

1. The Applicant filed on 2 February 2015 a staff memorandum of the United Nations High Commissioner for Refugees (UNHCR) contesting the decision of the High Commissioner not to promote her from the P24 to the P25 grade during the 2013 Promotions Process.

2. It is noted that the facts and grounds of appeal in this matter are the same as those in Case No. UNDT/GVA/2015/165. The Applicant also raised as additional grounds the present case. Parts of Judgment Rodriguez-Viquez UNDT/2016/030 decided on 14 April 2016 are repeated in this Judgment.

3. The Applicant joined UNHCR in 1995 as Associate Protection Officer at the ;22 grade in Geneva. In December 1995 she was assigned as Protection Officer in Geneva. In January 2000 she was granted an indefinite appointment at the P23 grade. In February 2003 she was assigned as Assistant Representative in Jakarta, Indonesia and she was promoted to the P24 grade. In February 2004 she was assigned as Representative (S) 5.287 722.7 9219 (U) - 0.9623 (\$) - 9.78566(.) - 5r a (sen&e #ending #osting f)om =e()ua)" t+)oug+ June

Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

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8. The Commission's findings on the alleged violation of the right to a fair trial must be based on the facts and circumstances of the case. The Commission's findings on the alleged violation of the right to a fair trial must be based on the facts and circumstances of the case.

2D. Insofar as the Applicant's requests for remedies set out above are stated to be tantamount to the Tribunal (which finds that the above) is a (see. The contested decision (of) the Tribunal (which is identified (" the Applicant and submitted for) management decision is the decision not to promote the during the 2013 Promotions' session. Not only is the Tribunal (which is not satisfied of an application & assessing the) decision on the Applicant's promotion (but an " such a) decision. It is not the subject of a request for management decision and as such do not fall within the Tribunal's jurisdiction pursuant to staff rule 11.2.a) and art. D.11.dl.1.1. (1 of the Tribunal's statute. See Gehr 2013 UNAT 22: :1. The above Applicant's request for) damages as a consequence of these acts

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32. The Promotions Po\$%&""* adopted on 5 =e()ua)" 2014* %nt)odu&ed a /ne7
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the staff members who have passed the test - found (based on the) evaluation of the following criteria:

1. A staff member's performance during the past three years must (be at the minimum / Adequate) and must (be at the minimum / Poor) of the test. The staff member's performance and readiness to perform at a higher level as reflected in the narrative of the performance appraisal in the PA - /e2PAD and the meeting. The highest regard will be given to consistent demonstrated performance and documented performance in emerging operations during the past three years. In addition, the staff member must

45.

Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

5D. The Tribunal notes that the Promotions Policy⁷ establishes the methodology for a two-round evaluation of candidates and sets out the evaluation criteria for each round. The Policy does not provide for the separate consideration of male and female candidates at a "stage" nor does it refer to gender as a factor for consideration in the evaluation of candidates. There is no reference to gender consideration in the Promotions Policy⁸ until the end of the process⁹ in section 5.10.2 provides that "Each grade seeks 70% female" as not "entirely achieved" at least 50% of the promotion slots¹⁰ (referred to as "substantive" employees) to female staff.

5. The "gender" of the Promotions Policy¹¹ is consistent¹² refers to the overall assessment and ranking of a single pool of candidates. In this respect, sections 5.1 and 5.3 provide that in the "second round" the "PP" shall conduct a two-round assessment of the staff members who advanced from the first round¹³ following the Panel's "recommendations" at 7% of the second round assessment rankings and develop a consolidated list of substantially equally meritorious candidates for consideration ("the Panel's recommendations in the two-round process" as added). There are sections 5.10.1 and 5.10.2 provide that in the two-round process the Panel's members shall "prepare the list of substantially equally meritorious candidates as retained after the second round" and make final recommendations¹⁴ which are not to exceed the number of slots available (as added) in section 5.10.2.

