



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2009/36  
Judgment No.: UNDT/2013/032  
Date: 26 February 2013  
Original: English

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**Before:** Judge Vinod Boolell, Presiding  
Judge Nkemdilim Izuako  
Judge Goolam Meeran

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

TADONKI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Robert Amsterdam, Amsterdam & Peroff LLP  
Geoff Gelbart, Amsterdam & Peroff LLP  
Katy Epstein, Amsterdam & Peroff LLP  
Katya Melliush, OSLA

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, UN Secretariat,  
Steven Dietrich, ALS/OHRM, UN Secretariat  
Adele Grant, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant was appointed as the Head of Office (“HoO) for the Zimbabwe Office of the Office for the Coordination of Humanitarian Affairs (“OCHA”) on 24 March 2008. The Assistant Secretary-General (“ASG”) of OCHA, Ms. Catherine Bragg, informed him by an email dated 27 January 2009

### **Procedural History**

5. On 10 December 2009, the Applicant filed an amended application on the merits. The Registrar transmitted the application to the Respondent for reply within 30 calendar days.

6. On 4 January 2010, pursuant to article 10.9 of the UNDT Rules of Procedure, the President of the UNDT requested the President of the United Nations Appeals Tribunal (the Appeals Tribunal) to refer the case to a panel of three UNDT judges.

7. On 19 January 2010, the Respondent filed his response to the Applicant's amended application.

8. On 20 January 2010, a Panel of three UNDT judges was constituted.

9. On 21 January 2010, a Case Management Discussion (CMD) was held under art. 19 of the Rules of Procedure of the Tribunal by the Presiding Judge with the objective of identifying the issues and to assess the readiness of the case for a hearing. The Respondent indicated his intention to call four witnesses as part of his case but did not name them.

10. On 5 February 2010, the Applicant submitted voluminous additional documents, including numerous written testimonies of persons allegedly familiar with the Applicant's character and professionalism for the consideration of the Tribunal.

11. On 9 February 2010, the Applicant filed a motion to strike out the Respondent's lisre2.2n49T7(t)8sies s(j/T.5(l)1.9(y)-4.5( fa)-7.5(s )-n )-bffA8.5(.7538 0Nmha7.7(ss5.3(l)7a

Bragg), Mr. John Holmes, Under-Secretary-General of OCHA and the Emergency Relief Coordinator (USG Holmes), and the United Nations Resident Coordinator and Humanitarian Coordinator (“RC/HC”), Mr. Agostinho Zacarias, at the hearing in Nairobi.

12. On 10 February 2010, the Respondent submitted a list of potential witnesses, excluding USG Holmes and ASG Bragg.

13. By order UNDT/NBI/O/2010/015, dated 10 February 2010, the Tribunal

19. A hearing was held

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## **Facts**

30. The Applicant entered the services of the Organization in 1999 with the United Nations Office for Project Services (UNOPS). He later joined OCHA as a Senior Regional Advisor for the Southern Africa Humanitarian Information Management Network in Johannesburg. In December 2007, the Applicant applied for the position of HoO of OCHA in Harare, Zimbabwe, under a 200-series contract. He went through a competitive process that lasted six months, and was selected. He assumed duties on 24 March 2008.

31. The Applicant underwent an orientation and induction in New York where he was given a briefing by Mr. Steve O'Malley of the CRD and other OCHA staff. According to the Applicant, he was not briefed by USG Holmes but had a ten-minute meeting with him

32. The Applicant's fixed-term appointment was extended through 23 April 2009 and thereafter, his appointment was variously extended as follows: from 24 April to 29 May 2009; from 30 May to 15 July 2009 but was further extended through 2 August 2009 after the Applicant filed a Suspension of Action dated 10 July 2009; and from 3 August 2009 to 3 September 2009. Following the Respondent's decision not to renew the contract beyond 3 September 2009 the Applicant filed another application for a suspension of action, which was granted (n)2.0o-owct berl2(t)6.ptemn 2009

administrative decision not to renew his fixed-term appointment after its expiry on 23 March 2009. The Applicant also filed a request for suspension of action on 27 January 2009 seeking to suspend the implementation of the two administrative decisions.

34. According to the records provided by the Applicant, the JAB considered the request for suspension of action and recommended that the request be rejected on the ground, that the Applicant had not made a *prima facie* showing that the implementation of the decision not to renew his 200-series contract would result in irreparable harm, provided that certain conditions be met before the expiry of his appointment on 23 March 2009. On 30 January 2009, the Secretary-General informed the Applicant that he had accepted the JAB's findings.

35. On 12 March 2009, the Applicant was again advised that his appointment would expire on 23 March 2009.

36. On 16 March 2009, the Applicant requested another suspension of action against the non-extension of his contract, but OCHA subsequently extended the Applicant's appointment for a month through to 23 April 2009. In the light of that extension the JAB did not take any action on this second request for suspension of action.

37. On the same date, the Applicant filed a rebuttal against his 2008-2009 performance appraisal ("e-PAS"). On 17 March 2009, the Administration provided the Applicant with a list of names of OCHA staff members and requested him to select three persons to serve as members of the Rebuttal Panel. On 18 March 2009, the Applicant raised his concerns over the involvement of OCHA staff members in the rebuttal. He requested that persons from other United Nations agencies sit on the panel to avoid the risk of potential conflicts of interest.

38. On 20 April 2009, OCHA decided to proceed with the Applicant's



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44. On 18 August 2009, the Applicant filed an application for suspension of action before the Tribunal of the decision not to renew his contract beyond 3 September 2009. He also sought a number of other reliefs. The suspension of action was granted by judgment UNDT/2009/016.

45. In a motion dated 2 September 2009, the Applicant requested the Tribunal to provide an interpretation of judgment UNDT/2009/016. The Respondent did the same on 2 October 2009. The Applicant filed comments to the Respondent's request for interpretation. Thereafter, the Respondent filed a reply to the Applicant's motion for clarification.

46.

49. By Order 052 (NBI/2010) dated 31 March 2010, the Tribunal granted the Applicant's motion for interim measures and directed the Respondent to pay him the sum of two months' net base salary, within seven days of the Applicant signing an undertaking to repay any sums which may be due to the Respondent upon judgment being given by the Tribunal.

50. On 7 October 2010, the Respondent submitted a Motion for Reconsideration of Order No. 052 (NBI/2010). The Respondent alleged that new facts had emerged since the Tribunal granted interim relief of two months' net base salary to the Applicant on 31 March 2010, which demonstrated "a level of impropriety of the greatest ilk" on the part of the Applicant. The Respondent sought to show that the Applicant misled the Tribunal in seeking interim relief. According to the Respondent, the Applicant was allegedly appointed as a Director in UNOPS at the P-5 level on 16 February 2010; was paid salary advances by UNOPS.0968 0y a

formalized. The Applicant submitted that the Respondent's motion was "a thinly veiled attempt to malign" him, "so as to prejudice the outcome of the trial."<sup>1</sup>

52.



*Respondent's motion to recall a witness*

58. After RC/HC Zacarias had completed his testimony, Counsel for the Respondent made a motion to have him recalled for further examination on the grounds that, as the Tribunal understood it, RC/HC Zacarias was dismayed, disturbed, surprised and allegedly taken aback by the line of cross-examination he was subjected to. The Tribunal rejected this motion on the grounds that no reason was presented to explain whether there was any new element that may have taken RC/HC Zacarias or Counsel for the Respondent by surprise. It is an elementary principle of evidence that when a witness completes his or her testimony, it is on very rare occasions that the witness may be recalled. This may happen when there is a need for further clarification, or when any new evidentiary element, which could not reasonably be foreseen has been discovered after his testimony.

