed but lacked experience and diplomacy. Civil society partners expressed some concerns about the Applicant's behaviour. The Applicant alleged that the NPO was engaged in outside activities but the HR Director at UNDP confirmed that this was untrue.

l. She wrote her mission report soon after the mission within the two-month deadline.

m. The selection process for the upgraded position took place between June and November 2012. She shortlisted the candidates including the Applicant. She told Human Resources that she would opt out of the interview panel as she was preparing for her own recruitment. The role of Hiring Manager was carried out by Mr. Seymour who was the Deputy Programme Director of the Programme Division in New York. She did not participate in the interview panel and did not receive any results from the interview process.

n. One Ms. Malwayo with whom she had previously worked was selected over the Applicant. She was not aware of Ms. Malwayo's candidacy for the post.

o. In early 2013, she recorded her assessment in the Applicant's RCA noting that the Applicant submitted her RCA late despite several reminders. She gave her a rating of "Met Expectations".

26. Mr. Ngokwey's testimony.

a. He knew the Applicant when he worked as the RC/HC in Cote d'Ivoire from 2010 to 2013.

b. The Applicant is an intelligent and articulate leader who had been instrumental in keeping gender high on the agenda of the UNCT in Côte d'Ivoire.

c. The Applicant built partnerships for her Organization not only within the United Nations system but also with civil society organizations, bilateral and multilateral institutions as well as with the government. It is through these partnerships and her credibility and organization that she successfully mobilized resources for UN Women-supported activities in Côte d'Ivoire. She was an asset to the United Nations.

d. The Applicant was a competent and ethical manager of human and financial resources and was a whistle blower on issues of improper handling of funds received by UN Women in Côte d'Ivoire.

e. On 13 June 2012, he met with Ms. Odera in his office and she told him that a P-5 post would soon be opened for the UN Women's Côte d'Ivoire office and that she would not support the Applicant's candidacy for it. She told him that she had advised the Applicant not to apply for the position. She spoke about the Applicant's poor performance and relationships with other United Nations agencies and implementing partners which she said she learnt about on several occasions from credible sources.

f. He replied [(th)9(r)0 1 358.5U211s26 Tm [([(th)9(r)-)-2A6.72 269.76 Tm [(0 1 358.5U

27. Mr. Houinato's testimony.

a.

h. Following the advertising of the post in June 2012 and the shortlisting of candidates, an interview panel of which he was a member was convened. The panel did not have regard to the Applicant's performance appraisal or of any other candidates. There was no technical or written test for the candidates as this was determined not to be a requirement for the post.

i. The interviews were conducted by the panel sitting in person in Headquarters, except himself, and conducting all interviews by teleconference. The panel interviewed all the candidates based on a pre-established set of competency based questions prepared by the HR section with input from the panel. In total the interview lasted 23 minutes with connection difficulties at the beginning and towards the end. With other candidates the interview took about 45 minutes.

j. The Applicant's answers were brief and did not elaborate on her points. She did not provide concrete examples to illustrate her answers. She showed some gaps in the area of staff and team management relative to the performance of other candidates that were interviewed. The panel members rated the responses for each competency assessed. Another internal candidate was fully recommended over the Applicant.

k. The Applicant was given full and fair consideration. He knew that the selected candidate had worked with Ms. Odera before but had not discussed her suitability with Ms. Odera. Giving priority to an internal candidate happens when an internal candidate and an external candidate tie after a recommendation is made. Both the Applicant and the person recommended were facing the same risk as both their jobs had been reclassified.

28. Ms. Singh's testimony.

a. She is a HR Specialist in the HR section of UN Women.

b. In June 2012 she was responsible for facilitating the recruitment process for the upgraded post.

c. The upgraded post was advertised in June 2012 and Ms. Odera who was

object to the length and quality of the interview. The panel members rated the candidates' responses for each competency assessed. Another candidate was fully recommended over the Applicant. On 17 December 2012, she sent the Applicant a written notification of the selection decision.

d. The priority given the Applicant was in her being shortlisted and being allowed to compete.

e. The witness stated in cross-examination that she does not speak French, the language of the interview she officiated in.

