to create a new

Merits

b. The contested decision was motivated by bias on the part of the two decision-makers, who wanted to separate the Applicant from service and ensure that the incumbent of the GFATM OM post would be retained. The UNDP Human Resources colluded with these decision-makers in order to effect the Applicant's separation;

c. The Organization mischaracterised the process as an abolition of the posts of ARR(O) and GFATM OM and the creation of a new post of ARR(O) whilst, in effect, it only made cosmetic changes to the terms of reference of the post of ARR(O) encumbered by the Applicant; This unlawful process avoided a comparative review of the old and new terms of reference for the post of ARR(O) and deprived the Applicant of the safeguards he was entitled to as incumbent of the ARR(O) post;

d. The advertisement of the Applicant's post was made in violation of sec. 74 of UNDP Recruitment and Selection Framework as no new functions were added to his terms of reference nor any additional technical competency required;

e. The recruitment process for the new ARR(O) post was not only tainted by bias but also impaired by several procedural flaws, all designed to avoid scrutiny over the process;

f. In particular, all the decisions in this selection process, except the marking of the candidates' interviews, were made by the Deputy Resident Representative who had no authority to take such decisions;

g. The requirement to use an assessment process other than a panel interview, set forth in sec. 68 of the UNDP Recruitment and Selection Framework, have not been complied with, which removed any objective element from the selection process. Furthermore, technical skills were not properly assessed during the interview;

d. As to remedies, the Applicant had a duty to mitigate his loss so any award of material damages should take into account the income from his new job. Furthermore, the Applicant did not adduce any evidence of moral damages;

e. Consequently, the Respondent requests the Tribunal to reject the application in its entirety.

Consideration

Receivability

29. By his application, the Applicant challenges the decision to separate him from service, notified to him by letter of 17 May 2015. In this process, he impugns prior decisions taken in the process that led to his separation, notably the decision to abolish his post and to create and advertise a new one. At the hearing on the merits, the Respondent challenged the receivability of the application insofar as it concerns these latter decisions, arguing that the Applicant is time-barred to challenge them as he did not file a request for management evaluation within the set deadline.

30. The Appeals Tribunal held in *Lee* 2014-UNAT-481 that while an applicant "cannot challenge the discretionary authority of the Secretary-General to restructure the Organization or to abolish a post, [he/she] may challenge an administrative decision resulting from the restructuring once that decision has been made". It found that the budgetary proposal by the Secretary-General and the General Assembly's adoption of it by resolution "[were] merely acts prefatory to or preceding an administrative decision that would 'produce direct legal consequences' to [the Applicant's] employment".

31. It follows from this jurisprudence that the Applicant could not separately challenge the decisions to abolish his post and to create a new one.

32. That said, this does not mean that the Applicant, while contesting his separation from service, cannot raise arguments touching upon prefatory steps taken in the process leading to such decision and which contributed to it. This position was confirmed in *Hersh* 2014-UNAT-433-Corr.1, where the Respondent argued

that the Dispute Tribunal could not review the decision regarding the reclassification of a post, taken

38. It is settled law that a fixed-term appointment does not bear any expectancy of renewal (Staff regulation 4.5; *Syed* 2010-UNAT-061; *Appellee* 2013-UNAT-341). A non-renewal decision can be challenged on the grounds that it was arbitrary, procedurally deficient, or the result of prejudice or some other improper motivation (*Morsy* 2013-UNAT-298; *Asaad* 2010-UNAT-021; *Said* 2015-UNAT-500; *Assale* 2015-UNAT-534). The

the Tribunal, following the cross-examination of the Deputy Resident Representative, which revealed their existence.

46. The Tribunal deems it appropriate to quote a large portion of the exchanges contained in these documents given their import to the case, to avoid any misinterpretation and to fully expose the role played by the Human Resources team in the process and the approach taken by both the Resident Representative and the Deputy Resident Representative.

47. In a confidential email of 24 September 2014 to a Human Resources Specialist, RBAP, OHR,

current portfolio of the

1) Local staff member, Mr. Shahin Shadian (index# 682921), is NOT a long-serving staff member having joined UNDP upon initial appointment effective [1 February 2012]. As such a non-renewal notification shall be issued to him to notify of non-renewal of his contract beyond February 2015. Although at least 30 days' notification is required, it is best that any affected staff member receives such notification as early as possible so they can start exploring other options including searching for jobs within or outside of UNDP. You will note in the attached template that a reason for the non-extension is required, which I request from you soonest in order to facilitate clearance from LSO.

