

5. In the said memorandum he was informed that if the above allegations were established, his conduct would constitute a violation of staff regulations 1.2(b), 1.2(f) and 1.2(q), staff rule 1.2(e), and sections 3.1, 3.2(b) and 3.2(c) of ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse).

6. He was also asked to provide, within two weeks of his receipt of the memorandum containing the allegations, any written statement or explanation that he

improper conclusion that the Applicant engaged in conduct that violated his obligations, including the prohibition of sexual exploitation and abuse.

12. He argues that there is no rationale for why the investigator repeatedly chose to believe the complainant, V01, over the Applicant in the absence of concrete evidence. V01 claimed the Applicant first exploited her five times at his two residences although no one could be identified to corroborate this. She also testified they went to the Tony Guesthouse seven times, but there is no evidence for this. MS, the attendant referred to numerous visits with four other women who were never identified. Moreover, the manager of the Guesthouse never saw the Applicant at any time. No one contacted the local police about these alleged activities. V01's story does not ring true.

13. The summary of the case cited in the reply is based on questionable testimony and circumstantial evidence. It does not meet the standard for clear and convincing evidence.

14. The Applicant maintains that the accusations made against him had to be seen in the context of the local environment in order to be understood. The background to the issue is cited by some of the Church members who were acquainted with V01 and V01's mother "W01" and were aware of similar cases which had arisen. These witnesses confirm that the motivation behind the allegations of child abuse were monetary. The Church, of which the Applicant was a leader, engaged in providing assistance to the local population and in particular women and girls, in the form of financial support for schooling and promoting local businesses that provide financial independence for women. Unfortunately, wherever there are good intentions, there are those who seek to exploit them.

15. The Applicant submits that it is unclear why the Office of Internal Oversight Services' ("OIOS") Report dismissed as irrelevant most of the testimony that did not support the central thesis of the case. This included the landlord of the Applicant's residence, the security guards and the Church membership. The investigation also

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entrance of the house led directly into the living room and that the Applicant's bedroom was on the left of the entrance. She described the Applicant's bedroom and the furniture in the living room. V01 also gave a precise description of the most recent house the Applicant rented. She described the living room and its furniture. She also described the bedroom where the Applicant had sex with her, specifying that it did not have a washroom.

28. Though the Applicant now asserts, without any evidence, that his bedrooms in both of his DRC apartments were on the right, during his OIOS interview, he confirmed that the bedroom in his December 2016 apartment was on the left side of the entrance. Furthermore, OIOS confirmed V01's descriptions of the Applicant's December 2016 apartment, as well as her description of his latest apartment, witmn004913004C18005

- b. On 3 July 2017, W01 filed a complaint with the Agence National de

which aims to safeguard local populations that the United Nations serves, the imposed sanction of dismissal from service was proportionate to the Applicant's misconduct.

40.

- b. There was no witness to corroborate the victim's accusation that the Applicant exploited her five times at his two residences.
- c. No witness corroborated the victim's testimony that the Applicant took her to Tony Guesthouse seven times.
- ii. The investigative report on which the conclusions were drawn, omitted or ignored pertinent information leading to an improper conclusion.
- iii. The Applicant had good intentions.
- iv. Credible witnesses were threatened for defending the Applicant.
- v. Extortion; the motivation behind the allegations of child abuse were

children (persons under the age of 18) is prohibited regardless of the age of majority or the age of consent locally, except where a staff member is legally married to a person who is under the age of 18 but over the age of majority or consent in his or her country of citizenship. Mistaken belief in the age of a child is not a defence. The exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. United Nations staff members are obliged to create and maintain an environment that prevents sexual exploitation

cases centre on the credibility of the complainant's testimony.⁹

55. In the *Haidar* case just like in the present case, the Appellant had challenged the UNDT's findings of fact, arguing that the Tribunal erred for, "basing its considerations principally on the testimony of the Complainant". He further averred that the U

58. The Tribunal reminds itself that the Respondent has the burden of proof to show that the facts on which the sanction was based are established by clear and convincing evidence. In the instant case the Respondent has in his submissions summarised the case providing specific incidents that constituted misconduct leading to the sanction. The Applicant has argued that the Respondent has not met the requisite standard of proof and has cited the following instances for consideration:

i.(a) The investigator repeatedly chose to believe the complainant, V01, over the Applicant in the absence of concrete evidence. There was no witness to corroborate the victim's accusation that the Applicant exploited her five times at his two her to Tony Guesthouse seven times.

59. The Applicant argues that that there is no rationale for why the investigator repeatedly chose to believe V01 over him in the absence of concrete evidence. He states that V01 claimed he first exploited her five times at his two residences although no one could be identified to corroborate this and that V01 also testified they went to the Tony Guesthouse seven times, but there is no evidence for this. MS, the attendant at Tony Guesthouse referred to numerous visits with four other women who were never identified. Moreover, the manager of the Guesthouse never saw the Applicant at any time.