60. The fact that the D, - ? "read" instructed the "PP" members to consider female and male candidates¹⁵ (before the "Gender Commission") and announced its decision to divide the employees into the promotion slots (between the two groups) as a separate process (including the gender consideration) in the Policy¹⁶ and is indicative of a "transition" of the Promotions Policy¹⁷ and is indicative of a "transition" of the Policy¹⁸.

61. In an "interim" Tribunal (which finds that although the Administration may have sought to achieve the "Gender Commission" as a result of a "revised" number of promotions to female and male candidates¹⁹ its separation of candidates ("

making a determination of issues that had to be addressed at a later stage that is at the time of awarding the promotions after the evaluation of the candidates and the results taken into account. The also unfurled the number of promotions slots that may be added to women.

65. In this respect the Tribunal (under stresses that the Promotions Policy does not provide for promotion quotas (based on gender) as seemed to be intended ("the ... Commission). ... it provides for a minimum of 50% of the available slots to be awarded to /sufficiently" equivalent) various female staff. ... the number of promotion slots that are to be awarded to women is and is not limited to 50% and estimates depends on the merits of the candidates in line with article 101.3 of the UN Charter. ... provides that /the amount of allocation in the employment of the staff and in the determination of the conditions of service is a necessary of setting the highest standards of efficiency and integrity. The intended consequence of section 5.10.2 of the Promotions Policy is so apparent from the face of it that there is no question as to its meaning. As the Appellant Tribunal (under stated in /Cott 2012/UNAT/22250

2D. The first step of the interpretation of an "kind of uses" ... of the ... attention to the ... terms of the ... (no). In the language used in /Cott 2012/UNAT/22250 (A) - 2.3044.3252 () - 4849 (e) - 3.66653 () 2.5653 () 0.3849 (u)

Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

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D3. The Panel is satisfied that the PP members to assess the staff members have met the minimum threshold of the competence of the staff members. These members have the necessary skills and experience to carry out the tasks assigned to them.

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:6. It was established that on 25 June 2015* the D, - ? +ed a ()efing session (" 3%deo &onfe)en&e 7%t+ t+e 'PP a(out t+e 'e&ond and T+%d - oundsA

Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

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Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

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124. T+e #)o(\$em 7%t+ t+%s &o))e&t%on eBe)&se %s t+at %t assumes t+at t+e met+odo\$og" fo))an<ng /und%stingu%+a(\$e0 &and%dates suggested (" t+e D, - ? 7as (%ndng o)* at (est* t+at t+e 'PP mem(e)s %ntended to fo\$\$o7 %t. =%st\$"* as t+ese /%nst)u&t%ions0 7e) e not t+e su(8e&t of an adm%nist)at%3e %ssuan&e* t+e" &annot (e &ons%de)ed as (%ndng u#on t+e 'PP mem(e)s. 9ne 7%tness* %ndeed*)efe))ed to t+e met+odo\$og%&a\$ suggest%on as %n fa&t (e%ng no mo)e t+an t+at* a suggest%on* as %t &ou\$d not (e mo)e. 'e&ond\$"* a(sent an" e3%den&e f)om t+e 'PP mem(e)s* 7+o 7e) e not %n3o\$3ed %n t+e &o))e&t%on eBe)&se* %t &annot (e #)esumed t+at t+e" %ntended to fo\$\$o7 t+e D, - ? As suggested a##)oa&+. 4ndeed* most of t+em d%id not. 4n t+ese &%)&umstan&es* t+e - es#ondentAs post factum)e&onst)u&t%ion %s #u)e\$" s#e&u\$at%3e and of no ass%stan&e. T+e T)(una\$ %s t+e)efe) e not %n a #os%t%on to assess t+e %m#a&t of t+e nume)ous e))o)s and du(%ous met+odo\$og" ado#ted (" some 'PP mem(e)s on t+e A##\$%&antAs &+an&es fo) #)omot%on.