2) Please submit the revised JDs/TORs of the two NOC positions in due course under a separate covering memo to ODU (memo and JD templates are attached), for their assessment and confirmation that both positions can, indeed, be retained at the NOC level.

3) The justification for advertising one of the NOC positions for recruitment and open competition, while the other NOC (Programme Officer)

> Please proceed with getting the necessary clearances at the HQ end including LSO so that we could issue the letter at the earliest but no later than the end of this month—October.

51. The draft non-renewal letter, written on behalf of the Resident Representative, stated that the non-renewal of the Applicant's fixed term appointment was "due to a major revision of the Terms of Reference for this post consequent upon the need to combine the functions of the two Operations Managers—one for the Country Office and the other for the GFATM Health & Development Cluster which is itself a need to reduce management costs". It further stated that "[i]t [was] not a reflection for [his] performance".

52. By email of 22 October 2014, the Human Resources Specialist, RBAP, OHR, responded to the Deputy Resident Representative's request, insisting that clearance for the reclassification of the Applicant's post be obtained prior to notifying the Applicant of the non-renewal of his appointment:

> I would like to recall my earlier advice, as per item 2 of my email of 26 September 2014, i.e., to submit the revised TOR to ODU/OHR for reclassification. Before the non-renewal

The revised new ToR for the OM (Assistant

consequent to which the post will be abolished." (ver 2). Our preference will also be to go for a version without any reason. I agree that it keeps it simple.

In response to your other point you have raised our plan is to abolish the current NO-C post and create a new NO-C post with the new ToR (to be approved by ODU) and advertise the same. We will advertise both internally and externally and if we do not find sufficient suitable applicants, then consider external applicants also. This [staff member] whose post is being abolished will definitely have a chance to apply as external candidate.

Could we request you to please ON PRIORITY run both the versions past the LSO and revert to us urgently. As we have only under two months left we are keen to issue the letter ASAP.

I will be sending the new ToR to ODU for classification under copy to you. It would be useful to know to whom it should be addressed. The template that Lory shared has Mark's name on it. Is that

> Since you have explained the history, we discussed to link the OM strengthening plan to the Financial Sustainability plan which the office has had earlier.
>
> You were then to provide us with the plan including the expected timing of the VA and its completion date, to enable us advise you on the duration of the recommended extension of FTA appointment for both staff members to allow them apply and compete for the position.
>
> As indicated above, since both staff members are non-long serving, there is no need for a search letter, as I originally envisaged in our discussion. It will therefore be a non-renewal letter, which could be combined with the anticipated extension of FTA (I suggested then that it could be three months to accommodate the filling of the newly established OM—NOC position).
>
> 2) After our discussion, you were provided with the template of the post creation and classification. Since then you have sent the request to Joel with clarification. I am assuming that the final request to be sent to both OFRM and ODU.
>
> 3) Please find attached template of a regular non-renewal letter, which you will need to include the reason for extension on the first para[graph] and send it us back together with you (sic.) plan (which services as a justification for the non-renewal) to enable us share with LSO for clearance and move forward with the action.

58. In an email of 22 December 2014, the Deputy Resident Representative followed-up on a number of issues above, notably in respect of the non-renewal letter to be sent to the Applicant and, for the first time, proposed a draft non-renewal letter for the incumbent of the GFATM post as well:

> As regards theo.5.59000015454499ewal

Please go ahead and have the discussion with the staff members tomorrow as planned, separately;

The discussion should inform them the detail of the plan as you mentioned on the draft letter;

The discussion should be documented;

The letter should not give too much information as we discussed, since it will be captured through your individual discussions with the [staff members], it should only mention—on the first para "… per your discussion with so and so, on the such and such date, your contract is being extended for a period of three months, from through … i 0 TD (you2 -302.846988496.09997559 0806 0 Td ( )Tj 41)Tj 2.2990036 9884h

statements he produced prior to the hearing, and clearly and most convincingly support the Applicant's allegations of bias made in his initial application.

