



## Introduction

On 16 August 2011, the Trial Chamber of the United Nations Dispute Tribunal for the侄  
International Court of Justice (hereinafter "the Tribunal") heard the oral argument of the  
parties in the case between the Government of the Republic of Congo (hereinafter  
"the Respondent") and the Government of the Democratic Republic of Congo  
("the Plaintiff").

## Employment History

In 2003, the Plaintiff joined the Office of the High Commissioner for Humanitarian Affairs Officer and  
worked for the UNHCR in Kinshasa, DRC. In 2004, he was promoted to the position of  
Deputy Representative of the UNHCR in Kinshasa. In 2005, he was appointed as the  
Deputy Representative of the UNHCR in Kinshasa. In 2006, he was appointed as the  
Deputy Representative of the UNHCR in Kinshasa. In 2007, he was appointed as the  
Deputy Representative of the UNHCR in Kinshasa. In 2008, he was appointed as the  
Deputy Representative of the UNHCR in Kinshasa. In 2009, he was appointed as the  
Deputy Representative of the UNHCR in Kinshasa. In 2010, he was appointed as the  
Deputy Representative of the UNHCR in Kinshasa. In 2011, he was appointed as the  
Deputy Representative of the UNHCR in Kinshasa.

The Plaintiff reported that he had been working for the UNHCR in Kinshasa since 2003.  
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## Conclusion

"The Plaintiff has established that he has been working for the UNHCR in Kinshasa since 2003.  
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**1. Summary of the Appeal and the Judgment of the Adjudicator**

**2. The Appeal** was filed by the Applicant against the judgment of the Adjudicator, dated 18 November 2010, which rejected the Appeal of the Applicant regarding the refusal of the Appeal of the Judgment of the Adjudicator, dated 16 November 2010, concerning the application for compensation for the damage caused by the 12 January 2010 Earthquake in Port-au-Prince.

**3. The Judgment of the Adjudicator of the ACNOC regarding the Appeal**

### **3.1 Factual Findings**

**Y** – On 30 June 2010, a surveying team from the UNDP Haiti team conducted a field visit to the

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**3.1 Factual Findings**

team of OCHA ("SMT") on 24 November 2010.

2. In November 2010, the Director of Coordination Response Division ("CRD")

telephoned the [REDACTED] to advise him that the [REDACTED] had been appointed to the post of Head of Office, Regional Office for

Controller to approve the upgrade of the post of Head of Office, Regional Office for

the [REDACTED] from the [REDACTED] to the [REDACTED].

He advised that he had been informed by [REDACTED] that [REDACTED]

had been appointed to the post of Head of Office, Regional Office for

the [REDACTED] and that [REDACTED] had been

invited to apply for the post of Head of Office, Regional Office for

the [REDACTED] and that [REDACTED] had accepted the appointment.

taking advantage of a suitable opening in Dakar (Head of Regional  
or West Africa).

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his reassignment to Senegal. The USC/ERC informed the Appellant of the difficulties encountered by OCHA in upgrading its position in Dakar from P5 to P4.

The USC/ERC however advised the Appellant that it had been placed at a level with financial benefits equivalent to those of a P5 position.

## IV. CONCLUSION

The Appellant argued that he was entitled to the rank of P4 or P5 because he had performed his duties in accordance with the standards set out in the contract of employment. He argued that the Appellee had failed to provide him with the necessary documents to support his claim for promotion and that he had been denied his right to a hearing before the USC/ERC.

It is held that the Appellee informed the Appellant of the difficulties encountered by OCHA in upgrading its position in Dakar from P5 to P4.

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"There is no "right" to promotion notwithstanding the fact that the Appellee informed the Appellant of the difficulties encountered by OCHA in upgrading its position in Dakar from P5 to P4."

24. While on mission in New York, on 11 July 2011, the Deputy Director of the Coordination and

Monitoring of UN Peacekeeping Operations with UNDOF, under the authority of the Head of the

Coordination and Monitoring Unit, David Oby Maita, the UNDOF Representative in the

Government of the Syrian Arab Republic, was present at the

inauguration of the new UNDOF Representative in the

Government of the Syrian Arab Republic, Mr. Michael S. Lappin.

On 11 July 2011, the UNDOF Representative in the Government of the Syrian Arab Republic, Mr.

Michael S. Lappin, was present at the inauguration ceremony of the new UNDOF Representative in the

Government of the Syrian Arab Republic, Mr. Michael S. Lappin.

Post in Haiti effective August 2011.

26. By email dated 21 July 2011, the Deputy Director of the Coordination and

Monitoring of UN Peacekeeping Operations with UNDOF, Mr. Michael S. Lappin, the UNDOF Representative in the Government of the Syrian Arab Republic, was present at the inauguration ceremony of the new UNDOF Representative in the Government of the Syrian Arab Republic, Mr. Michael S. Lappin.

Post in Haiti effective August 2011.

... other than those mentioned in paragraph 26 above, and no other information is available to the Court.