Applicant's case

30. The Applicant's case as per her oral testimony, pleadings and closing address is summarized below.

31. The Applicant is a whistle-blower who,

34. In this case the bias of Ms. Odera, who as the Applicant's supervisor was an influential decision-maker in the selection for the Applicant's upgraded post, is documented as shown in her June 2012 mission report. There is evidence of its transmission to other relevant decision-makers and documented proof of its intended effect upon the selection process. There were so many procedural errors that the said selection process appears to be a mere formality.

35. The Applicant was not given full and fair consideration because the selection process was biased by the influence of the WARO exerted directly by Ms. Odera and indirectly through Mr. Houinato her Deputy and another interview panellist, Mr. Daniel Seymour.

36. The bias is based on a desire to retaliate against the Applicant and the June 2012 mission report is clear evidence of bias and designed to speak to the Applicant's candidature. The said mission report or its contents were disseminated amongst most or all persons relevant to the selection process.

37. UN Women's denial of bias and denial of any role for Ms. Odera in the selection process is not borne out by the facts:

- a. Ms. Odera being the hiring manager and supervisor of the advertised post shortlisted the candidates. The claim that Mr. Seymour was the hiring manager is untrue.
- b. The Selection Guidelines require the hiring manager to participate on the selection panel and that any reasons for the hiring manager to be excluded are to be recorded. Not only was the reason for the absence of Ms. Odera not recorded, none of the Respondent's three other witnesses could recall why Ms. Odera was not on the panel.
- c. Ms. Singh testified that Mr. Houinato represented Ms. Odera on

Mr. Houinato, an interview panellist. They were transmitted also to Ms. Turkoz-Cosslett whose deputy Mr. Seymour, was a panellist and designated “hiring manager”. Ms. Singh indicated that Ms. Turkoz-Cosslett received the report of the interview panel.

e. The scores of the Applicant and the selected candidate were extremely similar. Half-points separated the Applicant and the selected candidate. According to Ms. Singh, this is normally the result of averaging the scores of panellists. Mr. Houinato admitted a preconception of the Applicant’s performance.

f. UN Women provided no evidence of how the selection decision was taken after the interview panel produced its report, or the reasons of the ultimate decision-maker.

38. A flawed interview led by Ms. Odera’s deputy and the deputy of Ms. Turkoz-Cosslett, the Global Programme Director who was a recipient of the Odera mission report, was the soul of this selection process. The Applicant was

based interview is not designed to replace a technical or substantive, knowledge-based assessment. Such an assessment acquires additional importance if the interview panel has no performance record upon which to base their assessment, nor objective measure of assessing a staff member's knowledge. According to Mr. Houinato, the Panel asked only the questions provided to it, preventing any probing of substantive knowledge. Another effect of failing to conduct a written assessment is that no record exists of the substantive questions or the propriety of any answers.

d. The Applicant was interviewed for half the length of time of the other candidates. The imbalance in interview durations raises serious questions about the fairness of the process, the opportunity given to the Applicant and the panel's interest in her candidature.

e. With regard to the absence of probing questions, UN Women attributes the brevity of the interview to the brevity of the Applicant's responses to the pre-set questions. This is untenable. Although panellists are intended to begin with a provided list of questions, they are expected to probe with candidate-specific follow-up questions.

f. The interview which was conducted in French was recorded by a non-French speaking HR representative. The HR unit is facilitator to the entire recruitment process. The HR representative records the agreed ratings, rankings and comments and serves as an *ex officio* member of the interview panel, recording results of the interview panel deliberations and drafting a report. In this case, the HR representative did not even understand the language of the interview.

g. Candidates were scored relatively as Mr. Houinato testified that compared with other candidates, the Applicant showed gaps in her answers. The selection process is designed to assess candidates against the set criteria not relative to other candidates. This is a guard against favouritism or bias, it ensures that multiple candidates can be

1. There was no evidence of central review or decision making post-interview.

f. Post judgment interest upon all amounts awarded, from the date of the Dispute Tribunal judgment, including through any period of an unsuccessful appeal.

Respondent's Case

42. The Respondent's case is summarized below.

43. A party alleging bias or other improper motivation bears the burden of proving such bias on a preponderance of evidence. If the Administration is able to even minimally show that the Applicant's candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden shifts to the Applicant who must satisfy it through clear and convincing evidence.