63. The Tribunal is concerned that these documents, which were crucial to the determination of the case and were apparently in the possession of Counsel for the Respondent for some time, were disclosed only at a very late stage of the process, following a request it made during the Deputy Resident Representative's cross-examination. Whilst these documents were not specifically covered by the orders for production of evidence made by the Tribunal prior to the hearing, as their existence was unknown at the time, the Tribunal finds that the Respondent nevertheless failed to fulfil his disclosure obligations in this case. In this respect, the Tribunal recalls its holding in *Valentine* UNDT/2017/004 that in the context where most of the relevant evidence is in the possession of the Administration, "[p]rompt and full disclosure of the relevant documents by the Respondent is key to a fair determination of the case". As held in *Valentine*, the Respondent's disclosure obligations are not limited to produce the evidence relevant to support his own case but includes "any document in his possession that is relevant to the determination of the Applicant's case, as presented in his or her application". This duty of candour that falls on the Respondent is necessary to ensure that staff members have access to justice. Applicants cannot have their cases fairly and properly considered by the Tribunal without the Tribunal being fully informed of all matter touching upon the case. The non-disclosure of documents which are clearly relevant goes to the ability of an applicant to form and present his or her case and to the ability of the Tribunal to ensure that proper processes have been followed and are not tainted by ill motivation. The failure to provide relevant documents is the same as misleading the Tribunal. This is unacceptable conduct, especially in circumstances where the knowledge of the existence of relevant documents is solely within the purview of the Respondent. The duty of candour finds its source in art. 4 of the Code of conduct for legal representatives and litigants in person, adopted as Appendix to General Assembly resolution 71/266 on 23 December 2016, which provides that "legal representatives (…) shall maintain the highest standards of integrity and shall at all times act honestly, candidly, fairly (…) [and] in good faith".

64. The late disclosure of the documents also calls into question the integrity of the Respondent and his Counsel in handling this case, as well as that

denials until he was confronted with incontrovertible documentary evidence, which he had every reason to believe had not been disclosed to the Tribunal, as it had not been provided to the Tribunal before the hearing. It is further noted that the witness was generally evasive in his answers and, at times, even refused to answer simple questions. He appeared at all times to be motivated by a desire to obscure the decision-making process and to implicate others, while minimizing his own involvement. This witness was not a witness of truth and no reliance can be placed upon his testimony. Rather, his attitude lends supports to the conclusion that the contested decision was based on ulterior motives.

67. As to the Resident Representative, he also failed to make any reference in his witness statement and his initial oral testimony to the email of 24 September 2014, or any of the other emails to and from Human Resources seeking advice as to how to engineer the separation of the Applicant. However, after having been presented the email of 24 September 2014, he confirmed that he and the Deputy Resident Representative had concerns with the Applicant's performance and that these were a factor taken into account in the decision to separate the Applicant, although he insisted that it was not the main one. He stated that the Applicant's post had to be merged anyway with the GFATM OM post and that the outcome would be the result of a valid process as the Applicant would be allowed to compete for the new post. He tried to convince the Tribunal that the Applicant had a chance to be selected for the new ARR(O) post, despite the expressed concerns about his performance by the decision-makers. The Tribunal finds that the Resident Representative's testimony is inherently incoherent and not credible. Again, it displays an attempt to justify an ill-motivated and improper process.

68. The Human Resources Business Partner, who was copied with all emails quoted above and oversaw the whole process, also gave evidence to support the contested decision. She initially sought in her witness statement and testimony in Court to justify and support the process that led to the contested decision, trying to avoid any reference to the origin of the process. The Human Resources Business Partner declared in her witness statement, which she confirmed under oath at the hearing, that "[i]n early 2015, the UNDP's Country Office in Iran contacted the Office of Human Resources to enquire and request advice about the merging of

2 posts of Operations Managers into a one new post". When confronted with the 24 September 2014 email and the ones that followed, she was forced to admit that her witness statement was inaccurate, and rather disingenuously sought to argue that this was a typographical error. The witness statement clearly gave the impression that the events under review commenced in "early 2015", when clearly they commenced in September 2014, which she well knew, but totally failed to disclose. The "contact" before this date disclosed matters evidencing inappropriate conduct by those involved in such.

69. In cross-examination, the Human Resources Business Partner, after she had been made aware that the Tribunal had the correspondence from the commencement of the transactions involved in this

71. The Tribunal finds that little credibility can be afforded to this witness, whose testimony appears to have been motivated by a desire to justify the contested decision at all cost and to distance herself and her team from

performance issues, and not the result of the abolition of his post. Not only did the Deputy Resident Representative explicitly state his real motivation in his email of 24 September 2014, but he also persistently insisted that a non-renewal letter be sent to the Applicant, even before a decision to abolish his post and to create a new one had been approved by the ODU/OHR.

