7. 7e%. 172(5 of t\$e OT, Po"!%&# !nsofa as !t e"ates to staff on !nte >agen%& se%ondment o "oan# '\$ose etu n to UNDP 'as su(=e%t to t\$e a-a!"a(!"!t& of su!ta("e pos!t!ons fo '\$!%\$ t\$e& \$ad to app"&!n a %ompet!t!-e e<e %!se# p o-!des t\$at !n t\$e e-ent of t\$e! %on-e s!on to pe manent appo!ntments su%\$ %on-e s!on 'ou"d (e%ome effe%t!-e on"& on t\$e date of t\$e staff mem(e s; etu n to UNDP. Pu suant to t\$!s Po"!%&# !n "ate O%to(e 2012# t\$e OT, team ' ote to a : uman ,esou %es 7pe%!a"!st# ,eg!ona" ?u eau fo Af !%a 23, ?A45# Off!%e of : uman ,esou %es 23O: ,45# UNDP# to as%e ta!n '\$en t\$e App"!%ant 'as to etu n to UNDP.

- 1. On .0 No-em(e 2012# t\$e Depa tment of 8!e"d 7uppo t 23D8745# '\$!%\$ adm!n!ste s pe sonne" !n pea%e/eep!ng ope at!ons# ' ote to UNDP e9uest!ng t\$at t\$e App"!%ant;s se%ondment (e e<tended (& t\$ ee mont\$s !n o de to a""o ' UN+87A to p"a%e \$!m on adm!n!st at!-e "ea-e pend!ng t\$e !n-est!gat!on !nto \$!s poss!("e m!s%ondu%t. A"t\$oug\$ UNDP ' as p epa ed to g ant su%\$ an e<tens!on and# !n t\$e !nte !m# to defe %ons!de at!on of \$!s su!ta(!"!t& fo a pe manent appo!ntment# t\$e App"!%ant de%"!ned to a%ept an e<tens!on. A%%o d!ng"&# \$!s se%ondment ended on ) De%em(e 2012 and \$e etu ned to UNDP on 7 De%em(e 2012.
- O. Unde se%. 1) of t\$e OT, Po"!%&# 3@(Ae!ng t\$e su(=e%t of an !n-est!gat!on at t\$e t!me of t\$e e-!e' @'ou"dA not ne%essa!"& d!s9ua"!f& t\$e e"!g!("e staff mem(e s f om (e!ng %ons!de ed fo a @pe manent appo!ntmentA. : o'e-e# 3@%Aons!de at!on of su%\$ staff @'as toA (e p"a%ed on \$o"d pend!ng t\$e %omp"et!on of t\$e p o%esses unde t\$e UNDP Bega" 8 ame 'o / fo Add ess!ng Non> Comp"!an%e '!t\$ UN 7tanda ds of Condu%t.4 Pu suant to t\$!s# on ) De%em(e 2012# t\$e t\$en>P o=e%t Canage # OT, /O:,# UNDP# as/ed to (e /ept !nfo med of t\$e esu"ts of t\$e !n-est!gat!on efe ed to !n pa a. ) a(o-e. T\$e e-!e' of t\$e App"!%ant;s su!ta(!"!t& fo a pe manent appo!ntment 'as defe ed pend!ng t\$e out%ome of t\$e !n-est!gat!on.

10.

1). ?& "ette of 1 August 201.# t\$e Deput& D! e%to # Off!%e of : uman , esou %es 23O: C45# ?u eau of Canagement 23?OC45# UNDP# !nfo med t\$e App"!%ant t\$at \$e \$ad e<%ept!ona""& (een g anted one &ea of 7BDOP# f om 11 Ju"& 201. to 17 Ju"& 201\*. 7\$e fu t\$e %"a !f!ed t\$at 3t\$e g ant!ng of t\$!s 7BDOP o an& %onse%ut!-e e<tens!ons 'ou"d not !mpa%t an& !g\$ts @t\$e App"!%antA ma& \$a-e \$ad fo %ons!de at!on of t\$e Ag eed 7epa at!on pa%/age4.