**Applicant's case**

59. The Applicant submits that the decision not to renew his contract as HoO OCHA Zimbabwe was taken in violation of his due process rights, as he was not given a valid reason and he was not given a proper e-PAS. He was not offered a mid-year review of his performance and a chance to improve any identified shortcomings. He was served with an unfair e-PAS that had been hastily and unilaterally prepared by OCHA and which grossly violated any relevant

orchestrated against him by his deputy, Mr. Farah Muktar, played a significant part in his removal; (iii) the top management of OCHA in New York as represented by USG Holmes, and ASG Bragg condoned the attitude of RC/HC Zacarias who was making life difficult for him; (iv) the Muller Mission that was sent to Zimbabwe to investigate the working of OCHA was in fact an investigation on his performance that triggered his removal; and (v) the procedure contained in the e-PAS rules was not followed.

61. The Applicant further avers that OCHA acted wrongfully against him and caused severe prejudice to his career, in addition to physical injury to him. The termination resulted in a series of contractual, administrative and financial abuses as well as other “cruel” measures of retaliation.

62. He also asserts that the Respondent tried to force him to withdraw his case from the MEU and the UNDT in exchange for a one-year extension.

### **Respondent’s case**

63. The Respondent submits that this matter is about the decision not to renew the Applicant’s fixed-term appointment beyond its expiry date and argues that it was not biased nor founded on extraneous factors as alleged by the Applicant. The Respondent avers that the Organization complied with the applicable rules and regulations and that the Applicant did not suffer any actual detriment. He further submits that the decisionn.0004u po TD0s tsl; an TD0s ts-1.5( w)-5.9(a; anse )JTJ0 -

42. The

65. The Applicant occupied a central role in the co-ordination of the delivery of aid but he failed to perform at an adequate level for the functions of his post. Further, he had been given opportunities to take corrective action and improve, which he failed to do. It is also the Respondent's argument that the Applicant's inadequate performance adversely impacted on the delivery of humanitarian aid in Zimbabwe at a critical time. In good faith, the Organization made efforts to find an alternative placement for the Applicant, but it was not possible to do so.

66. With regard to the e-PAS, the Respondent refers to Administrative Instruction ST/AI/2002/3 which provides that a draft work plan for discussion with the first reporting officer must be prepared by the staff member and it is the responsibility of the first reporting officer to ensure that this occurs. In the present case, it was the responsibility of both the staff member and management to ensure that the performance appraisal procedure was complied with and, in fact, the evidence has shown that the Applicant was abundantly aware of his duties and responsibilities. He received the work plan for the office and worked on and modified this work plan. Accordingly, the Applicant could have prepared and submitted his individual work plan at any time. Furthermore, the Applicant knew what the duties were from the terms of the Vacancy Announcement and he was in receipt of the proposals of the executive coaching mission, which detailed the break-up of duties between the HC and the HoO.

67. The Respondent acknowledges that there was some confusion in regard to the Applicant's reporting lines. The RC/HC thought that he was the Applicant's first reporting officer – which in fact was the case. However, the Applicant considered that he only reported to the RC/HC for limited duties, and not in regard to his management role in the office. The Respondent submits that the Applicant could have cleared this issue by drafting his individual plan and sending it to either Mr. David Kaatrud (Director of the Coordination and Response Division (CRD)) or RC/HC Zacarias or both. That would have started the performance appraisal process in accordance with paragraph 6.2 (a) of ST/AI/2002/3.



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coordination of development policy towards a particular country. He was also responsible for many other aspects of policy, including gender and human rights. He was usually the designated official responsible for security policy and security decisions in Zimbabwe.<sup>8</sup>

78. The role of a resident coordinator, especially when he is also a humanitarian coordinator is to maintain a working relationship with the government to which he is accredited. At the same time, because of wider issues of concern in the United Nations system about the particular government at that particular time, the HC was obliged to reflect those concerns as well, both privately and publicly. So it was a very difficult balancing act. There were those in the system who regarded Mr. Zacarias as performing that balancing act with great skill in the circumstances by maintaining access and having influence with government whilst not compromising principles. Yet there were others who regarded him as being too close to the government.

*The Head of the OCHA Office in Zimbabwe*

79. As HoO of OCHA Zimbabwe, the Applicant was entrusted with the following responsibilities: to manage and lead the OCHA Office in Zimbabwe; to support humanitarian programming/coordination in Zimbabwe; to support humanitarian policy and leadership and other related matters.

80. USG Holmes explained in his testimony that the role of the head of the OCHA office in any particular country is to work directly for the humanitarian coordinator and to liaise with not only him but also with the other main United Nations agencies in the country and the NGOs. He or she ought to have a relationship with the government and maintain the necessary balance between having a productive and cooperative relationship with it, while at the same time drawing attention to issues and on occasions saying things, which the government may not find particularly palatable. This is the situation that faces any head of

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<sup>8</sup> 6/7 p.92

office in any country where OCHA operates, but of course it can be more or less difficult depending on the attitude of the particular government concerned.<sup>9</sup>

81.

g. Whether the Applicant suffered any moral damage as a result of

85. According to Ms. Tomás, the Applicant would call the staff into his office and lecture them without according them opportunity to speak.<sup>11</sup> The question of whether the Applicant used a tape recorder to record the conversations of staff members was disallowed in the absence of any evidence of such tape recordings.<sup>12</sup> She stated that the Applicant would also threaten the staff that he could easily fire them<sup>13</sup> and that he could destroy whoever he wanted.<sup>14</sup> He would often summon staff to meetings that were not work-related.<sup>15</sup> That feeling of suspicion did not exist at the time Ms. A.A.O was the head of OCHA.<sup>16</sup> She said that the staff was isolated and suspicious during Mr. Tadonki's tenure.<sup>17</sup>

86. Ms. Tomás said that there was nothing positive about the presence of the Applicant<sup>18</sup> and that he never provided proper and sufficient guidance. According to the witness, Ms Muwani, the Applicant's assistant told her that she had been asked to spy on the staff.<sup>19</sup> He also asked Ms. Loretta Bismark to do the same thing<sup>20</sup> and on one occasion, he came into her office and asked her repeatedly whether somebody had filed a complaint of sexual harassment against him. The witness said she felt harassed by this<sup>21</sup> and that it was an abuse of power.<sup>22</sup>

87. When Mr. Rudi Muller and Mr. Chris Hyslop came to Zimbabwe, the witness said that she and other colleagues met them to express their concerns about the work environment that had deteriorated under the leadership of the

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*Other testimonies about the Applicant's conduct*

91. Mr. Marcellin Hepie, head of UNHCR in Zimbabwe in 2008, stated during his testimony that it was a fact that the Applicant was putting pressure on his staff and this was so because he was a workaholic. The deputy head of office however, told Mr. Hepie that he was disappointed with the Applicant.<sup>32</sup>

92. The Applicant, according to Ms. Kerry Kay, a witness called by the Applicant, was not abusive towards people. Whenever she attended his meetings or went to meet him in his office, she observed the way he interacted with his staff and the way his staff talked about him at the reception desk and concluded that the staff “really enjoyed him” as he was “open, polite and kind”.<sup>33</sup> Commenting on an observation made in a document,<sup>34</sup> where it is stated that the Applicant lacked certain listening skills and that he needed to further develop his management, team working and communication skills, Ms. Kay disagreed and added that his communication skills were excellent.