75. The evidence further shows that the Deputy Resident Representative could not initiate a non-renewal based on performance issues as there was no record of underperformance. The Applicant’s performance appraisals were not completed for the performance cycles of 2013 and 2014, which correspond to the period when the Deputy Resident Representative was his first reporting officer. The Applicant’s previous performance appraisals, completed by his former supervisor, the former Resident Representative, rather indicated a satisfactory performance. Whilst 0 Td (Applicant’s)Tj (

77. It is also established that the Deputy Resident Representative and the Resident Representative sought to ensure that the incumbent of the GFATM OM post would be selected for the new ARR(O) post. The email of 26 September 2014 from the Human Resources Specialist, RBAP, OHR, in which she assumed that the incumbent

d. The post classification was not properly reviewed by ODU and the review process

> set of functional or technical competencies and qualifications, such posts must be also advertised for competitive selection. For further guidance on the business process and procedures for job classification, please refer to the policy on Job Evaluation.

88. In addition, sec. 2.5 of the UNDP Rank-in-Post Policy provides that:

> [I]f the post which has been reclassified is occupied by a FTA, CA or PA staff member and is advertised, the incumbent will be invited to apply for the reclassified post, his/her application will receive priority consideration and if he/she is found suitable, he/she may be selected for the post irrespective of his/her ranking in the selection process.
>
> If the incumbent is not selected for the reclassified post, the hiring unit will be required to provide to the CRB/CRP substantiated reasons for not considering him/her suitable for the post, and the procedures related to abolition of post will apply.

89. The question at issue is whether the Applicant was unlawfully deprived of the aforementioned protections as incumbent of the ARR(O) post, under a pretext that the post was abolished instead of being reclassified following the addition of new responsibilities.

90. From the outset it cannot be ignored that the process was motivated by an expressed desire of the CO Senior Management to ensure that the Applicant would be separated from service and that the incumbent of the GFATM OM post would have a chance to compete for the new ARR(O) post, if not to be selected. The series of emails reproduced above show that the process was driven by considerations related to the incumbents of the posts rather than

intention of the CO Senior Management was initially to integrate the functions of the

94. A comparison of the ToRs of the three positions confirms that the ARR(O) post continued to exist, with additional responsibility for leading the GFATM operations, as evidenced by the following.

95. As a starting point, it is noted that the two positions that the Organization allegedly sought to merge, namely the ARR(O) post encumbered by the Applicant and the GFATM OM post, were fundamentally different. The ARR(O) post was a core function in the CO, responsible for leading the office's operations. It had a wide breath of functions, which notably encompassed responsibility over the delivery of projects in the office's portfolio. In this connection, the ToRs of the old ARR(O) post stated under "Operational Context":

> Under the guidance of the [Deputy Resident Representative], the ARR (Operations) acts as an advisor to Senior Management on all aspects of CO management and operations. This includes strategic financial and human resources management, efficient procurement and logistical services, ICT and common services consistent with UNDP rules and regulations. The main role is to lead the operations, ensuring smooth functioning of the CO/programmes/projects and UN common services, consistent services delivery and constant evaluation and readjustment of the operations to take into account changes in the operating environment as and when needed. The ARR (Operations) acts as the UNDP Security Focal Point.
>
> The ARR (Operations) leads and guides the CO Operations Team and fosters collaboration within the team, with programme staff and with other UN Agencies and a client-oriented approach. The ARR (Operations) works in close collaboration with programme and project teams in the CO, operations staff in other UN Agencies, UNDP HQs staff and Government officials to successfully deliver operations services.

The ARR(O) post was

Under the overall guidance of UNDP Deputy Resident Representative and direct supervision of the Head of GFATM Cluster, the Head of Operations ensures efficient and smooth implementation of operational activities of UNDP projects funded by GFATM in PR, i.e. efficient implementation

"the revised job description contains new functions from another technical area requiring a new set of functional or technical competencies and qualifications".

104. In this connection, the Respondent argues that the new

collect the relevant documentation and ensure a follow-up. The Tribunal finds that even if additional responsibilities for different types of audits were added to the ARR(O)'s ToRs, these appear to constitute additional tasks, or possibly functions, which remain in the same technical area as the audit functions already under the responsibility of the ARR(O) post.