125. 4n 3%e7 of t+e fo)ego%ng* t+e T)(una\$ &on&\$udes t+at t+e a7a)d of t+e same)an<ng to mo)e t+an one &and%date* u#on suggest%on f)om t+e D, - ?* +ad no (as%is %n t+e P)omotions Po\$%&" and &onst%tutes a #)o&edu)a\$ e))o) %n %ts %m#%sementat%on. 'u&+ met+odo\$og" &ou\$d not (e)easona(\$" %nt)odu&ed 7%t+out

dissemination (between) and (3) the different 'PP mem(e)s to the same date and assets that these are and that of an (it) a" declassification (3) and* in some instances* (as. The -es#endent su(m)ts that the T)(una\$ ma")e&ommed &anges to the Promotions Po\$&" if it is &ont)a" to the 'taff -uses and -egulations* (ut &annot o)de) tem. , e su(m)ts that the +as /m%in%ma\$\$" demonstrated that the A##\$&ant 7as given fu\$\$ and fa) &ons(der)ation fo) #)omotion as +e) fact sheet +as (een) e3)e7ed (" the 'PP mem(e)s and e3a\$uated aga%nst o)er)s #u)suant to the &te)a set fo)t+ in the Promotions Po\$&". , e a)gues that these e3a\$uation &te)a 7e) suff%&ent\$" defined and in \$%ne 7%t+ the PA ? ' to a\$\$o7 fo) a &om#a)at%e assessment of the &dates. The -es#endent assets that dissemination in)an<ings 7e) eB#e&ted and (nt)%ns& to the nature of the #)o&ess* 7+%&+ %n3o\$3ed a su(8e&t%e) e3)e7 (" the 3a)%ous 'PP mem(e)s.

12 . At the outset* the T)(una\$ agrees 7%t+ the A##\$&ant that the &onso\$dated ta(\$e of)an<ing fo) fema\$e &dates fo) #)omotion to the P25 \$e3e\$ disse\$a"s signif%&ant d%e)gen&es in the)an<ings #)o3ded ("

133. As assessed a (03e* %t %s not t+e T)(una\$As)o\$e to engage %n a)e3%e7 of t+e P)omot%ons Po\$%&" un\$ess %t %s a\$Sege\$ t+at %t does not &om#"\$ 7%t+ a +%g+e) no)m. T+%s %s not t+e &ase %n t+e %nstant a##\$%&at%on. T+e t+)ee e3a\$uat%on &)%te)%a fo) t+e 'e&ond - ound* t+at %s* #e)fo)man&e* manage)%a\$ a&+%e3ements and eBem#%a)" \$eade)s+%# 6ua\$%ties* a)e %n \$%ne 7%t+ staff)egu\$at%on 1.1.d1* 7+%&+ #)o3%des t+at /EtF+e 'e&)%eta)"2Gene)a\$ s+a\$\$ see< to ensu)e t+at t+e #a)amount &ons%de)at%on %n t+e dete)m%nat%on of t+e &ond%t%ons of se)3%&e s+a\$\$ (e t+e ne&ess%t" of se&u)%ng staff of t+e +%g+est standa)ds of eff%&en&""* &om#eten&e and %nteg)%t"0. T+e P)omot%ons Po\$%&" #)o3%des fu)t+e) #a)t%&u\$a)s fo) ea&+ &)%te)%on* 7+%&+ a)e a\$so %n \$%ne 7%t+ staff)egu\$at%on 1.1.d1.

134. -ega)d%ng #e)fo)man&e* %t #)o3%des fo) a m%n%um standa)d /%nd%&at%ng t+e staff mem(e)As a(%\$%t" and)ead%ness to #e)fo)m at a +%g+e) \$e3e\$0 and fo) &ons%de)at%on of /&ons%stents\$" demonst)ated eB&e#%ona\$ #e)fo)man&e and do&umented eBem#%a)" se)3%&e* %n&\$ud%ng %n eme)gen&" o#e)at%on0 and of /se)3%&e at t+e +%g+e) g)ade \$e3e\$ fo) one "ea) o) \$ong)e) G)e&ogn%5ed t+)oug+ t+e)e&%#t of aEnF 'PA&e)bf A5P0Tee)le36429 (+) J TJD:51(T) - 7.3642 - 14.3239 ()2.58011(")9.69979 () - 4152