*Allegation of sexual harassment*

93. The Applicant denied that he interrogated Ms. Tomás to find out whether a complaint of sexual harassment had been made against him by his assistant. He had raised the matter at a staff meeting having heard such a rumour and learnt that it was Ms. Tomás who was behind the rumour. But he did have a conversation with her and she told him that she was worried about the long hours the secretary was working. That allegation was never the subject of any investigation as provided for by the Staff Rules.<sup>35</sup>

94. Mr. Amsterdam, Counsel for the Applicant, intervened to move that all the evidence relating to the said allegation be struck off the record.<sup>36</sup> He submitted

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<sup>32</sup> 5/7, notes of presiding judge

<sup>33</sup> Transcript of hearing of 24 February 2010 (hereinafter “24/2”), pp. 20/21

<sup>34</sup> Applicant’s Bundle Vol. 2 (hereinafter “A2”), 513 Para 31.

<sup>35</sup> 26/2 pp.59/60

<sup>36</sup> 26/2 p.69

that the issues in this case were not related to the allegation and it was the first time in the course of the proceedings that this matter was being raised.<sup>37</sup> He continued that what was worse was that a totally unfounded allegation of sexual harassment was being used by Counsel for the Respondent to attempt to discredit the Applicant.

95. Rules exist within the Organisation on how to deal with such a serious allegation. An investigation would have allowed the Applicant to present his version of events, and for the facts as presented by both parties to be properly and independently verified. Although no investigation was carried out into these allegations and there was absolutely no foundation or justification for such a line of questioning, this allegation is used unashamedly by Counsel for the Respondent. This is yet another indication of the length the Respondent was prepared to go to downgrade and denigrate the Applicant. In the view of the Tribunal, this is another example of abuse of process by the Respondent.

*Criticisms of the Applicant by NGOs*

96. RC/HC Zacarias testified that the heads of agencies had a forum for coordination of all international NGOs operating in Zimbabwe under an umbrella organisation of the national NGOs, known as NANGO. There were more than 1,000 national NGOs and 56 international NGOs in Zimbabwe. The international NGOs and the umbrella organisation, NANGO, called themselves the Heads of Agencies.<sup>38</sup>

97. In July 2008 a letter<sup>39</sup> purporting to emanate from the Heads of Agencies'

The Applicant, who claims to have a wide knowledge of computers, said that when he analysed the letter from a computer, he found out that the author was one Stephen Vaughan, head of CARE,<sup>41</sup> an NGO in Zimbabwe.<sup>42</sup> When the Applicant confronted him with the letter, he denied writing it and said the letter came from a group.<sup>43</sup> A second person, one Ms. Joanna Hiel from Médecins du Monde (MDM) had co-authored the letter.<sup>44</sup> The Applicant responded by inserting his comments in capital letters after each paragraph.<sup>45</sup>

98. In reply to a question, the Applicant answered that the two had authored the letter to serve the purpose of RC/HC Zacarias. Both these persons who headed international NGOs needed the support of Mr Zacarias to obtain accreditation to work in Zimbabwe. In the case of CARE, the government had accused the NGO, under the le-7.. Tm6lp(e )-5.nttugoa(, fr)-7.2 forctin rural( )JTJ0 -1.7272 TD-.0013



103. The document also contained "Recommendations from USAID" on the need for OCHA to look for ways to improve communication with NGOs and donors by meeting with the donor community more frequently. It went on to say that the United States of America "can be very supportive" if OCHA keeps the dialogue with them open.

104. OFDA is one of OCHA's major donors within USAID. In the light of USAID's recommendations, it was suggested to the Applicant that the head of OFDA, Mr. Ky Luu, was not convinced that the Applicant was performing.<sup>54</sup> The Applicant rejected this suggestion and stated that the date of the meeting should be put in its proper context as it took place on 30 July 2008, at a time when they were all confined in Harare as a ban was in force. Mr. Luu arrived during this period when nobody could move and he seemed not to be aware of it.<sup>55</sup>

105. Secondly, the complaints made by Mr. Luu were about humanitarian leadership. He was asking why the United Nations could not defy the government, and according to the Applicant the concerns were more about the humanitarian coordinator rather than him. He tried to explain to Mr. Luu that he was not the right person for these issues. Pushing the government was the job of the HC and not OCHA.<sup>56</sup>

106. And lastly, Mr. Luu was also making recommendations. He wanted a strong OCHA that had a strong relationship with the government, and that was exactly what the HC did not want. The HC did not want the OCHA office to be in contact with the government or to be that strong.<sup>57</sup>

*Complaints about the overall attitude of the Applicant*

107. USG Holmes explained that the behaviour of the Applicant related to work performance because many of the partners he was operating with, the major

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<sup>54</sup> 26/2 p. 8

<sup>55</sup> 26/2 p. 9

<sup>56</sup> 26/2 p. 9

<sup>57</sup> 26/2 p. 9

United Nations agencies, the major NGOs and some donors had serious problems relating with him. They found his attitude patronising and lecturing and he was not providing the right kind of relationships, which OCHA needed.<sup>58</sup>

108. In a note to USG Holmes on 27 October 2008<sup>59</sup> regarding a meeting she had with the Applicant, ASG Bragg expressed some concerns about the overall attitude of the Applicant towards the HC and the fact that he was reluctant to listen to the views of others. USG Holmes discussed the contents of that mail with ASG Bragg and agreed with the conclusion she had reached about the Applicant, namely that they were having a very serious problem with him. The Applicant was not listening to the points that were being made about him and he did not seem inclined to take any corrective action. USG Holmes added that there was a significant problem with the personal attitude of the Applicant in his dealings with the rest of the humanitarian community and that it was extremely worrying.<sup>60</sup>

109. According to USG Holmes, the Applicant had become aware of the issues in relation to him and was in a position to take corrective action but was unwilling to do so.<sup>61</sup> This was after the complaint from the NGOs, after the difficulties he had with other members of the United Nations Country Team and with the Humanitarian Coordinator about his behaviour. He was in denial about these problems and was inclined to attribute them exclusively to some kind of conspiracy against him, led by the Humanitarian Coordinator and perhaps by his deputy as well.<sup>62</sup>

110. USG Holmes testified that steps were taken to assist the Applicant in relation to the behavioural component, which affected his performance. He stated: “I gave instructions that there should be a time when I was communicating with Zac about the problems that he was part of. I made it clear to my colleagues in

Georges himself to make sure that he recognised that there were problems there and did something about it.”<sup>63</sup> The Tribunal finds, however, that there was no clear indication as to how and when OCHA actually took any steps to address the issue.