109. Most significantly, the requirements for the post were not modified. The functional and core competencies and the experience required remained exactly the same. Only the educational requirements were slightly modified, such that the new ToRs require a "Master's Degree or equivalent in Business Administration, Public Administration, Finance, Economics or related field" whereas the former ToRs required the same but stated that a "Bachelor's degree is acceptable only with additional years [2] of work experience". The Human Resources Business Partner explained that the change to the new ToRs was made to ensure compliance with the generic job description. No connection was established between this minor change to the ToRs and the alleged addition of new functions.

110. In view of the foregoing, the Tribunal finds that whilst additional responsibilities in respect of the operations of the GFATM and audits have been added to the ToRs of the new ARR(O) post, these did not constitute new functions from another technical area, as the Operations Manager was already responsible for leading programmes operations and to act as audit focal point. They were merely additional tasks in respect of the same functions. They certainly did not require a new set of functional or technical competencies and qualifications, as evidenced by the fact that there has been no change in the j (th)Tjs80 Td4 6b1h99463 -20.69799805 TD .86199951 -20

c. Scrutiny over the process

113. This whole process was conducted without any scrutiny from the relevant Human Resources department. No approval was sought for the abolition of the two posts and the creation of a new one. The only procedure undertaken to validate the process was to send a request for classification of the new ARR(O) post to the ODU. In his request of 27 December 2014, the Deputy Resident Representative requested the classification of the new ARR(O) post, which he identified as "a new post". He attached the budget authorisation, the new proposed Organizational chart and the new ToRs. Significantly, neither the old ToRs of the ARR(O) post nor the old organizational chart were provided. This made it impossible for ODU to properly and convincingly scrutinize the restructuring exercise or to examine whether the change of ToRs for the ARR(O) post required under the relevant rules that the post be re-advertised. In this connection, it is noted that the request form for re-classification, which is used for both classification of new posts and reclassification of existing ones, specifically requires that justification be provided in case of re-classification, and that the previous Organizational chart be provided. By indicating that the process was not a re-classification, the Deputy Resident Representative deliberately avoided providing these documents and submitting them to a comparative review. Classification for the new ARR(O) post was thus granted on the basis of incomplete information, which misrepresented the situation and, therefore, was invalid. The operation of one of the systemic checks was thus subverted.

114. Furthermore, the authority of ODU to authorise the classification has not been established since no attempt was made to constitute a local CRP, which has primary authority to review post classifications and make recommendations to the Resident Representative.

115. In this connection, sec. 1 of the CRP Rules (in force since 1 July 2009)

> is established by the Administrator or the head of office on behalf of the Administrator, under the provisions of Staff Rule 4.15 for the purpose of making recommendations in respect of:
>
> …
>
> d) Review of job classification and reclassification submissions prior to their approval by the Resident Representative (Please see job classification POPP for procedures)

116. Sec. 2 of the Rules for CRP provides for the possibility of making alternative arrangements when the quorum cannot be met:

> In non-New York Headquarter offices where the quorum criteria cannot be met, the head of office is required to make alternative arrangements with the CRP in New York for the review of their cases. Country Offices that cannot meet the quorum requirements may utilize the New York CRP.

arrangements to constitute a local CRP and that the staff association was not consulted prior to referring the matter to ODU.

120. In this connection, the Respondent's witnesses confirmed that no attempt was made to constitute a quorum using one of the possible alternative arrangements set forth in secs. 5, 9, 11 and 12 of the Rules for the CRP. Amongst others, no attempt was made to include professional staff members or national officers of other UN agencies in Teheran as ad hoc members of the CRP. No consideration was given to the possibility of limiting the quorum to three and to allow the ex officio panel secretary to vote. It was also established that the staff association was not consulted before referring the matter to ODU, in violation of sec. 13.

121. The evidence shows that the decision to send the classification review to ODU was made by the Human Resources team. The Human Resources Business Partner testified that it was decided to send the review to ODU in order to render the process "more transparent". She acknowledged that the rules were not followed but insisted that this decision was nevertheless justified. In this respect, the Tribunal stresses that the rules specifically define the process for seeking classification of a post and these must be followed. The role of the Office of Human Resources is not to decide which process would be more

Selection process for the new ARR(O) post

123. The Applicant asserts that the selection process for the new ARR(O) post was biased and vitiated by procedural irregularities in that:

a. All the decisions in this selection process, except the marking of the candidates' interviews, where made by the Deputy Resident Representative who had no authority to take such decisions;

b. The requirements to use an assessment process other than a panel interview, set forth in sec. 68 of the UNDP Recruitment and Selection Framework, have not been complied with, which removed any objective element from the selection process. Furthermore, technical skills were not properly assessed during the interview;

c. Two of the panel members, including the Deputy Resident Representative who exerted influence on the selection process despite his alleged role as a non-voting panel member, were biased as they previously manifested their desire to separate the Applicant;

d. The Organization did not seek to establish a quorum in the local CRP prior to using an external one, as required by secs. 9, 11 and 12 of the CRP Rules.