13D. Turning to the task the 'PP mem(e)s 7e) e asked to unde)ta<e* t+e T)(una\$ notes t+at t+e) e %s \$itt\$e gu%dan&e* %f an"* %n t+e P)omot%ons Po\$%&" a(out t+e #)o&edu)e o) met+odo\$og" to (e used to fu\$f%\$ t+e +%g+\$" &om#%eB eBe)&%se t+at t+e 'e&ond -ound e3a\$uati%on %n3o\$3es. No adm%in%st)at%3e %ssuan&e 7as #)o3%ded

found in 70. According to the 'PP' (eta)"* the 7 as no further discussion among the 'PP' members as to the methodology" for the assessment of the dates. The 'PP' members 70 70e "the" associated the dates for the 03e) a 7 #us an additional one if needed* a##ea) to a 3e &#seted the) 7 7t+n fou) da"s. The f+ da" 7 as 3ed fo) the D, - ? to &onso\$ date the data* so the T+)d - ound &ou\$d #)o&eed the fo\$\$o 7ing 7ee<.

141. There is no doubt that the 'PP' members' task 7 as enormous and +g+\$" &#eB* &onside)ng the age num(e) of &dates t+at +ad to (e assessed n a &#a)at%3e fas+ion and the documents at the) dis#osa\$. Com#a)ng and an<ng 161 &dates (ased on the) #e)fo)man&e* manage)a\$ s<\$\$\$ and \$eade)s+## 6ua\$ties 7as* (" natu)e* a +g+\$" &#eB eBe)&se. The A##\$&antAs fa&t s+eet* fo) nstan&e* &ontains 21 #ages of dense\$" &ondensed nfo)mat%on a(out +e) \$anguages s<\$\$\$* a&adem% (a&g)ound* em#so"ment)e&ods* #e)fo)man&e e3a\$uations* and de3e\$o#ment and \$e)anng e3ents.

142. The T)(una\$)e&a\$\$s t+at the fa&t s+eet &ontains no quantitat%e 3a\$ue su&+ as #e)fo)man&e)atngs (" a su#e)3%so). =o) the)e3e3ant #e)%od* the fa&t s+eet me)e\$" &ontains n the /Pe)fo)man&e K3a\$uations0 se&t%on* the staff mem(e)As 7o< o(8e&t%3es and the &omments of +s o) +e) su#e)3%so) d%3%ded as fo\$\$o 7sc

- a. / ? anage) Comments on Values* Co)e Com#eten&es* and ? anage)a\$ Com#eten&esJ
- (. / ? anage) Comments on C)oss2=un&t%ona\$ and =un&t%ona\$ Com#eten&es0J and
- &. / ? anage) 93e)a\$\$ Com#eten&es Comments0.

143. These)u()s a)e 3e)" gene)a\$ and the) a)e no s#e&f%& &omments* fo) nstan&e* on manage)a\$ a+e3ements and \$eade)s+## 6ua\$ties. The &omments* 7+&+ 7e)e not meant to se)3e as a s#e&f%& a##)a)sa\$ of the &dates\ &a#a&t" to #e)fo)m at the P25 \$e3e\$ a)e e)t+e) 3e)" gene)a\$ o)* at t%mes* fo&us on #a)t%u\$a) #)o&e&t\$ t+at a)e not d%e&t\$")e3e3ant fo) the #)esent eBe)&se. The 'PP' mem(e)s 7e)e)e6u)ed to &#a)e 161 fa&t s+eets 7t+n a da" o) t7o* to do the same fo)

the 10 male and dates to the P25 3e3e* and then to the and dates to the D21 3e3e. The 7+0e 3e7 7as &om#eted 7t+n fou) da"s.