111. ASG Bragg had written to him: “The overwhelming impression from the conversation was that [the Applicant] perceived himself to be the only one who could see the situation in Zimbabwe clearly.”<sup>64</sup> She added that “I do believe that from that meeting it was quite apparent to me that [the Applicant] did not understand that there is a pattern of relationship difficulties and that because of the work that we do is so much dependent on relationship, our job is coordination. We are not like other humanitarians. We do not actively deliver food. We don't do concrete things. All of what we do is dependent on relationship. And when we have a head of OCHA office in a course of a 90 minute meeting seems to me to have little grasp of a pattern of relationship difficulties, that causes me some concern”.<sup>65</sup>

112. In another mail sent to Mr. Gaby Douek of CRD dated 27 October 2008, ASG Bragg wrote in relation to the Applicant: “The view of some donors and NGOs was in fact that he was seen as too close with the government. The ASG heard speculation that he [the Applicant]

that he vehemently denied that he was too close to the government, and he said that if he had been close to the government, he would have received his accreditation by then. And I think that was the extent of our exchange on that matter”.<sup>67</sup>

114. ASG Bragg testified that she received other unfavourable reports about the Applicant. She referred to a discussion with the government of Canada where she was told that the OCHA office in Zimbabwe was one of the weakest globally but they were not saying the Applicant was a poor manager.<sup>68</sup>

115. She told the Tribunal that she heard from the CRD desk that managed the OCHA office that they were not getting sufficient information on the situation in Zimbabwe and that the reporting had been very inadequate.<sup>69</sup>

116. According to her, people she talked to in USAID told her that Mr. Luu (head of OFDA) had gone to Zimbabwe and was very unhappy with the OCHA Appl Sh 19 TD-.0Europeaat



opinion of him. And somehow went on to take the place of a proper appraisal process.

118. In an email to RC/HC Zacarias dated 14 May 2008, Mr. Festo Kavishe, Head of UNICEF at the time levelled a number of criticisms against the Applicant

121. RC/HC Zacarias rejected the suggestion that Mr. Gwynne Vaughan, Mr. Kavishe and some others were his pawns; that he knew that he could not get rid of the Applicant himself because he had already gotten rid of two others and therefore was procuring third parties to destroy the Applicant instead of helping him. He added that if there had been conditions for dialogue with the Applicant he would have brought these issues directly to him. He had never suggested that the Applicant should be removed.<sup>77</sup>

122. In a mail dated 23 September 2008<sup>78</sup> to USG Holmes, RC/HC Zacarias informed the USG that NGO representatives had signified their intention of lodging a protest against the Applicant. In relation to that mail, USG Holmes explained that his office needed to know if a Humanitarian Coordinator or the head of the OCHA office was effectively interacting with members of the humanitarian community in Zimbabwe since the job of the OCHA office is coordination which by definition involves maintaining good relationships with all those with whom the office was trying to coordinate.<sup>79</sup>

123. He testified that initially when he heard about the issues between the

IACS and that he had thus created an expectation that donors would be invited to all meetings. The Government of Zimbabwe would believe that the humanitarian mission in Zimbabwe was donor-controlled which might result in the destruction of all that had been built with the Zimbabwe government. RC/HC Zacarias sought the guidance of David Kaatrud on how to address the situation although he claimed that he had spoken with the Applicant and had reached an understanding with him.

125. The Applicant told the Tribunal that there was no discussion between him and RC/HC Zacarias on these issues and that the email was sent without his knowledge.<sup>82</sup> He said that it was impossible for him alone to write a contingency plan and that he coordinated with the agencies to do it. The allegation that he did not discuss it with United Nations colleagues was wrong, and indicated the kind of perception that RC/HC Zacarias had of his job. It was not the job of the head of OCHA to write a contingency plan but to bring people together to prepare the plan with the help of his team. All that the contingency plan contained came from the agencies and not from OCHA.<sup>83</sup>

*Response and measures taken by Applicant to address humanitarian concerns in Zimbabwe*

126. The Tribunal heard evidence that the Regional representatives of WFP, UNICEF and OCHA visited Zimbabwe from 19 to 21 May 2008 with the aim of exploring and identifying ways of supporting the evolving operational and programme requirements of the United Nations Country Team and its partners.<sup>84</sup> Some of the recommendations approved by that mission included the initiation of the Humanitarian Weekly Technical Coordination Meetings chaired by OCHA, the weekly donor meetings with the RC/HC and the formation of the United Nations Crisis Management Team. These were positive steps in the right direction

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<sup>82</sup> 25/2 p. 45/46

<sup>83</sup> 25/2 p. 45

<sup>84</sup> A1 p.150







government but without any success. During political violence, the United Nations had helped victims. OCHA had tried its utmost to support the NGOs within the rules of the United Nations. The United Nations had been instrumental in getting an MOU signed between the MDC and ZANU PF (the main political parties in the country) on the need to put an end to violence and to help victims including internally displaced persons. In the wake of the 29 March elections OCHA had stepped up traditional humanitarian coordination in Zimbabwe.<sup>96</sup>

134. The participation of NGOs, IASC and working groups was secured. A Weekly Humanitarian Technical Coordination Meeting was established by OCHA with the endorsement of the RC/HC that brought together donors and NGOs but not the government. OCHA raised the alarm that since the results of 29 March elections were uncertain this might lead to dramatic consequences. OCHA was also worried about the closure of the humanitarian space and the spread of political violence. The Applicant raised the issue of how OCHA Zimbabwe could be supported in facilitating the restoration of a humanitarian space in Zimbabwe that would be fully open and impartial, with less political interference and that really focused on the most vulnerable people in the country.<sup>97</sup>

135. Ms. Kay testified that through her work she had a lot to do with the NGOs, the IOM, ICRC and other organisations. According to her, the Applicant was

happening or going to happen.<sup>100</sup>



collaboration with WHO and that weekly cholera situation reports were prepared and disseminated throughout the cholera emergency. The Applicant explained that all of this was done during his tenure as HoO OCHA Zimbabwe.<sup>107</sup> The report also mentioned that a “significant level of advocacy has been made on ensuring that access to the needy population by humanitarians is opened and unhindered”.<sup>108</sup> This was to the Applicant’s credit and contrary to the adverse comments that had been made against him by senior management.

139. The Applicant also referred to how his OCHA office intervened to find shelter for victims of violence in Ruwa. He indicated that for the OCHA office to be more effective in its role for regaining humanitarian access there was a need to put the humanitarian situation on the agenda through an active role of the United Nations Secretary-General along with the permanent representatives of African countries on Zimbabwe.<sup>109</sup> On 26 June 2008 about 387 Zimbabwean women and children had invaded the car park of the South African embassy and asked for asylum.

140. On the same day, there was a group of about one hundred people in front of the US embassy, but they were not allowed in and RC/HC Zacarias went there but later left. The Applicant’s team was following the events and went there too. The police were ready to round up those people. The Applicant remained with some of his staff as he tried to find a solution and the priority was the protection of the people there. The presence of the Applicant with his team in that car park was a deterrent, as the government of Zimbabwe could not round up the people in front of OCHA staff. The Applicant and his team reached an agreement with the police for shelter to be provided to these people. This was known as the Ruwa incident.<sup>110</sup> This was another positive contribution made by the Applicant and for which he deserved credit.