124. The Respondent submits that the process was conducted in accordance with the applicable rules and that there is no evidence of bias. He argues that the Deputy Resident Representative had delegated authority to conduct recruitment processes, that it was not necessary to conduct a written test and that it was advisable to submit the review of the recruitment process to the regional CRP, in Bangkok. He further asserts that the Deputy Resident Representative did not participate in the candidates' assessment.

125. The evidence shows that the selection process was essentially handled by the Deputy Resident Representative, who, *inter alia*, took the lead in creating the vacancy announcement, short-listing the candidates, deciding to forego a written test, assisting in the preparation of the interview questions and generally handling

all communications with Human Resources. It is not disputed that he acted as *de facto* hiring manager for a large part of the recruitment process, although the final selection decision was formally made by the Resident Representative as hiring manager. The Resident Representative was also kept informed of the steps mentioned above and he chaired the interview panel.

126. At the outset, the Tribunal stresses that given the express desire of the Deputy Resident Representative and the Resident Representative to separate the Applicant and to retain the

selection processes have

expected that for many of those having to use the administrative issuances, English may be a second or third language.

136. In the present case, the assessment was limited to a panel interview. Although this interview included a number of technical questions, these did not constitute another assessment technique as required by art. 68 of the

to the candidates himself and presenting his opinion to the other panel members on the answers given.

139. In this respect, sec. 86 of the UNDP Recruitment and Selection Framework states that "[i]f a panel member is requested to interview a candidate that they have directly supervised, it is at the discretion of the panel member to determine whether or not he or she should excuse him or herself from the panel should it constitute an actual or perceived conflict of interest". Sec. 87 further provides that "[a]ny panel member with a conflict of interest pertaining to one or more interviewees should exclude themselves from the interviewing process". Again, the use of the word "should" in sec. 87 is unfortunate and ought to be read as a "shall" as it would be contrary to the principles governing selection processes set forth in art. 64 of the UNDP Recruitment and Selection Framework, which requires that selection processes be "rigorous, fair, transparent and professional", that one of those individual involved in the assessment process have a conflict of interest.

140. It follows from sec. 87 that once the Deputy Resident Representative decided that he had a conflict of interest, he had to exclude himself totally from the interview process. His role as a "non-voting member" was not only entirely inappropriate, but it was also not foreseen in the rules. In this respect, the composition of the interview panel is described in sec. 86 of the UNDP Recruitment and Selection Framework, which provides that "[a]ll interview panels will normally include the hiring manager or her/his designated representative from the hiring unit, an HR professional (as a full panel member) or associate (as panel facilitator and rapporteur) and one other professional from outside the hiring unit".

141. The reason provided by the Deputy Resident Representative to assist at the interview does not withstand scrutiny as it was clearly established that he already knew both of the candidates very well. The circumstances of the case rather lead to the unassailable conclusion that the Deputy Resident Representative attended the interview in order to influence the assessment process.

142. It is further to the

no attempt to prevent the subversion of the processes by declaring the conflict or any of the prior actions to which he was a party. It is noted that, of course, such a declaration would have been inconsistent with achieving the desired result.

d. Scrutiny over the recruitment process

143. Fourthly, the process was reviewed by the regional CRP in Bangkok, without any attempt being made to refer it to the local review panel. As was the case for the review of the new ARR(O) post classification, Human Resources considered that it would be "more transparent" to refer the case to the regional CRP.

144. In this respect, sec. 96 of the UNDP Recruitment and Selection Framework provides that "[n]o offer of FTA can be made without the review of the relevant CRB [compliance review board]/CRP [compliance review panel] as appropriate". Sec. 97 further provides that "[h]iring managers are responsible for submitting proposed candidates in accordance with the CRBodies TOR and Rules of Procedure".