The Applicant has not done so because:

a. The issues she raised were promptly and adequately addressed to the satisfaction of management. Action was taken and support offered. In addition to managerial action, the allegations were investigated professionally. Her claim that she was ignored is unsubstantiated.

b. Ms. Odera did not and could not manipulate the selection process. She shortlisted the Applicant and her role in the process ended there.

c. The Applicant received full and fair consideration. The interview was fair. The panel asked the same questions of every candidate but the Applicant's responses were lacking. There was no evidence of personal *animus* towards her from any interview panel member or any attempt to manipulate the selection process.

d. Priority consideration cannot take precedence over the requirements to select the best candidate who was not the Applicant.

e. Legitimate performance feedback is neither retaliation nor bias. There is no evidence of bad faith, bias or improper motivation with respect to the performance evaluation procedures as they were applied to the Applicant. Contrary to her claim, the Applicant at no stage received a

negative performance appraisal. The Applicant was provided with regular feedback concerning her performance and ways to improve it and given guidance as to her work objectives.

f. The Applicant did not engage in a formal rebuttal process. Although an automated email was generated in April 2012 registering the Applicant's purported disagreement with her assessment, the Applicant neither indicated her disagreement in writing in her RCA nor submitted a formal application for rebuttal.

g. The Applicant has not produced any evidence that the decisions as to the duration of her contract renewals were arbitrary or based on improper motives. The approach taken in relation to the Applicant's contractual status was consistent with a system-wide approach as part of the implementation of the UN Women Regional architecture.

h. The Applicant was neither the subject of an investigation nor a complaint. The Applicant's assertion that she was the subject of various negative or retaliatory statements and actions are unfounded.

i. The Applicant made no claim of retaliation. The Applicant at all material times reserved the right to seek redress through informal or formal complaint procedures but took no action to do so. The Applicant at no time gave any indication that she had experienced or feared retaliatory action as a result of her reporting her concerns regarding the project. Having failed to do so, her insistence that she was the victim of retaliatory action is without merit.

44. The Applicant has failed to establish evidence of procedural irregularity. The Applicant claims that the selection process did not follow the applicable procedures and was manipulated to her disadvantage by the Regional Director, however, the records demonstrate the contrary.

a. The Applicant received full and fair consideration. Discrimination and bias were absent;

b. A written assessment was neither required nor necessary. Under the Selection Guidelines, the use of an interview panel as the selection tool was reasonable and lawful and was certainly not a breach of the Applicant's rights.

c. The non-consideration of the Applicant's pending performance appraisals was neither improper nor prejudicial. The panel did not have regard to the performance appraisal tool in relation to any of the opportunities the applicant

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What was the attitude of the management of UN Women to the various official reports made by the Applicant alleging a financial scam and other irregularities in the implementation of the UNFPA-funded project? Did the Applicant's insistence that there had been project irregularities and her subsequent report to OAI negatively affect her relationship with the UN Women management and constitute a reason for her non-selection?

52. In her testimony, the Applicant told the Tribunal that as the UN Women CPM in Côte d'Ivoire, her duties included management of Human Resources issues, programmes and other matters in that office at a time that the country was still in crisis. Before she came on board, the NPO, Ms. Matenin Coulibaly was responsible for the office and managed programme activities with the WARO.

53. Soon after the Applicant assumed her duties, one of her first tasks was to respond to UNFPA about a project it funded for UN Women in Côte d'Ivoire that had started in late 2009. Upon looking into the project implementation, she had concerns about some UN Women NGO partners. In particular, the project was to have been implemented by four NGOs. The Applicant said she realized that the activities were not carried out by the NGOs and so a narrative and financial report could not be sent to UNFPA.

54. She further discovered that contracts were signed between the four NGOs and WARO on 28 October 2009 for the implementation of the UNFPA-funded project. It was obvious that the NGOs received the money but did not carry out the activities. Ms. Coulibaly told the Applicant that she conducted the activities herself. The Applicant testified that there were no proper terms of reference and that the NGOs were merely a conduit as they would receive money to implement the project but would give the money back to the NPO who would then by herself carry out the project activities.