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<sup>107</sup> 25/2 p. 18

<sup>108</sup> 25/2 p. 18

<sup>109</sup> R1 p.15 & 16

<sup>110</sup> A1 p.212

141. According to the Applicant, the United Nations could not use the term Internally Displaced People (IDPs) as is the international practice. They were

ASG Bragg admitted in cross examination that she had not even considered the authenticity or authorship of the letter yet felt that she had to give it credence and take it seriously.<sup>112</sup>

***Was the non-renewal of the Applicant's contract motivated by extraneous factors or improper motive?***

144. It is settled law that in a case like the present one, which is civil in nature, the burden of proving what is averred in the pleadings lies on the party making the assertions. The standard of proof required is “a preponderance of the evidence” or on “a balance of probabilities”. “That degree is well-settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the Tribunal can say: “we think it more probable than not,” the burden is discharged but, if the probabilities are equal, it is not.”<sup>113</sup>

145. In a case where improper motives or extraneous motives are invoked it is very rare that direct evidence is available to prove such assertions. The task of a court of law is to scrutinise and peruse all the evidence presented by the parties both in support and in rebuttal of the assertions. A party making an assertion of extraneous factors or improper motive must establish a *prima facie* case that this is so. This would require a court of law, in the absence of direct or confirmatory evidence of such assertions to draw reasonable inferences from the evidence.

into his performance as Head of OCHA under the guise of a mission led by Mr. Muller to look into the working of Zimbabwe OCHA; (iv) the negative attitude of the OCHA management towards him; (v) the deliberate and systematic ignorance by OCHA New York of the hostility of RC/HC Zacarias who was hell-bent on getting him out of Zimbabwe; and (vi) the improper way in which his performance was evaluated.

147. The Applicant therefore submits that the cumulative effect of these factors show that he was a victim of a conspiracy between RC/HC Zacarias, and Mr. Muktar with the complicity of OCHA leadership.

*The nature of the relationship between the Humanitarian Coordinator and the Applicant*

148. Before the Applicant took up his assignment in Zimbabwe, he went to New York for briefings and met briefly with USG Holmes. They had a discussion about the challenges in Zimbabwe. That discussion also covered the relationship that he was likely to have with RC/HC Zacarias.

149. In support of his case, the Applicant explained that at the time he went to Zimbabwe in 2008 political violence had escalated dramatically. There was a humanitarian drama unfolding and people were dying. Part of the population had been abandoned and subjected to repression.<sup>114</sup> The issue between him and the HC was to what extent these humanitarian concerns should be exposed and addressed and the risk that there was of infuriating the Mugabe government. Matters started to sour when the Applicant started doing his job. RC/HC Zacarias preferred that the Applicant remain quiet. If he remained quiet, OCHA at headquarters would say he was not doing his job. Therefore while silence would bring him trouble from OCHA, noise would infuriate the RC/HC. When the Applicant started organizing a forum made up of the NGOs, the United Nations and the donors to discuss the situation in Zimbabwe with the approval of RC/HC

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<sup>114</sup> 23/2, p.42

Zacarias and to achieve a common understanding of the humanitarian situation, the RC/HC became angry.<sup>115</sup>

150. The Applicant had prepared an Assessment Form on Zimbabwe dated 7 April 2008<sup>116</sup> in which he stated that humanitarian preparedness in Zimbabwe needed to be increased due to an acute deterioration of the economy and livelihoods. Access to food and basic services such as healthcare and vital HIV/AIDS support were critically affected by the protracted electoral process. He referred to electoral violence, acts of retaliation, and acute food shortages.<sup>117</sup> The

Country Team on OCHA's ability to support the coordination of humanitarian work”.

153. The Applicant did not agree that he should have had prior consultations with the UNCT or RC/HC Zacarias before distributing the Assessment Form.<sup>123</sup> This position was confirmed in an email dated 16 June 2008 from USG Holmes to RC/HC Zacarias in which he informed RC/HC Zacarias that there was no need for the Applicant, as Head of OCHA Office, to clear the assessment form with him and that by holding a meeting on the subject, RC/HC Zacarias had made the situation more difficult whereas he should have instead discussed the issue directly with the Applicant. USG Holmes had stated “... It could easily have been discussed directly, where you could have clarified the issue and understood that the process [the Applicant] followed was the correct one. From the Draft Note it is evident that the meeting only worsened rather than improved the situation.”<sup>124</sup>

154. From then on RC/HC Zacarias adopted a hostile attitude towards the Applicant. RC/HC Zacarias had told the Applicant when he first reached Zimbabwe, “I hope you don't need for a”

was also told by Mr. Steve O'Malley that RC/HC Zacarias was a big problem for them.<sup>128</sup>

156. This is how the Applicant related what Mr. O'Malley told him:

“One, Mr. Zacarias is a person that can be very brutal and abusive with someone working under him. Secondly, he has a very strong relation with the Government of Zimbabwe, ZANU, that I should be careful about that. Thirdly, that despite all the negative comments, all the reports they have received in OCHA against Zacarias demanding his departure from Zimbabwe, all these requests have failed to succeed because Mr. Zacarias has very strong support in the UN at headquarters. Fourthly, he told me that with my predecessor they had identified a pattern by Mr. Zacarias of micromanaging OCHA staff behind the OCHA head of office. So Mr. Steve O'Malley made me aware, ‘You should know that Mr. Zacarias will be calling your staff behind you to talk to him about you and often give them instruction that you won't know’. Lastly, Mr. O'Malley told me that they were powerless towards Mr. Zacarias, and it will be up to me to manage that situation. He told me, ‘It's up to you. We are powerless. There's nothing we can do. And therefore this is what I want. I recommend that you do’.<sup>129</sup>

157. There is also undisputed evidence that RC/HC Zacarias had had a negative relationship with the two predecessors of the Applicant, Mr. A.G and Ms. A.A.O. The RC/HC conceded that he was aware of the perception but he was never given a chance to explain his side of the story about the difficult relationships that he was encountering, or if he did explain, he did not believe that he had been understood. He believed he did his best to build a relationship.<sup>130</sup> The difficulties related to methods of work and substance. Regarding Mr. A.G, RC/HC Zacarias stated that he did not have any contacts with the government of Zimbabwe and was working mostly with NGOs without bringing in any members of the government and so gave the government the impression that OCHA was trying to overthrow it with the help of NGOs. There was also the impression conveyed in a

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<sup>128</sup> 25/2 p.34

<sup>129</sup> 25/2 p. 37

<sup>130</sup> 7/7 p.34

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For example, reports were being sent without his knowledge.<sup>135</sup> He received information from the head office in New York that there was feedback from the donor community that he was not exercising enough leadership on humanitarian affairs or on humanitarian work, and that this complaint was coming from the Applicant as head of office of OCHA.<sup>136</sup>

162. Another major issue between the Applicant and RC/HC Zacarias was in relation to the Applicant's accreditation with the government of Zimbabwe. It was the responsibility of Mr. Zacarias to sort the issue with the government.

163. When the Applicant's family arrived in Zimbabwe, the Government did not give them accreditation to reside in the country. The Applicant's wife and children therefore had to leave in May 2008 and return to South Africa where they stayed in a hotel for five months in the hope that the accreditation would be given. The Applicant complained about this first to RC/HC Zacarias and later to New York only for the RC/HC to tell him on 6 August 2008 that he had no idea of the consequences. Whenever he had mentioned the issue to RC/HC Zacarias, he would reply that he forgot to tell the minister about it and would promise to deal with it but never did.<sup>137</sup> After the Applicant complained to New York a letter of protest was sent by the RC/HC to the Government of Zimbabwe.<sup>138</sup>

164. The Ministry of Foreign Affairs then summoned both the Applicant and RC/HC Zacarias to a meeting. The Permanent Secretary told RC/HC Zacarias in the presence of the Applicant that: *"You are playing ball with us and you are sending this letter to your people in New York to present the Zimbabwean government badly. We are seen here as denying a UN senior staff and his family entry to Zimbabwe yet, Mr. Zacarias (R)-4n)-4n) the Ze Z*

165. After that meeting, the Applicant became very scared of RC/HC Zacarias because he had been exposed. He called Chris Hyslop and asked for protection. He also told him to inform USG Holmes about that situation. That same evening RC/HC Zacarias wrote the minutes of the meeting without showing them to the Applicant and sent them to USG Holmes, but omitted a number of details.<sup>140</sup>

166. Mr. Muller told the Tribunal that he was aware that the Applicant faced

experienced the same pattern of behaviour from the same deputy during their terms.