- 16. On 17 Janua & 201\*# t\$e D! e%to # O: ,# ?OC# UNDP# sent an ema!" to a"" UNDP staff not!f&!ng t\$em t\$at as a"" e<!st!ng %ases su(m!tted to t\$e Ad-!so & ?od!es \$ad (een e-!e'ed# t\$e UNDP OT, p o=e%t 'ou"d %"ose on .1 Janua & 201\*. G!-en t\$at# !n 2012# t\$e OT, team \$ad defe ed e-!e' of t\$e App"!%ant;s %ase !n "!g\$t of t\$e ongo!ng !n-est!gat!on fo m!s%ondu%t# t\$e "atte \$ad not (een %ons!de ed fo a pe manent appo!ntment. T\$e App"!%ant d!d not %\$a""enge t\$e de%!s!on not to g ant \$!m a pe manent appo!ntment !n t\$e %onte<t of t\$e OT, .
- 17. On 11 Ju"& 201\*# t\$e D! e%to # O: ,# UNDP# !nfo med t\$e App"!%ant t\$at \$!s 7BDOP 'as e<%ept!ona""& e<tended unt!" .0 7eptem(e 201\*. On 1 O%to(e 201\*# \$e' ote aga!n to ad-!se t\$e App"!%ant t\$at \$!s app"!%at!on fo an e<tens!on of 7BDOP \$ad (een e<%ept!ona""& app o-ed fo a fu t\$e pe !od f om 1 O%to(e 201\* to 17 Ju"& 201)# '\$!%\$ 'ou"d (!ng t\$e tota" pe !od of 7BDOP to t\$e ma<!mum of 2\* mont\$s a""o 'ed. +n \$!s "ette # \$e stated t\$at t\$e App"!%ant;s app"!%at!on fo ag eed sepa at!on se"e%t!ng t\$e opt!on of "ump>sum and 3 (!dg!ng4 'as 3st!"" unde e-!e ' 4.
- 11. On \* 8e( ua & 201)# O+O7 e"eased !ts !n-est!gat!on epo t and fo 'a ded a %op& to UNDP.
- 10. On 17 Ju"& 201)# t\$e App"!%ant ea%\$ed t\$e ma<!mum "!m!t of t ' o &ea s on 7BD OP# ' \$e eupon \$!s f!<ed>te m appo!ntment e<p! ed

2). On 2\* Ca %\$ 2017# t\$e, espondent !nfo med t\$e T !(una" t\$at UNDP \$ad sent t\$e App"!%ant a "ette not!f&!ng \$!m t\$at# \$ad \$e ema!ned !n !ts emp"o&# a e%ommendat!on 'ou"d \$a-e (een made to %\$a ge \$!m '!t\$ m!s%ondu%t. : e 'as g!-en 1) da&s to %omment t\$e eon.

## Parties' submissions

- 26. T\$e App"!%ant;s p !n%!pa" %ontent!ons a eE
  - a. , ega d!ng e%e!-a(!"!t&# t\$e "ette dated 1 O%to(e 201\* %annot !nd!%ate t\$at a de%!s!on to g ant t\$e App"!%ant \$!s ag eed sepa at!on 'as (e!ng made %ond!t!ona" on t\$e out%ome of t\$e d!s%!p"!na & p o%ess# (e%ause su%\$ "ette p e%eded UNDP;s /no' "edge of t\$e !n-est!gat!on aga!nst \$!m. T\$e efe en%e !n t\$e "ette to t\$e app"!%at!on (e!ng 3st!"" unde e-!e' 4 must efe to t\$e opt!ona" )0H up"!ft of t\$e te m!nat!on !ndemn!t& and/o to t\$e poss!("e e<tens!on of t\$e 7BDOP fo (!dg!ng pu poses]
  - (. A\%o d!ng to se\%. 11 of UNDP Ag eed 7epa at!on A angements\# ead !n \%on=un\%t!on '!t\\$ !ts se\%. 10\# on\"\& \\$o\"de s of a f!\<ed>te m appo!ntment '\\$o \\$a-e (een g anted ag eed sepa at!on e\%e!-e a t\\$ ee\mont\\$ not!\%e. T\\$e efo e\# t\\$e fa\%t t\\$at t\\$e App\"!\%ant 'as g!-en and se -ed a t\\$ ee\mont\\$pe !od not!\%e s\\$o 's t\\$at \\$e \\$ad (een g anted an ag eed sepa at!on. +f t\\$!s 'e not t\\$e \%ase\# \\$e 'ou\"d \\$a-e e\%e!-ed\# at most\# a one\mont\\$ not!\%e pe !od. :a-!ng t eated t\\$e App\"!\%ant as a staff mem(e unde an ag eed sepa at!on\# UNDP s\\$ou\"d (e estopped f om et oa\%t!-e\%ende !ng t\\$e