55. The Applicant testified that she felt that what happened was a financial scam in which the NGOs were used to obtain funding and the NPO then managed NGO money. Because she was worried about accountability and the violation of financial rules, she reported the matter to the WARO ney

the Côte d'Ivoire office in August 2010, he recommended, because of her concerns,

one email to Ms. Odera. She had also called and emailed Mr. Houinato on the

headquarters by the Applicant on the projects managed by the NPO. That mission, she stated, was exceptional because both Misses Chiwara and Turkoz-Cosslett at headquarters who had received the Applicant's reports of project irregularities, had sent her on the mission.

68. Mr. Houinato who was Ms. Odera's deputy at the

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Applicant was thereafter told by WARO that all the funds for the UNFPA project had been accounted for.

88. When the Applicant engaged on different occasions with Mr. Houinato on her observations and suspicions concerning the UNFPA-funded project, she was told that nothing had gone wrong and warned about gathering any information from NGOs regarding how the project funds were obtained and returned to the NPO. Mr. Houinato testified that doing so amounted to an unauthorized investigation into a project that was completed before the Applicant came to UN Women in Côte d'Ivoire and which posed no fiscal risks.

89. But is it true that the UNFPA-funded project had become history as claimed by Mr Houinato at the time the Applicant went to work for UN Women in Côte d'Ivoire? The investigation report shows at its pages 10 and 11 that Ms. Coulibaly collected various sums of money for the UNFPA project from the REFAE account between 12 November 2009 and 15 September 2010. It also showed that on 14 June and 30 June 2010, Ms. Coulibaly was still handling the said project funds and sending some of it into REFAE account. It must be recalled that the Applicant started heading the Côte d'Ivoire office on 1 April 2010 and that responsibility for the re TJ ET 9f 0 0 0 rg 0.9981 0 0 1 298.8 370.08 Tm [(C)6(ô)-32(te)-370.08

prescribed by Section II of ST/AI/371 (Revised disciplinary measures and procedures).

92. It is inconceivable that the Applicant as a head of office would sit idly by while her subordinate, the NPO, wrongfully kept NGO funds in a hidden account she could easily access, hired consultants as she pleased and recklessly spent the illegally-obtained funds under the Applicant's watch. Instead of helping to stop the scam that was unfolding, the WARO preferred to protect the errant NPO and accused the Applicant of mistreating her, of causing tensions in the Cote d'Ivoire office and of being a bad manager.

93. Although it is the position of the Respondent that the former WARO Director Ms. Mukarubuga and the NPO took project money from the NGOs so that the NPO would implement the project activities by herself because the NGOs lacked capacity to do so, Ms. Coulibaly herself told investigators that the NGOs were selected based on their reputation within the United Nations system. Was she lying to investigators? Interestingly, a fifth NGO, AFJCI, which is a professional association of women lawyers, also received funds for the UNFPA-funded project, implemented their activities and submitted their reports without any interference.

94. It is the Tribunal's finding that the Applicant as head of the UN Women Cote d'Ivoire office acted properly and ethically in blowing the whistle on the

after the OAI investigation report had been released to UN Women, were merely intended to deceive the Tribunal. These false testimonies also go to show that both the WARO Director and her Deputy not only had plenty to hide but were also unfairly committed to running the Applicant out of UN Women.

96. It is also unsettling that in spite of the fact that the Applicant reported the matter to senior UN Women managers in New York, they too refused to act until the said Applicant reported to the OAI.

97. The Tribunal finds and concludes that the NPO and the former WARO Director were involved in illegally obtaining certain UNFPA project funds in late 2009. The Applicant uncovered what had happened and her unrelenting reports to the new Director Ms. Odera and other WARO personnel and later to more senior managers at the headquarter offices in New York regarding the dodgy manner in which the UNFPA funds were obtained and handled embarrassed the WARO Director.

98. The fact that the Applicant persisted by later making an official report to

undertake the mission. According to her testimony, the said mission was precipitated by the Applicant's report of the NPO's alleged mishandling of NGO project funds to headquarters, concerns about the performance of the office and discontent expressed by project partners (NGOs) with the Applicant's management.

100. In his closin

Applicant and the UNFPA head of office in Côte d'Ivoire and "harsh exchanges" between the same Applicant and OHCHR head of office.