145. Pursuant to sec. 1(1) of the CRP Rules, recommendations for "UNDP Fixed Term (FTA) and Permanent Appointments (PA) against locally recruited posts GS1-7 and NOA-D" falls under the mandate of the local CRP. The requirements for referring to another CRP or to the CRB in Headquarters are the same as for classification of posts, which are more amply discussed above (see paras. 116 and 117 above).

146. It is not disputed that no attempt was made to refer the selection process for by for review by the local CRP, thus rendering the referral to the Bangkok CRP in[illegible]

147. Finally,

unlawful, the Tribunal finds that the contested decision to separate the Applicant was equally unlawful.

Remedies

151. Art. 10.5 of the Tribunal Statute, as amended by resolution 69/203 of the General Assembly adopted on 18 December 2014, delineates the Tribunal's powers regarding the award of remedies, providing that:

> As part of its judgement, the Dispute Tribunal may only order one or both of the following:
>
> (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
>
> (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation, and shall provide the reasons for that decision.

Rescission and alternative compensation

152. Having found that the decision to separate the Applicant was unlawful, the Tribunal rescinds it. To provide an effective remedy to the Applicant, whose reintegration would normally flow from the rescission of the decision to separate him, the Tribunal also deems it appropriate to rescind the decision to abolish the Applicant's

the numerous irregularities that led to the Applicant's separation, rescinding the decision appears to be the only option for the Organization to avoid support of what is an outrageously unfair process and perpetuate the irregularities that led to the appointment of the incumbent of the new ARR(O) post.

154. Nevertheless, the Tribunal must set an amount of compensation "in lieu of" rescission. It finds that the exceptional and extraordinary circumstances of this case justify the award of compensation exceeding the equivalent of two years' net base salary, set down in art. 10.5(b) of its Statute. It is noted by the Tribunal that this case has disclosed the most extraordinary conduct by senior managers specifically calculated to deny the Applicant rights given to him under the regulations and rules of the Organization. Further, they acted to subvert the checks and balances that normally provide protection to the Applicant from such conduct. Also extraordinary is the initial collusion in the conduct of the senior managers by an officer in Human Resources and the subsequent failure of the Human Resources Business Partner to stop the conduct she admitted and well knew to be unethical and unlawful. There was a significant breach of duty of care owed to the Applicant. The Appeals Tribunal recalled in *Hersh* 2014-UNAT-433 what it had held in *Mmata* (2010-UNAT-092), namely that "art. 10.5(b) of the UNDT Statute does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation".

155. The Tribunal notes that the Applicant's case is particularly serious, since he had a considerable career with the Organization, in terms of its length, but also in terms of opportunity. As a national officer working in the UNDP Iran CO, his employment secured him an income compared to that of the best paid civil servants in the country, and a possibility of career development. After his termination, the Applicant could not secure another United Nations position. In order to mitigate his damages and ensure a livelihood, the Applicant took up a position with the Norwegian Refugee Council in Iran on 18 October 2015, for which he earns USD2000 per month, which is less than half of the salary he received while working for the United Nations. Two years later, the Applicant still occupies this position and earns the same salary. Despite the Applicant's efforts to mitigate his damages,

his career took a serious blow due to his unlawful separation from the Organization and significantly impacted his standard of living.

156. In light of all of the foregoing, and the seriousness of the breaches of the Applicant's rights as presented above, the Tribunal finds it appropriate to set the amount of compensation under art. 10.5(a) at three years' net base salary. In addition, the Applicant shall receive compensation in the amount equal to the contributions (the staff member's and the Organization's) that would have been paid to the United Nations Joint Staff Pension Fund for a three-year period. Given that this is an amount that the Organization may elect to pay in lieu of rescinding the unlawful decision to separate the Applicant, the Tribunal does not deem appropriate to deduct from the award the amount that the Applicant earned in his new employment, in an attempt to mitigate his damages and to ensure

year which was rekindled by having to take part in these proceedings. The Tribunal finds it appropriate to award the sum of USD20,000 as moral damages.

Referral for accountability

160. Pursuant to art. 10.8 of its Statute, "[t]he Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations … for possible action to enforce accountability".

161. The Tribunal is of the view that the facts D2r82f (Th.95599365 0.6"oral)Tj ( )m8fn0ity".

not to disclose all relevant documents, being those ordered to be produc

(*Signed*)

Judge Rowan Downing

Dated this 17th day of November 2017

Entered in the Register on this 17th day of November 2017

(*Signed*)

René M. Vargas M., Registrar, Geneva