144. , a3ng 3e7ed the A##\$&antAs fact sheet and some ot+e)s n sm\$a) a##\$&at@ns (efo)e t* the T)(una\$ &annot (ut 7onde) +o7 the 'PP mem(e)s &ou\$d #oss(\$"*)easona(\$" and #)o#e)\$" &om#a)e the 161 fema\$e &and%datesA #e)fo)man&e* manage)a\$ a&+e3ements and \$eade)s+## 6ua\$%t%es n the fa&e of the %nfo)mat%on d%\$#a"ed n the%) fa&t sheet a\$one* and unde)ta<e the same tas< fo) the 10 ma\$e &and%dates and then the D21 &and%dates n su&+ a s+o)t #e)%od and 7t+out an" fu)the) gu%dan&e. The d%ff%u\$t" %s #a)t%&u\$a)\$" a&ute g%3en t+at the &and%dates a)e not &om#et%ng fo) a #e&f%& #ost 7+e)e #a)t%&u\$a) eB#e)%en&e o) &om#eten&es ma" (e of s%gn%f%&ant %m#o)t* (ut &om#a)ed on the (as% of the%) a(%\$%t" to #e)fo)m at a +%g+e) 3e3e\$ n the%))es#e&t%3e a)ea of eB#e)t%se.

145. In the T)(una\$As 3e7* the)at%ngs &ontain%ed n e2PADs 7e)e not on\$" eB#%&%t%")e6u%)ed (" the Po\$%&"* (ut a\$so &u&%a\$ to g%3e the 'PP mem(e)s some &om#a)at%3e measu)es. The &omments #)o3%ded (" the

edge of dates and the 7a" the 7as conducted the T)(una\$ finds that the #)esum#tion of)egu\$a)t" +as (een)e(utted* and that the)e)e strong)nd&ato)s that the 'e&ond -ound)e3%e7 7as &a))led out)n an a)(t)a)" manne).

'afegua)ds em(edded)n t+e #)o&ess

14D. I +en %ssues 7)t+)an<ings 7e) addressed 7)t+ t+e 7)tresses &a\$\$ed (" t+e -es#ondent* t+e")e#eated\$" ans7e)ed that an")m#e)fe&tions)n t+e #)o&ess 7e) &u)ed (" t+e fa&t that t+e num(e) of &and%dates 7+o #)o&eeded to t+e T+%)d -ound 7as e6u%3a\$ent to 200H of t+e num(e) of a3a%\$a(\$e s\$ots fo) #)omot%on* so t+e T+%)d -ound offe)ed t+e 'PP mem(e)s an o##o)tun)t" to &o\$\$e&t%3e\$" #)o(e t+e))nd%3%dua\$ assessment. =u)t+e)mo)e* t+e" asse)ted that a3e)ag%ng t+e)nd%3%dua\$ 'PP mem(e)sA)an<ings smoot+ed out)nd%3%dua\$ e))o)s o))n&ons%sten&ies and d%\$uted out%e)s)an<ings. T+e A##\$%ant a)gued that t+e #)esen&e of a T+%)d -ound)e3%e7 &an on\$" &u)e e))o)s)n)es#e&t of &and%dates 7+o ad3an&e to t+is stage. 't+e fu)t+e su(m)tted that t+e a3e)ag%ng of t+e 'PP mem(e)sA)an<ings %s s%im%a)\$" %nsuff%ent to smoot+ out t+e %ssues %dent%f%ed.

14:.

150. 'e&onds"* t+e T)(una\$ notes t+at t+e)e %s no #)o3%ison %n t+e P)omotions Po\$%&" %n)es#e&t of t+e met+odo\$og" fo) &onso\$dat%ng t+e %nd%3%dua\$)an<%ngs #)o3%ded (" ea&+ of t+e s%B 'PP mem(e)s. T+e e3%den&e s+o7s t+at t+e D, - ? e\$e&t to ta<e an a)%t+met%& mean of t+e %nd%3%dua\$)an<%ngs #)o3%ded (" ea&+ 'PP mem(e). !" ta<%ng an a)%t+met%& mean* t+e &and%datesA)an<%ngs 7e)e de facto &on3e)ted %nto nume)%a\$ 3a\$ues* 7+%%+ 7e)e t+en)an<ed f)om t+e \$o7est to t+e +%g+est. None of t+e 7%tnesses #)esented (" t+e -es#ondent &ou\$d #)o3%de an" &ogent eB#\$anation as to 7+" t+%s met+odo\$og" 7as &+osen. T+e e3%den&e d%ss%osed t+at no stat%st%&a\$ ad3%&e 7as soug+t o) o(ta%ned %n)es#e&t of t+e a##)o#)%ate met+odo\$og" to (e used.