105. The report also stated that "most (UNCT) colleagues" were aware of the tension between the Applicant and the NPO while some knew of disagreements between the Applicant and the Administrative Assistant and the Driver.

106. It was also stated that

110. In the same concluding paragraphs of the report, she claimed that the Applicant was intent on getting rid of the NPO. She claimed also that the Applicant had spoken negatively to UN Women's national implementing partners about the NPO and this caused the Minister of Women Affairs

project funds and conflict of interest issues on the part of the NPO. Ms. Odera did not elicit any information from the relevant NGOs concerning their involvement in the UNFPA project.

121. In spite of claiming that she undertook the mission partly to address the Applicant's allegations concerning the improper handling of project funds by the NPO, her report did nothing to address the total absence of integrity and accountability in the manner in which UN Women's former WARO Director and the NPO in Cote d'Ivoire obtained funds by false representations. It did not address how the said funds were retrieved by the NPO from three of the NGOs used as conduits or why they were deposited into the bank account of REFAE, an NGO in which the NPO was a founding member and account signatory.

122. While giving a lot of prominence to what she said she heard concerning poor relationships between the Applicant and the UNFPA country representative, both of whom she described as "difficult personalities", Ms. Odera avoided any mention of problems between the two as a result of the UN Women WARO office obtaining funds from UNFPA by false representations in 2009.

123. No in-depth questions appear to have been asked about alleged outside activities in which the NPO was said to be engaged. Instead, Ms. Coulibaly was portrayed as the pristine victim of the Applicant's excesses, abuse and mismanagement.

124. The credibility of the conclusions of Ms. Odera's mission report is further damaged by her style of hasty generalizations. For instance, she constantly referred to what she was told by 'UNCT colleagues'. A close scrutiny of the report shows that out of about ten or more UN agencies operating in Cote d'Ivoire at the time, the only UNCT members she met and spoke with concerning the Côte d'Ivoire office during her 2012 mission were UNDP personnel and the RC/HC.

125. The report states that a proposed meeting with the UNCT did not take place and she did not meet the country representatives of UNFPA or

with only UNDP personnel, Ms. Odera wrote in her report that ‘most members of the UNCT’ were aware of the Applicant’s problems with the NPO. This was a deceptive ploy used to confuse anyone who would not read her report critically.

(c) Circulation of Ms. Odera’s mission report

126. In answer to a question in cross-

130. There is evidence that the interview panel consisted of three UN Women staff members and one external person. The Tribunal notes that with two UN Women panellists who were not only negatively debriefed about the Applicant but were also deputies and representatives of the author of the damning mission report and the Global Programme Director who received the said report, the interview panel was materially tainted with regard to the Applicant's candidature.

Was the Applicant denied any priority considerations to which she was entitled?

131. It was part of the Applicant's case that she was not afforded priority consideration to which she was entitled being the incumbent of a re-classified post as provided for in paragraph 4.6.1 of the applicable guidance on the UNIFEM Rank-in-Post policy published on 31 October 2008.

132. Two of the Respondent's witnesses addressed this issue. The first was Mr. Houinato who in reply to a question during cross-examination stated that giving priority consideration to a candidate would arise where an internal candidate and an external one are being considered following a recommendation. He stated that in the case of the Applicant, the risk she faced of losing her post was equal to the risk faced by the internal candidate who was selected as that candidate also had her post re-classified. On her part, Ms. Grant testified for the Respondent that the priority granted the Applicant was in the fact of her being shortlisted and then allowed to compete for her re-classified post.

133. The Respondent argued in the light of the United Nations Appeals Tribunal (UNAT) decision in *Megerditchian*¹ and *Charles*² that in addition to having the requisite qualifications, the Applicant was required to pass an interview before being given priority consideration. It was additionally argued that the shortlisting of the Applicant amounted already to priority consideration.

134. While these are conflicting arguments, the first seems to imply that the Applicant had failed the oral interview for her re-classified post and that the matter of availing her any priority consideration did not therefore arise. However,

¹ 2010- UNAT-088.

² 2012- UNAT-242.

the Respondent's witness, Ms. Singh, testified that the Applicant was recommended by the interview panel with reservations and that no waivers of UNIFEM rules were sought or granted.