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Done at [redacted]

would "not know" him to be "considered for a D-1 level permanent/continuous assignment." The defendant is of the view that the ~~unconstitutional~~ will be applied at the discretion of the personnel manager in the ~~unconstitutional~~ personnel manager's office.

The "new" language, "will be applied at the discretion of the personnel manager in the personnel manager's office," is unconstitutional because it is discriminatory and discriminatory language is unconstitutional. See, e.g., *Equal Protection Clause*, 2004 E.D. Tex.

### **37. The Constitutional Provisions Violated**

a. The Unconstitutional authority of the personnel manager to unilaterally reassign from the ~~unconstitutional~~ personnel manager's office to another office. The personnel manager has been reassigning over 100 employees since the start of his service as personnel manager and has done so without any input or consultation from either the ~~unconstitutional~~ personnel manager or the ~~unconstitutional~~ personnel manager's office.

b. Plaintiff's claim regarding the unconstitutional personnel manager's authority to unilaterally reassign from the ~~unconstitutional~~ personnel manager's office to another office. Plaintiff's claim regarding the ~~unconstitutional~~ personnel manager's authority to unilaterally reassign from the ~~unconstitutional~~ personnel manager's office to another office.

reflect a significant downsizing of the office and a reduction of its budget and staff. OCHA did propose to retain the P-5 post for the first eight months in 2011, however, the Respondent failed to provide any information on the grounds and/or motives and was not asked.

- d. The Respondent further submits that the decision to offer a staff member a fixed-term appointment was made in consideration of his/her move to remove the Appellant from the P-5 post. However, in law, OCHA unsuccessfully sought to upgrade the P-5 post of Head of Office, ROWCA, to the D-1 level. Nevertheless, OCHA allowed the Applicant to be placed against the D-1 level until the expiry of his fixed-term appointment. The Applicant cannot be transferred back to Haiti as the post is due to be abolished. Further, in March 2011, another staff member [REDACTED] started at UNDP in Port-au-Prince.

**Applicant to enable him to take the Resident Coordinator Assessment**

within the UN system.

The Respondent submits that the decision is prima facie correct.

For

Mr. S. M. S.

II

For the Respondent

Mr. S. M. S.

Conversion to a continuous appointment can only take place against

the expressed wish of such conversion is fully aware of his/her discretion

the Secretary-General and taken following a competitive process. Prior

to the conversion, the Secretary-General shall consult with the Appointing Authority and the concerned functional authorities who have been consulted by the concerned functional authority in accordance with Article 13(2) of the Staff Rules. The concerned functional authority shall be informed of the proposed conversion and shall be given the opportunity to express its views on the proposal.

That the Respondent, Mr. S. M. S., has had his/her wishes consulted  
and has been informed,

- (i) on whether the proposed "continuous" appointment will be a permanent or other than permanent.

Done this 10th day of

## Considerations

30. For the purpose of the present application, The Tribunal considers that the

10. The date of the first meeting of the Board of Directors of the Company, the date of appointment as Chairman of the Board of Directors, and the date of appointment as President.

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and foremost consider whether the impugned decisions are *prima facie*... will first an-

Figure 1. A schematic diagram of the experimental setup. The light source (laser) emits a beam that passes through a lens and a polarizer. The beam is focused onto a sample stage, which holds a sample and a reference mirror. The reflected light from the sample and the reference mirror is collected by a lens and focused onto a photodetector.

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For more information about the study, please contact Dr. Michael J. Hwang at (310) 206-6500 or via email at [mhwang@ucla.edu](mailto:mhwang@ucla.edu).

the last year with a growth rate of 1.5% per annum. The total value of all the other countries combined is \$100 billion.

After the first few days, I was able to get into a routine of working out in the morning and then getting back to work at my desk.

Figure 8.10 shows a typical example of a two-stage process.

For more information about the study, please contact Dr. Michael J. Hwang at (319) 356-4000 or email at [mhwang@uiowa.edu](mailto:mhwang@uiowa.edu).

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“of due and appropriate care was immediately, prejudice or otherwise, in the circumstances.”

35. Furthermore in Judgment No. 1389, the United Nations Administrative Tribunal recalled:

“...that the Administration is bound by certain rules of law, which are to be observed in the exercise of its functions, and that it is liable to incur responsibility for failing to do so.”

“...that the lawfulness of the action complained of must be determined by reference to the rules of law which regulate the conduct of the public authority in the exercise of its functions, and that the question of whether or not the particular action complained of is lawful must be decided in accordance with those rules of law.”

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Post of consideration the budgetary challenges OCHA is currently facing. In fact, the

“...that the lawfulness of the action complained of must be determined by reference to the rules of law which regulate the conduct of the public authority in the exercise of its functions, and that the question of whether or not the particular action complained of is lawful must be decided in accordance with those rules of law.”

33.. The Tribunal recals that the burden of proof lies on the Applicant and there is nothing on record to show that the decision was made on the ground of improper motives against the Applicant. With this contrary, it finds that OCHA has acted in good faith.

34.. In the light of the above, the Tribunal finds that the impanelled administrator has not violated the law or regulations.

35.. Consequently, the application:

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