60. The Tribunal finds that Respondent's decision to believe V01 was based primarily on interviews with OIOS during which V01 gave detailed, coherent, substantiated and consistent sworn statements regarding the Applicant's sexual relations with her from 2016 until when W01, V01's mother intervened. The Tribunal

that the law and jurisprudence clearly demand that the claimant's evidence be corroborated by independent evidence.

has gone through the record of interviews with V01 and agrees with the Respondent that she is a credible witness. Her interviews conducted over five sessions in two days were detailed and even graphic in their description of her encounters with the Applicant. The Applicant bought V01 a cell-phone for communication. The Applicant ensured that his meetings with V01 were kept a secret as alleged by V01. It is immaterial that the Manager of Tony Guesthouse or that security guards did not see the Applicant with V01. The victim did not testify that she ever met the Manager of Tony Guesthouse or dealt with security guards during her visits. In her testimony, the Applicant made all the check-in arrangements while she waited in his car and she would just walk past reception into the arranged room “without paying much attention to the hotel”¹³. The Tribunal notes that MS did not specify that he saw the Applicant with V01 at Tony Guesthouse, but he saw him with four women. Therefore, MS’s testimony is not relevant to the charge that the Applicant sexually exploited and abused V01.

61. The record shows that V01’s interview detailing her first encounter with the Applicant was corroborated by W01 who gave a sworn statement to OIOS that she saw blood on V01’s skirt and V01 confessed that the blood was not menstrual-related but resulted from rape by the Applicant. The record shows consistent statements that W01 and V01 confronted the Applicant on the same evening about this incident. He allegedly admitted defiling the minor and undertook to remedy the situation by taking charge of the minor’s educational needs until she finished college and begged W01 and V01 not to pursue the matter and not tell anyone about it. That the Applicant took personal charge of V01 is further corroborated by prayer group members who testified that the ‘sponsorship committee’ of the prayer group was never involved in the financial arrangement between V01 and the Applicant, that he was assisting V01 in his personal capacity.

¹³ Interview with V01, Part 4[audio-recorded] (28 November 2017) lines 1108-1114.

62. The details of V01's encounters with the Applicant, in particular, the locations where they met for sex were confirmed by OIOS who physically located the Applicant's houses and verified their furnishings and the guesthouse mentioned in V01's testimony. The Applicant subsequently confirmed that V01 visited him at his house on 'school related' matters only. One security guard confirmed that V01 had been to the Applicant's house on her own on two occasions. Other security guards never saw V01 at the Applicant's house, but according to the record, this was because these guards worked in shifts and may have missed V01's visits. V01's siblings told investigators that the Applicant visited their house, gave them biscuits and proceeded to their mother's bedroom with V01. W01 corroborated their testimony. It is therefore not correct that V01's testimony that the Applicant had sexual relations with her was not corroborated.

63. The Tribunal has no cause to believe that V01 fabricated the allegations against the Applicant. The Applicant has not discredited the meticulous, detailed, and precise narration of the events from the first encounter in December 2016. V01 did not waver in her narrations. She was confident and consistent in her interviews with OIOS. There is nothing in her oral interview to OIOS or its summary to suggest that V01 was being dishonest or had been coached to implicate the Applicant. The Applicant has not adduced any evidence of any ulterior motive on the part of V01 or OIOS. On the contrary, V01 seemed to have a soft spot for the Applicant who she still believed would make her a 'big lady'. V01 explained to OIOS that she continued to have sexual relations with the Applicant because he enticed her with promises of a good life, for instance, he promised and she believed that the Applicant would make her a big lady¹⁴, would purchase a compound for her¹⁵ and would open a bank account for her¹⁶. He gave her gifts of money and other material things like cell-phone, perfumes and oils. It is therefore not correct that OIOS did not probe V01 why she continued to have sex with the Applicant after the first encounter in December

¹⁴ Interview with V01, [audio recorded], (28 November 2017) lines 982-997 and 1208.

¹⁵ Ibid., line 1211.

¹⁶ Ibid., line 1214.

2016. She kept her affair a secret from her mother as instructed to her by the Applicant. The Applicant was a very senior member of V01's prayer group, she referred to him as "pastor" and her mother's "father", he held a position of trust in that regard among his believers; he was more senior in age (60 years) and experienced in life than the victim (16 years); and he exploited her financial vulnerability and a child's material needs like money for hair

evidence. The only witness during the investigation with OIOS that alluded to prostitution was NM, however, according to the summary of the interview with NM, she heard this from the Applicant. She was told this story in the context of the local authorities' summons for the Applicant to answer rape charges. NM did not have any fact to support this allegation other than the Applicant's word. The Tribunal places no weight on this piece of evidence because it is hearsay and from a source that was obviously conflicted as having been a subject of criminal investigations.

