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Case No.: UNDT/GVA/2012/087

Judgment No.: UNDT/2013/065

Date: 9 April 2013

1. By application filed on 22 October 2012, the Applicant contests the decision not to renew his fixed-term appointment beyond 31 May 2012 as Managing Director of the Global Mechanism of the United Nations Convention to Combat Desertification (“UNCCD”).

2. The Global Mechanism was created by the UNCCD and has been housed

5. The Applicant signed the letter of appointment for the above extension on 1 April 2011.
  
6. On 21 October 2011, the COP issued decision 6/COP.10 with respect to the

10. On 21 November 2011, the Executive Secretary, UNCCD, wrote to the President, IFAD, with respect to the implementation of decision 6/COP.10, referring to the fact that the Managing Director of the Global Mechanism would be appointed through the recruitment process of the United Nations and requesting to be provided with a job description for said post. To his letter, the Executive Secretary, UNCCD, attached a proposed road map for the implementation of decision 6/COP.10. On 28 November 2011, the Executive Secretary, UNCCD, informed the President of IFAD that it was expected that the recruitment process of the Managing Director of the Global Mechanism, under the United Nations recruitment procedures, be completed by 30 June 2012.

11. On 23 November 2011, the Director, Human Resources Department (“HRD”), IFAD, sent to the Executive Secretary, UNCCD, the job , UNDFéEeOLYh,hyHErOMhF,-vYcEC

On 27 January 2012, the Executive Secretary, UNCCD, informed the Applicant



to assist OHRM in the recruitment of the Managing D





Mechanism, either until the time authorized in the budget approved by the UNCCD COP, namely until the end of 2013, or until the transfer of staff required by decision 6/COP.10 has been completed and a new Managing Director been recruited, in both alternatives with retroactive effect from 1 June 2012.

30. By letter dated 23 July 2012, the Director, HRD, IFAD, responded to the Applicant's request for facilitation, stating that as a result of decision 6/COP.10 and the amended terms of the MOU, neither IFAD nor its President were authorized to act on behalf and for the account of the COP with respect to the extension of the Applicant's appointment. The Director, HRD, IFAD, stressed that therefore, the relief requested by the Applicant was not within the powers of IFAD or its President, but exclusively with the Executive Secretary, UNCCD. Therefore, he requested the Applicant to address any further communications on the matter to the UNCCD Secretariat.

31. On 23 July 2012, the Applicant forwarded the response from the Director, HRD, IFAD, to the Executive Secretary, UNCCD, asking him to review his request for facilitation, particularly with respect to the responsibility of the UNCCD for the decision taken by the Executive Secretary, UNCCD, not to extend the Applicant's appointment beyond 31 May 2012. He therefore requested the management evaluation of the content of the memorandum dated 25 May 2012 under the UN Rules. His request for management evaluation was copied to the United Nations Under-Secretary General for Management.

32. The Executive Secretary, UNCCD, responded to the Applicant's request for management evaluation by letter dated 31 July 2012, noting that OHRM had informed the Secretariat of UNCCD that since the Applicant held an IFAD letter of appointment and was not a holder of a UN letter of appointment, any request for management evaluation should be addressed to IFAD.

33. By memorandum dated 2 August 2012, the ASG, OHRM, responded to the

34. On 23 August 2012, the Applicant submitted a statement of appeal against IFAD decision not to extend his appointment beyond 31 May 2012 to the Secretary of IFAD Joint Appeals Board (“JAB”), requesting it to find that the decision not to renew his appointment was taken in violation of IFAD human resources rules and constituted a violation of the duty of care of international organizations towards their employees. He requested, inter alia, to be reinstated to the position of Managing Director of the Global Mechanism, with retroactive effect from 1 June 2012, either until the time authorized in the budget approved by the UNCCD COP, i.e. the end of 2013, or until the transfer of staff required by decision 6/COP.10 has been completed and a new Managing Director of the Global Mechanism had been recruited.

35. By email dated 28 August 2012, the Secretary of IFAD JAB asked the Applicant to provide the JAB Secretary with a written request by the Executive Secretary, UNCCD, to IFAD, with respect to the application of IFAD grievance procedures to Global Mechanism staff.

36. On 3 September 2012, the Applicant sent an email to the Executive Secretary, UNCCD, informing him about the request from the Secretary of IFAD JAB, and asking him to confirm whether he would be ready to request IFAD to apply its internal grievances procedure.

37. By letter dated 9 October 2012, the Executive Secretary, UNCCD, reiterated the content of his previous message of 31 July 2012, namely that the United Nations OHRM had confirmed that the Applicant held an IFAD letter of appointment which indicated the applicable regulations and rules.

40. By letter of 10 January 2013, the Director, HRD, IFAD, informed the Applicant that pursuant to a request from the Executive Secretary, UNCCD, IFAD—on behalf and in the name of UNCCD under the terms of the revised MOU—was making arrangements to ensure that the internal recourse mechanisms of IFAD, initiated by the Applicant on 13 July 2012, were applied. The Applicant however rejected IFAD offer at this stage.

41. An oral hearing was held on 15 March 2013, at which Counsel for the Respondent was present in person and Counsel for the Applicant participated via telephone.

42. The Applicant's principal contentions are:

Receivability

- a. He is aware and recalls that the ICJ confirmed in its Advisory opinion of 1 February 2012 that the Managing Director of the Global Mechanism is an IFAD staff member;
- b. The foregoing notwithstanding, by decision 6/COP.10, the existing contractual arrangements ought to be modified and it was the responsibility of the Executive Secretary, UNCCD, to transfer the existing contracts of Global Mechanism employees under the administrative regime administered by UNOG. Decision 6/COP.10 did not foresee a phase during which Global Mechanism appointments would be subject neither to IFAD nor to UNOG;
- c. Despite his obligation, the Executive Secretary, UNCCD, did not take the actions required under decision 6/COP.10 to ensure that Global Mechanism employment contracts be transferred from IFAD to UNOG;
- d. According to the revised MOU, which entered into force while his appointment of 30 November 2011 was still valid, IFAD is not a party to the appointments of Global Mechanism staff and IFAD Rules and procedures

his contract of 30 November 2011 was issued “on behalf of and at the direction of UNCCD”;

e. In view of the foregoing, “the [Executive

k. The decision damaged the Global Mechanism since it left it without a Managing Director, despite the fact that the Applicant, as incumbent of the

least have been extended until a new Managing Direc









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by the Executive Secretary, UNCCD, through the recr



accepted - to him being simply transferred or extended under a new legal and administrative regime.

66. In view of the foregoing, and duly taking into account the Appeals Tribunal's Judgement Gabaldon, the Tribunal finds that the United Nations did not engage in or conclude any pre-contractual obligations that could lead to conclude that the Applicant had a status legitimately entitling him to similar rights as those of a United Nations staff member.

67. In its Judgement Iskandar 2011-UNAT-116, the Appeals Tribunal ruled that there may be situations in which the United Nations, by its behaviour, extended the protection of its system of administration of ttttd sa



72. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 9<sup>th</sup> day of April 2013

Entered in the Register on this 9<sup>th</sup> day of April 2013

(Signed)

René M. Vargas M., Registrar, Geneva