135. In considering whether the Applicant received priority consideration as provided for in the relevant Rank-in-Post policy, UNAT's decision on the issue as espoused in *Megerditchian* and cited by the Respondent is the relevant authority upon which reliance must be placed. While weighing the circumstances in that case, UNAT noted th

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143. The first of these was the shortlisting for the re-classified post which was carried out by Ms. Odera. Part of the Respondent's case is that Mr. Seymour rather than Ms. Odera was the hiring manager. While Ms. Odera herself testified that she was not the hiring manager and was supported by the testimonies of Ms. Grant and Mr. Houinato, Ms. Singh, who was the head of Human Resources at UN Women at the material time, told the Tribunal that Ms. Odera did the shortlisting of candidates and that she was both the hiriported by t

manager were not satisfied as argued for the Applicant and amounted indeed to a serious procedural breach on the part of the Respondent.

Absence of any technical assessment in the selection process.

148. One of the submissions made on behalf of the Applicant is that UNDP recruitment rules and the practices in the entire United Nations system require a technical assessment in addition to an interview. It was also submitted that although the UN Women's rules are silent on this requirement, such an assessment was especially important for an interview panel that had no performance records to work with.

149. Considering that a technical assessment is not provided for in the recruitment guidelines for UN Women, the Tribunal does not find in this case that the absence of a technical assessment was a procedural error.

Duration of the interview of the Applicant.

150. The evidence is that the Applicant's interview lasted half the length of time given to the other candidates. It was submitted for the Applicant that the significant difference in interview durations between the Applicant and the other candidates, spoke to a lack of fairness in the process.

151. Ms. Singh had testified that interviews for P5 posts in which she participated always lasted 45 minutes or more. Mr. Houinato also agreed in cross-examination that the same interview for all the candidates excepting the Applicant typically lasted 45 minutes. There is corroborated evidence by the Applicant that apart from having a very short interview, the telephone line was not good and that some of the time she could not hear the panellists. The Respondent did not challenge or rebut this piece of evidence.

152. The unusually short duration of the Applicant's telephone interview whose quality was affected by a poor connection tends to suggest that the panel was not interested in her candidacy and that it granted her an interview only in order to appear to have given her adequate consideration. This constituted a procedural flaw that significantly compromised the fairness of the process.

Was harm suffered by the Applicant?

153. The Applicant pled that she suffered financial and reputational harm as a

priority consideration in the selection process to her re-classified post. No attention was paid to the matter of any priority considerations for the Applicant.

j. The UNIFEM Selection Guidelines requirement that where a hiring manager does not wish to be included as part of the interview panel, reasons for doing so must be recorded were not satisfied.

k. The non-consideration of the Applicant's performance appraisals by the interview panel amounted to a serious procedural error on the part of the Respondent.

l. The unusually short duration of the Applicant's telephone interview whose quality was also affected by a poor connection constituted a procedural flaw that indeed significantly compromised the fairness of the selection process.

155. The Applicant has discharged the burden of proof in showing that her non-selection for the upgraded post and her subsequent separation from the Organization were motivated by bias, procedural breaches, retaliation and other improper motives.

Accountability of United Nations' Managers

156. The

158. The non-selection of the Applicant to the upgraded post was undoubtedly prompted by the Applicant's diligence and boldness in unearthing and reporting the financial scam perpetra

pay compensation to the Applicant in the sum of two years' net base salary at the rate in effect at the date of Judgment.

167. It was pled by the Applicant and stated in her testimony that she suffered loss of income and loss of reputation that have negatively impacted her and her daughter as a result of not being selected for her upgraded post due to bias. The Tribunal found as a fact that the Applicant indeed suffered the harm as pled.

168. The Applicant is also entitled to compensation for the substantive and procedural irregularities occasioned her by the failure of the Administration to follow its own guidelines, rules and procedures and the Tribunal, accordingly:

a. Awards the Applicant three months' net base salary as compensation for the substantive irregularity.

b. Awards the Applicant three months' net base salary for the procedural irregularities.

169. If the Se(.)] [(th)9(e)-3()] TJ E32(a)-75.68 Tm [(c)the