67. The Tribunal finds W01 a credible witness, her testimony relating to the first incident which she resolved informally with the Applicant is consistent with and corroborates V01's testimony. The Applicant has not successfully discredited this testimony. His attack of W01 as a thief and a prostitute can only be described as malicious and immaterial to the allegation.

Inconsistencies in V01 and W01 s Statements

68. It is the Applicant's case that the Administration did not consider inconsistencies in the statements of V01 and W01. The Tribunal finds that the only inconsistency that the Applicant has cited relates to the date and month of birth of V01. During her first interview in November 2017, V01 said she was born on 20 July 2000. In March 2018 when she was interviewed again she believed she was born on 12 May 2000 because she was told so and yet her identity card showed that she was born on 20 February 2000. In this Tribunal's view, this inconsistency relating to date and month of birth is not material to the substance of this case. The Applicant has not denied that V01 was a minor when he became acquainted with her in 2016. As a matter of fact, he believed she was around 14-15 years old. Therefore, the inconsistency as to the actual date and month of birth is immaterial as long as the Respondent is able to prove that the child was under 18 years old at the time. The Tribunal's assessment of the investigation audio recordings of V01 show that questions were craftily presented in some cases different questions were asked on the same issue but V01 gave consistent responses which were substantiated by W01.

the money they received from it. He avers that the investigators should have checked to see if there were any police records or if the Complainants had brought similar complaints in the past as reported by some witnesses. In his view, the OIOS should have pursued these issues which may have had an impact on the question of credibility.

72. The Tribunal notes that OIOS conducted interviews with the Church members. The record shows that it was the Applicant himself who invited W01 to join his prayer group after he became acquainted with her while she was working for BO with whom the Applicant shared a residence. It is ironic that the Applicant may now start questioning and disparaging a member of his own prayer group, his “daughter”. It is also not proper for the Applicant to begin now to question how his financial donations were utilised. The Applicant has not shown how knowing how the money was spent is a relevant factor in ascertaining witness credibility regarding the charge of having sexual relations with a minor.

ii. The investigative report on which the conclusions were drawn, omitted or is

money for rent and school fees, and covering some medical expenses on one occasion, the entire version of their story is fabricated”¹⁹.

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... there is no evidence that I engaged in the sexual exploitation of a minor as it has been alleged. The only basis for the conclusion of OIOS that it occurred was the circumstantial evidence of the payments made by me. There is a great deal of conflicting testimony in the OIOS report about how this came about. The most credible witnesses, who were largely ignored by OIOS, confirmed that V01 was one among several Congolese youth who benefitted from **financial assistance from members of the prayer group** and that out of concern for V01’s vulnerability to abuse, I agreed to help set them up in a respectable business. Her mother, W01 evidently saw this as an **opportunity and demanded more and more money. When she was refused, she concocted the story of sexual exploitation to essentially blackmail me.** She used her local contacts to pursue her claims. Unfortunately, my counsel at the time and the Magistrate pressured me into making a payment against my better judgment.²⁰

[...]

I also fail to understand why the OIOS report **overlooks the witnesses testimony**

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were

79. The prayer group members informed the investigators that they had a committee that considered monetary requests from poorer members of the group. The committee did 15C00.0pee

that BO, another witness, was not aware of this promise to W01 and she distanced herself from the assertion. What NM spoke of was mere hearsay of what the Applicant told her.

v. Extortion; the motivation behind the allegations of child abuse were monet

W01 to set her up in business and that he was fulfilling that promise²⁴. He also said he paid the money to make the case go away “to get it off his neck”. The case was indeed withdrawn only that W01 was not satisfied with the manner in which the matter was handled, she thought the court officials were corrupt hence the report to MONUSCO.

86. One witness from the prayer group, BO, distanced herself from the Applicant’s assertion that she together with the Applicant promised W01 any money. In her interview statement with OIOS, she stated that she had loaned W01 some money and she was deducting USD50 every month from her wages as a domestic help. The Applicant has not contradicted BO’s testimony on this point. All in all, there were 80-100

viii. No one contacted the local police about the activities at the Guesthouse and the local prosecution investigation was unresolved.

90. The Applicant introduced the issue of the local police involvement in the matter. In particular, (a) that the Guesthouse did not report his alleged sexual activities with a minor to the police. The Applicant has not, however, shown where in the relevant staff provisions, the Administration is required that such acts first be reported to police in order to be credible. This argument is unsustainable; and (b) he alleges that the local Congolese investigation with the prosecution office was

length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.³⁴ There is ample evidence through UNAT jurisprudence to show that staff members are dismissed from service for violating SEA Rules.³⁵ The sanction is proportionate because it was based on a clear and convincing case of serious misconduct and not on mere suspicion as argued by the Applicant citing *Samandarov*³⁶. The Tribunal may not

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(Signed)

Judge Rachel Sophie Sikwese

Dated this 21st da