169. On this issue, paragraph 18 of the PDOG report states:

"In September 2008, according to the complainant, a local support staff requested to speak to him outside the office. During the conversation, the local staff informed the complainant that the deputy had taken all the local staff out to lunch and had informed them that he was getting rid of the head of office. He informed them that he had filed a complaint against the head of the office and in response a mission team was coming to conduct an investigation into the matter. Also during this lunch meeting the local staff was instructed to 'say bad things about him' to the officials coming from New York. The deputy had warned the local staff that they would lose their contracts if they did not carry out

authorise Mr. Muktar to attend the workshop in Geneva in September 2008 because in times of intense work every hand was needed.<sup>149</sup>

172. RC/HC Zacarias said that he was well aware of the problems the Applicant was having with Mr. Muktar and that even before the Applicant's arrival, he could foresee the problems coming, because they had competed for the same post. He

175. On his part, on 10 October 2008, the Applicant sent an email to Chris Hyslop requesting help to diffuse the situation created by the disruptive behaviour of his deputy.

176. Mr. Muller testified that Mr. Muktar felt bad that he was not made head of office and that there was very serious burning enmity and hostility between the Applicant and Mr. Muktar.<sup>154</sup>

fired. The locks of the office were changed and Mr. Shikisha could not even retrieve the documents of the Applicant. Following these events, he said, the Applicant collapsed and had to be hospitalized.<sup>160</sup>

other problems.<sup>163</sup> Although there were clearly concerns about his relationship with OCHA heads of office, he occupied an extremely difficult and sensitive position at that particular moment, and therefore some very difficult balancing acts were required.<sup>164</sup>

of the situation in Zimbabwe. The position of RC/HC Zacarias had to be saved at any cost, notwithstanding the fact that the Applicant was the third HoO that he was having problems with and whom he wanted to get rid of, as indeed he succeeded in doing with the active or passive complicity of the top management of OCHA. Even Mr. Muller in his report expressed the view that for the external partners of OCHA the relationship between the HC and OCHA heads of office was a key component of the dysfunction of OCHA in Zimbabwe.

186. While RC/HC Zacarias played a prominent role in the undoing of the Applicant, unfortunately and sadly USG John Holmes told the Tribunal that removing Mr. Zacarias would “have caused all sorts of other difficulties”.<sup>166</sup>

187. The clear conclusion that can be drawn by the Tribunal is that the OCHA management was bent on keeping the HC and sacrificing the Applicant. Was that done on the altar of good management or on the principles of good governance and fairness? Certainly not! It is significant that USG Holmes had written in an



189. In the light of the evidence, OCHA leadership in New York had knowingly sent the Applicant into a terrain that can be described either as a lion's den or a minefield. At least two former predecessors had prematurely exited from the same location with badly mangled limbs. With no plan to tame the lion or to demine the field, OCHA leadership had merely armed the Applicant with a warning that the lion was dangerous and that he must be careful of the field as it was mined. What is curious is why OCHA needed to maintain an office in Zimbabwe at all when it was obvious that whomever they sent to man said office would become prey for RC/HC Zacarias. Why was OCHA unreservedly setting up its heads of office, including the Applicant, for failure when its support of RC/HC Zacarias was unshakable regardless of the objectionable behaviour the RC/HC exhibited towards the OCHA personnel?

*The Tribunal's findings on whether the non-renewal of the Applicant's contract was motivated by extraneous factors or improper motive*

192. While RC/HC Zacarias stated that it was obvious that even before the arrival of the Applicant to Zimbabwe he could foresee problems between the Applicant and Mr. Muktar as they had competed for the same post, Mr. Muller in

humanitarian challenges. The anger of RC/HC Zacarias led him to take a singularly hostile stance; not so much because this was done behind his back, but because it reflected the real situation in Zimbabwe. He saw the report as indicating on the side of the Applicant a lack of solidarity with the other members of the UNCT and effort to undermine or tarnish the image of the UNCT. The Tribunal has no hesitation in concluding that this was the starting event that led to the tribulations of the Applicant with different stakeholders and the ultimate decision not to renew his Contract.

196. The RC/HC Zacarias had gone very far to undermine the Applicant thereafter, just as the undisputed evidence shows how he undermined the two predecessors of the Applicant who had to leave. The evidence shows that RC/HC Zacarias, made life very difficult for the Applicant in regard to his accreditation with the Government of Zimbabwe. The un-contradicted evidence of both the Applicant and Ms. Kerry Kay was that he closed his eyes to the obvious in regard to the humanitarian situation in Zimbabwe.

197. According to USG Holmes, Mr. Zacarias saw the need to maintain a working relationship with the government, because otherwise he would not be able to do the job. But to say that he wanted to maintain a relationship with the government at any cost was going too far.<sup>171</sup> The Tribunal rejects this statement in view of Mr. Zacarias' hostility towards the Applicant following the issuance of the Assessment Form on the dire humanitarian crisis in Zimbabwe and the lack of support from OCHA management.

198. The dysfunction of OCHA in Zimbabwe was laid at the door of the Applicant. A number of complaints or alleged complaints started flooding in following the assessment he made on the real humanitarian situation in Zimbabwe with Mr. Zacarias leading the show. He had started by calling a meeting following that report at which the Applicant was admonished and condemned. It would appear that once this process of character assassination started, everyone joined

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<sup>171</sup> 6/7 pp.96/97

the fray including USG Holmes, ASG Bragg, Mr. Muller, Mr. Kaatrud and Mr. Muktar.

199. Notwithstanding these constraints, the Applicant showed that he had a grasp of the humanitarian situation and what was required to deal with it. There is clear and un rebutted evidence of a number of positive actions that the Applicant took during his short tenure in Zimbabwe, whilst having to confront two hostile “colleagues”, namely RC/HC Zacarias who felt he was in an all-powerful position and untouchable, and Mr. Muktar who was indeed “the enemy within.”

200. The passive attitude of top management in New York in the teeth of a hostile RC/HC Zacarias and an undermining Mr. Muktar served to compound the problems faced by the Applicant who was taken to task and became the target simply because he had the courage to inform the OCHA Headquarters in New York that Zimbabwe was on the brink of a humanitarian crisis while RC/HC Zacarias was pretending to the contrary. To this must be added the physical and emotional stress caused by the recalcitrance of RC/HC Zacarias in obtaining accreditation for him and his family. In spite of these myriad challenges, which the Applicant faced in struggling to fulfil his mandate, the OCHA leadership in New York targeted and sacrificed him for the benefit of RC/HC Zacarias and Mr. Muktar.

201. RC/HC Zacarias took the Applicant to task for having addressed the humanitarian concerns in Zimbabwe in June 2008. Why would he do that? His attitude betrayed a consistent pattern of undermining the successive heads of OCHA office. Although this pattern was known to the top management of OCHA in New York, they failed in their duty to both the Applicant and the work of the OCHA office in Zimbabwe by their complacency and inaction in instituting protective measures to resolve the clearly identified management issues.

202. Following the departure of one of the predecessors of the Applicant, Ms. A.A.O, and before the arrival of the Applicant, there was an Executive Coaching



Government was being threatened by the three successive heads of OCHA, the latest of which was the Applicant. It is the finding of the Tribunal that the non-renewal of the Applicant's contract was motivated by extraneous factors or improper motive.