%. As a esu"t of t\$e App"!%ant;s "ong se -!%e# toget\$e '!t\$ t\$e

## 27. T\$e, espondent;s p!n%!pa" %ontent!ons a eE

- a. +f t\$e App"!%ant 'as unde t\$e e oneous !mp ess!on t\$at \$e \$ad (een g anted an ag eed sepa at!on !n 201.# t\$e "ette of 1 O%to(e 201\*# stat!ng t\$at \$!s e9uest 'as st!"" unde e-!e'# s\$ou"d \$a-e a"e ted \$!m to t\$e fa%t t\$at \$e \$ad not (een g anted su%\$ ag eed sepa at!on o # e"se# t\$at t\$e Adm!n!st at!on \$ad no' es%!nded !ts ag eement. A%%o d!ng"&# \$e s\$ou"d \$a-e e9uested management e-a"uat!on '!t\$!n t\$e statuto & t!me "!m!ts. 7!n%e \$e fa!"ed to do so# \$!s %\$a""enge !s! e%e!-a("e ratione materiaeI
- (. T\$e App"!%ant \$as not (een g anted an ag eed sepa at!on. T\$!s de%!s!on %ou"d not poss!("& \$a-e (een made p !o to \$!s e9uest!ng one# no '!t\$out go!ng t\$ oug\$ t\$e Ad-!so & Pane" and t\$e D! e%to of t\$e ?u eau of Canagement 7e -!%es. T\$e fa%t t\$at t\$e App"!%ant 'as affo ded a t\$ ee>mont\$ not!%e pe !od not on"& does not %\$ange t\$!s (ut !t !s !n fa%t %ons!stent '!t\$ se%. 112!5 of UNDP Ag eed 7epa at!on A angements# '\$!%\$ p o-!des t\$at a staff mem(e not se"e%ted fo a pos!t!on (& t\$e t!me of \$!s o \$e etu n to UNDP f om se%ondment '!"" (e p"a%ed on a t\$ ee>mont\$ not!%e. +n fa%t# su%\$ staff mem(e s a e f! st a""o 'ed to se -e t\$e! not!%e and on"& afte e<\$aust!on of t\$e not!%e pe !od a e t\$e& e<pe%ted to app"& fo an ag eed sepa at!on. D\$!"e t\$e App"!%ant a-e s t\$at t\$e "anguage !n some %ommun!%at!ons (& t\$e Adm!n!st at!on suppo ts \$!s %ontent!on# t\$!s !s a p"a!n m!s ead!ng of su%\$ %ommun!%at!ons!
- %. 7!n%e t\$e App"!%ant \$as not s\$o 'n t\$at \$e e"!ed upon t\$!s to \$!s det !ment o 'as !n an& manne p e=ud!%ed (& (e!ng a""o 'ed a t\$ ee>mont\$ not!%e pe !od# t\$e e a e no g ounds to estop t\$e , espondent f om a gu!ng t\$at t\$e App"!%ant 'as not g anted an ag eed sepa at!onI
- d. T\$e App"!%ant \$as not fu"f!""ed t\$e e9u! ements fo an ag eed sepa at!on# !n pa t!%u"a # \$e d!d not s!gn t\$e Ce t!f!%ate of no Contest e9u! ed unde se%s. 1\* and 20 of UNDP Ag eed 7epa at!on A angementsI

e.

## Consideration

Scope and receivability of t e application

21. T\$e App"!%ant des% !(es t\$e %ontested de%!s!on as t\$e de%!s!on not to p o%ess \$!s ag eed sepa at!on p !o to t\$e %on%"us!

Case No.

UNDT/GVA/2016/027

9uest!on !n t\$!s %ase !s !n%ons!stent '!t\$ !ts o 'n po"!%& !n t\$at !t 'as not one of

t\$at t\$e de%!s!on (& t\$e D! e%to # O: ,# UNDP# to defe %ons!de at!on of \$!s e9uest fo an ag eed sepa at!on unt!" t\$e %on%"us!on of a d!s%!p"!na & %ase aga!nst \$!m 'as not !n and of !tse"f an un"a 'fu" e<e %!se of manage !a" d!s% et!on.

\*0. +n -!e' of t\$e !no d!nate de"a&s t\$at o%u ed !n t\$e %! %umstan%es of t\$!s %ase 2see pa a. \*6 a(o-e5# t\$e T !(una" %ons!de s !t app op !ate to efe t\$!s %ase to t\$e UNDP Adm!n!st ato fo poss!("e a%t!on to enfo %e a%%ounta(!"!t&# !n a%%o dan%e ' !t\$ a t. 10.1 of !ts 7tatute.

## Judgment

)0. T\$e app"!%at!on !s d!sm!ssed.

2Signed5

Judge Goo"am Cee an

Dated t\$!s 21<sup>st</sup> da& of Ap !" 2017

Fnte ed !n t\$e , eg!ste on t\$!s 21<sup>st</sup> da& of Ap !" 2017 2Signed5 , enM C. Va gas C.# , eg!st a # Gene-a