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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/006

Judgment No.: UNDT/2021/070

Date: 18 June 2021

Original: English

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**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

TOSON

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Katrina Waiters, UNFPA







- iv. Representative in the CO Nigeria;
- v. Representative in the CO Bolivia; and
- vi. Chief, Gender and Human R

12. The Tribunal held a hearing on the merits of these claims from 26-29 April 2021 during which oral testimony was received from:

- a. Ms. Josephine Mbithi, Director/DHR;
- b. Mr. Arturo Pagan, Deputy Director/DHR;
- c. Ms. Giulia Vallese, Chair, 2019 Rotation Panel & Representative CO Afghanistan;
- d. Ms. Chidinma Ogbuehi, Human Resources Specialist, DHR/UNFPA;
- e. Mr. Harold Robinson. Regional Director, Latin and Central America
- f. Mr. Benoit Kalasa, Director, Technical Division; and
- g. Mr. Mabingue Ngom, Regional Director, West and Central Africa Regional Office.

13. The Applicant and Respondent filed their closing submissions on 20 and 21 May 2021 respectively.

### **Considerations**

14

followed;

b.







The Rotation Panel will: Consider the comments and the views

26. The Tribunal's view is that the language of arts. 17 (g) and 42 does not support the Applicant's assertion that the Applicant's immediate supervisor gave feedback to the Rotation Panel about his preferences. That assertion is premised on a misunderstanding of the import of the provisions of the UNFPA PPM which are only

Executive Director, the final decision maker. She confirmed that the Rotation Panel is  
Performance Appraisal and Development  
reports or the as part of their overall  
assessments. Finally, that the Rotation Panel has discretion to make assessments based

32. Her evidence was corroborated in material particulars by that of Mr. Pagan, that the integrity of the selection process is found in the members of the Rotation Panel which is comprised of experienced and highly qualified senior managers.

33. It is noteworthy that the Applicant does dispute the fact that he lacked knowledge of the Spanish language which is an automatic disqualifying factor for the representative position in Bolivia.<sup>13</sup>

34. For the position of Chief Gender and Human Rights which was advertised outside the Rotation process, it is in evidence that the Applicant showed that he had no training and experience in gender matters which was a relevant competency for the position. The Applicant was not short listed as a result. Mr. Kalasa e Applicant s current supervisor solicited, since such feedback is only required for the candidate who reaches the last stage.

35. According to Mr. Ngom, the procedure that was adopted in the selection process for the position of representative Nigeria involved him setting up a panel which looked at the candidates . That Panel comprised of the Resident Co-

achieving result.

b. The second segment was competency to developing and applying professional expertise, business acumen, leading, developing and empowering people, creating a culture of performance.

c. The third area was making decisions and exercising judgement.

d. The fourth segment was about providing a strategic focus, engaging internal and external partners and stakeholders.

36. In a bid to show that that the selection exercise was tainted with retaliation, bias, discrimination and improper motive, the Applicant points to the fact that the reasons which were given for his failed candidature for each position were vague and insufficient.

37. The Tribunal however accepts Ms. Mbithi and s that

supervisor against him.

40. The Rotation exercise for the representative positions in Uzbekistan, Ukraine and Palestine took place between 7 January 2019 and 15 February 2019. The position in Nigeria was advertised on 18 October 2018 and the selection decision was taken on 18 January 2019 the very day the Applicant was interviewed.

41. The Applicant made reference to a request for management evaluation which he alleges triggered retaliation from his Supervisor

leading a



on the basis of the same competencies, experience and skills which had been found to be insufficient for the Palestine position, stated that the Panel deliberates and makes a decision based on what they think is the best placement for a particular location. She clarified that there might have been lesser competition for the Libya position for example. Further that the Panel and Peers who sat could have been different from those who processed the applications for the Palestine position. Mr. Pagan also explained that the profile in Libya is quite different and factors such as language are crucial in determining whether the applicant has a suitable profile. In this regard, Ms. Ogbuehi testified about what is referred to as a country profile, which means that there are specificities that are required for each country office. A country profile would indicate what is required in that specific country and the kind of candidate they would want for that post.

54. The available evidence satisfactorily explains the apparent inconsistencies between the assessment in the Applicant's PADs and his assessment during the process