***The work performance of the Applicant***

206. The reasons given for the non-renewal of the Applicant's contract were set out in a letter to him from ASG Bragg dated 27 January 2009. These were firstly, the issuance of a letter of no confidence by the NGO community and the conclusions of the Muller mission. A second reason was related to the Applicant's internal management of his office. Accordingly, the Tribunal will examine the work performance of the Applicant in Zimbabwe.

207. The Applicant was the one who sounded the alarm about the impending



213. In relation to that email, the Counsel for the Respondent put it to the



as being the prime cause of any discontent. No adequate steps were taken to analyse the real issues in an objective and fair manner.

217. The Applicant may have made mistakes, shown an excessive zeal, or may have taken too much initiative – just like a man in a hurry to achieve what he felt had to be done – much to the dislike of people and stakeholders that were used to a particular style of management before his arrival. But this should .hou3(m)12a(a)2.3(d h)-5.3nno(l)1.1(0 -1

management blamed the Applicant for any relationship issues and thus ignored the negative attitude of RC/HC Zacarias and Mr. Muktar towards him.

***Was a proper performance appraisal conducted in respect of the Applicant?***

221. As already stated, the main ground for the non-renewal of the Applicants employment contract was his alleged non-performance. The Tribunal has already made a finding on this. But even on the assumption that the Applicant was not performing, was the proper process for separation on the grounds of non-performance followed?

*The e-PAS and reporting line*

222. A system for appraising the performance of United Nations staff members was established by ST/AI/2002/3. Under section 1 of this administrative instruction, the PAS system applies to all staff members except for staff at the level of Assistant Secretary-General and above.

223. Section 2.1(d) of ST/AI/2002/3 states that one of the purposes of this system is to recognize successful performance and address underperformance in a fair and equitable manner.

224. Section 2.2 further provides that the PAS is:

[a] management tool based on linking individual work plans with those of departments and offices and entails setting goals, planning work in advance and providing on-going feedback. An important function of the PAS is to promote two-way communication



officer was Mr. Kaatrud. RC/HC Zacarias said he informed Mr. Kaatrud about this situation and asked him to clarify with the Applicant.<sup>183</sup>

230. As the first reporting officer and supervisor, RC/HC Zacarias said he was conscious that it was his duty to bring the failings of any OCHA HoO to their attention and suggest to them what they should do in a coherent way to improve. He tried to comply with this role, but when he did so, the two previous OCHA HoOs in Zimbabwe and the Applicant felt that he was micromanaging them. When he was told that under the PAS rules there was a very heavy responsibility on him to ensure that he complied with the rules he went to Mr. Kaatrud to discuss the case of the Applicant, who did not recognize(DT/)-1(. Kaat)6.1(6.3(2(i)6.5(d )-5.3(not )-5.3(r)50 officer.

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should have done something about it in regard to the reporting line. USG Holmes was communicating with RC/HC Zacarias to impress on him that it was part of his management responsibility of the OCHA office. At the same time, ASG Bragg

239. USG Holmes referred to other steps that were taken to deal with the Applicant. He mentioned the very long interview ASG Bragg had with the Applicant in South Africa, the ample opportunities that he had to express his point of view and the mission led by Mr. Muller that provided the kind of feedback and the kind of knowledge OCHA needed to take their decision.<sup>195</sup>

240. Concerning OCHA management's use of the e-PAS system, USG Holmes conceded: "It is true that we have not had, until recently anyway, a good record of full compliance with e-PAS requirements. ... It's been a weakness of OCHA. ... I accept that clearly it would have been better if the process of the e-PAS had been started earlier and there had been the usual midpoint review of performance. That might have provided a more formal opportunity for these issues to be addressed."<sup>196</sup>

*Informing the Applicant about his performance*

241. ASG Bragg testified that throughout 2008, as management, they had tried to be as responsible as possible. When they heard that there were difficulties in the office, they sent Mr. Muller in to have a discussion with people around and in the office and with the Applicant himself so that they could have a better understanding.<sup>197</sup> In the course of that, there was feedback to the Applicant. When ASG Bragg met with the Applicant, she had also indicated to him the importance of maintaining a relationship with the humanitarian partners. This was not a counselling session. But in her conversation with the Applicant, when she realised that he had a pattern of relationship difficulties, she did point out to him the expectation of OCHA and the need to maintain the kind of relationship that would be conducive to getting the humanitarian coordination work done.<sup>198</sup>

242. She also believed that Messrs Muller and Kaatrud had all spoken to the Applicant about his situation and his performance. She stated that in spite of the

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<sup>195</sup> 6/7 p.115

<sup>196</sup> 6/7 p.107

<sup>197</sup> 10/7 p.60

<sup>198</sup> 10/7 p.60

Applicant's denial, she knew that these conversations had taken place although there were no written records of them.<sup>199</sup> According to her, OCHA management tried to deal with the situation in the context of a raging humanitarian crisis that was killing thousands of people and they had tried to do it as responsibly as possible by trying to find the Applicant a transition out of Harare. Unfortunately, because of his background and his level, they could not find him something more permanent. This was unfortunate and she did regret that they were not able to do so. She added that their responsibility would have been to the humanitarian situation of saving lives.<sup>200</sup>

243. She added: "There are lots of things that we probably could have done differently in hindsight, but I think we treated him with decency, I think we treated him with respect, I think we tried very, very hard to give him a transition out, but we had no choice but to have him leave Harare so that someone else could do the work that needed to be done in order to save lives."<sup>201</sup>

*Findings on the Applicant's performance appraisal*

244. The Tribunal notes that there may have been discussions or conversations between the Applicant, Mr. Muller and ASG Bragg about his work performance. But the plain fact is that on the assumption that the discussions took place, they were one sided in that they focused on the alleged shortcomings of the Applicant without giving him credit for the good work he had done. His positive achievements outweighed any negatives aspects. Consideration was not given to the difficulties that the Applicant was encountering in view of the hostile attitude of RC/HC Zacarias and Mr. Muktar against him. Management's assumption that it was the Applicant who was at fault had no objectively verified basis.

245. To start with, there was no clear reporting line, and even if it turned out that it was RC/HC Zacarias who was the first reporting officer, management

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<sup>199</sup> 10/7 pp.60/61

<sup>200</sup> 10/7 p.61

<sup>201</sup> 10/7 p.61



should have realised that the tense situation between the RC/HC and the Applicant would make it impossible for RC/HC Zacarias to act as an objective and impartial reporting officer. Events confirm this. RC/HC Zacarias had managed to establish very close contacts with a number of stakeholders, and criticisms against the Applicant came from these close contacts of RC/HC Zacarias.

246. Secondly, both USG Holmes and ASG Bragg stated that the proper e-PAS procedures were not followed. They described the difficulties experienced in the field and the lack of proper logistics to access the e-PAS electronically. ASG Bragg also explained the lack of clarity in the reporting line with regard to heads of office. Mechanisms had not been put into place for this purpose.

247.

officer higher than a staff member makes an allegation of incompetence he/she must bring clear facts in support of that allegation. There is also a duty on the manager alleging incompetence to take remedial measures. This would be especially required when a staff member has in the past been rated as outstanding in the core competencies. It is significant to note here that the Rebuttal Panel on the e-PAS of the Applicant changed his rating to one of “fully meets expectations.”