151. T+e T)(una\$)e&a\$\$s t+at t+e ne7 3e)s%on of t+e P)omotions Po\$%&"* a##%ied fo) t+e 2013 P)omotions 'ess%on* %s su(stant%a\$\$" d%ffe)ent f)om t+e #)e3%ous #o\$%&" as %t enta\$\$s a)an<%ng #)o&ess)at+e) t+an a s&o)%ng one. T+e &onso\$dat%on

223.994 -19.56 T.69849#)e\$\$.6)56(0)08.730%5e(5)taBTD249((e)59 caP%4e.528(3)656.37)287769484430P)0.7468560)--059002149

15. In a letter of 20 December 2015 to the Commission of the UN, the Staff Council, the High Commissioner stated that the Board should be asked to assume that the rotation is a core value of the Organization and considered as such in the #)omotions eBe)se* s#e&a\$ &ons%de)at%ons and &onst)a%nts a)e du\$" noted and 'PP mem(e)s a)e and 7%\$\$ &ont%nue to (e a##)a%sed of t+ese %n)e\$at%on to e\$g% (Se

to be considered the Applicant's (re)formation

160. The Applicant claims that the 'PP failed to (re)form' / be sent (re)formation and management accounts and that she should have (re)formed a motion as she fulfills the essential (re)formation and has (re)formed (re)formation' / (re)formation' (see the minimum (re)formation in EEF (re)formation' / (re)formation' 7 as given

fo) t+e Adm%n%st)at%on to eB#S%n to ea&+ and e3e)"

- ound %s +%g+\$" &om#seB g%3en* amongst ot+e)s* t+e num(e) of &and%dates %n3o\$3ed. T+e met+odo\$og" fo su&+ eBe)&%se needs to (e t+oug+t t+)oug+ &a)efu\$\$"* and de\$%neated %n fa%) and t)ans#a)ent #)o&edu)es* 7+%&+ a)e to (e a&&ess%(\$e and (%nd%ng so t+at t+e" &an (e)e\$%ed u#on and (e su(\$e&t to %ud%&a\$ s&)ut%n".

Remedies

1 1. T+e T)(una\$ s+a\$\$ &ons%de) t+e)emed%es soug+t (" t+e A##\$%&ant* \$%sted %n #a)a. 25.# a(o3e and %nsofa) as t+e" +a3e not (een found %)e&e%3a(\$e. T+e T)(una\$ 7%\$\$ &ons%de) t+e)emed%es %n \$%g+t of a)t. 10.5 of %ts 'tatute* 7+%&+ de\$%neates %ts #o7e)s)ega)d%ng t+e%) a7a)d.

Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

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Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

206. The Tribunal understands from the Applicant's submissions that the Applicant is claiming that a moral injury has been suffered from the fact that a staff member has sustained a fundamental breach of his or her substantial or due process entitlements. The Tribunal finds that the Applicant has established that a moral injury has occurred in the circumstances of the case and that the Applicant is entitled to compensation for moral damages.

20 .

discussed above. See para. 2: a claim in this respect does not fall within the ambit of the Treaty's jurisdiction in these proceedings.

210. The Treaty stresses that the requirement to adduce evidence of motivation "should not come as a surprise in the present

Case No. UNDT/GVA/2015/163

Judgment No. UNDT/2016/043

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Judge - o7an Do7n%ng

Dated t+%s 26th da" of A#)%\$ 2016

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