250. There is no evidence that a proper discussion on the performance of the Applicant ever took place, and what remedial action was taken if any

clarifying the relationship between the Humanitarian Coordinators (HCs) and the Heads of OCHA Field Offices.

253.

during the course of the reporting period.<sup>205</sup> The deadline for the work plan, according to ST/AI/2002/3, is 1 April of each year.<sup>206</sup> A work plan is a process that requires a discussion between the staff member and his supervisor or first reporting officer.<sup>207</sup> A work plan cannot be imposed on a staff member in an arbitrary manner. The Applicant would have had to work with RC/HC Zacarias as his first reporting officer to devise the plan for the performance cycle and to determine the competencies that would be used to carry out the work plan.<sup>208</sup> This, as has been pointed out above, was materially impossible.

256. It was also the responsibility of RC/HC Zacarias, as the first reporting officer, to ensure the implementation of all aspects of the PAS in a timely manner. Section 7.4 of ST/AI/2002/3 relevant at the time states emphatically that the “timely implementation of all aspects of the PAS and compliance with the spirit and the letter of the process, including completion of the PAS forms and



lay or where the balance of faults lay so that they could be in a position to take the corrective action which was clearly more and more urgently needed.

262. The request for the mission came from the RC/HC and this appears in the report of Mr. Muller where it is stated: “It also must be noted that the mission followed the receipt of a letter by the RC/HC Zimbabwe on 20 October of a letter [sic] from the NGO Heads of Agencies expressing dissatisfaction with the OCHA leadership in the country”.<sup>212</sup> Mr. Muller agreed that the letter received from the RC/HC was determinative and decisive in the decision to go to Zimbabwe. He rejected the suggestion that the mission was meant to take the Applicant by surprise by not giving him adequate notice.

263.

265. Mr. Muller sent another mail dated 4 November 2008<sup>217</sup> to the Applicant in which it was stated that: “The objective of our trip is to follow up on your request for headquarters support regarding the tension between you and your Deputy. Since that request, we have also received the message from some NGOs to the HC expressing dissatisfaction in OCHA leadership”. When he arrived in Zimbabwe, he gave three reasons: first to become familiar with Zimbabwe; secondly to look at the relationship between the NGOs and the UN and the third objective was to see how his office in New York could help the Applicant and his office.<sup>218</sup>

266. The Applicant stated that the ASG had told him that Rudi Muller would be going to Zimbabwe to look into the issues with the NGOs. She never told him that the mission would be looking into his relationship with the RC/HC or his deputy Mr. Muktar.<sup>219</sup>

267. Mr. Muller stated that the Applicant discussed his relationship with the RC/HC, the Government of Zimbabwe and also with his deputy Farah Muktar. He testified that the staff members were scared of Mr. Muktar but more so of the Applicant. Mr. Muller did not agree that most of the people he interviewed thought the relations between the RC/HC and the Applicant were the cause of dysfunctional state in the humanitarian community in Zimbabwe. The OCHA staff (he spoke to about ten of them) put more emphasis on the relationship between the Applicant and Mr. Muktar. The United Nations agencies had mixed answers. The NGOs had a similar attitude. But he agreed that for the external partners, the relationship between the Applicant and the HC was a key component of the dysfunctional state.

268. The Applicant also told him that Mr. Muktar had a close relationship with the RC/HC and he was being used by the RC/HC to fight him. The Applicant said that Mr. Muktar accused him of being a womanizer and of having no heart and

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<sup>217</sup> R1 p.66

<sup>218</sup> 24/2 pp. 100/101

<sup>219</sup> 24/2 p.91

had vowed to get him. The Applicant added that the donors, NGOs and HC had banded against him. Staff members of the information management unit told Mr. Muller that there was a deliberate attempt



humanitarian coordinator and/or him and his deputy, and some action had to be taken.<sup>228</sup>

272. The Muller mission had one mandate, namely to look into the working of the OCHA Zimbabwe office. In the end however, this report was used as a basis for not renewing the employment contract of the Applicant. There is evidence before the Tribunal that Mr. Muller himself, who was not the supervisor of the Applicant, accused him of not being a manager and phoned him to ask him to resign. The mandate of the Muller mission indicates clearly that the purpose of the mission was to look at the OCHA office and not to investigate or to pass value judgments on the performance of the Applicant. There were rules contained in the administrative instruction governing the Performance Appraisal System in place at the material time.

273. Mr. Muller chose to accuse the Applicant of mismanagement and ignored the tense relationship between RC/HC Zacarias and the Applicant, and between the Applicant and his deputy Mr. Muktar. By so doing, he unjustifiably arrogated to himself the power of a supervisor insofar as performance was concerned and converted his mission to an appraisal team. Whilst engaging in this process, Mr. Muller did not follow the strict rules governing performance assessment. Yet the Muller report was the trigger for the Administration in New York to conclude that the continued presence of the Applicant in Zimbabwe would not be conducive to the proper functioning of OCHA.

274. The Tribunal concludes that the Muller mission was a device used by OCHA top management to evaluate and investigate the performance of the Applicant without a proper and objective discussion and with the specific purpose of getting rid of him. Ms. Custodia Mandlhate, the WHO head in Zimbabwe, was interviewed by the Muller mission. In an email<sup>229</sup> sent on behalf of her organization, she wrote of the said mission:

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<sup>228</sup> 6/7 p.110

<sup>229</sup> A1 p.300

I feel a lot of tension between Zac [the UN RC/HC] and [the Applicant] but never expressed at UNCT level. I had two people from OCHA New York who came to see me and ask how WHO is working with OCHA, but I could sense from their attitude that their mission was something else. They were looking at the time... and in hurry... and even not paying much attention on whatever good I was saying about the collaboration between WHO and OCHA. I don't know if they are still around because no debriefing was provided to the UNCT... at my knowledge.

275. Further, she expressed her frustration with the mission's perceived goals:

“Zimbabwe is on a very difficult Humanitarian crisis, I would have expected to have the Deputy director of OCHA Mr. Rudi Muller who came to see me and many of you, concentrating really on how to help us- how to help the UNCT to face the humanitarian challenges in Zimbabwe, and not to spend all those resources (Travel and DSA all along from New York to discuss interpersonal relationships with OCHA or OCHA Country Director)”.

276. Instead of abiding by its stated mandate which was to assess the humanitarian situation in Zimbabwe at the time and to look at the functioning of the OCHA office, the Muller mission passed damning judgment on the Applicant while no mention was made of humanitarian concerns. Counsel for the Respondent conceded that Mr. Muller's mission was derailed by all that was being said by the NGOs, the UNCT and the staff. It should be noted that Mr. Muller never explained why he abandoned his stated mandate for the Zimbabwe mission. This notwithstanding, the Tribunal finds the argument of Counsel for the Respondent on the derailment of the Muller mission and report totally preposterous, and finds that that mission's real aim was to discredit the Applicant.

***The Applicant's separation process***

277. The Tribunal will now turn to the manner in which the Applicant was separated from service as Head of Office in OCHA Zimbabwe to determine whether the requirements of due process and fairness were observed by OCHA.

278. According to the Applicant's testimony, he met ASG Bragg in Johannesburg on 27 October 2008 and she brandished the letter from the Heads of Agencies. She told him that what had been written about him was correct. The Applicant did not know on what basis or what rationale ASG Bragg was coming to her conclusions.<sup>230</sup> He was not given an adequate opportunity to respond, and anything he said was dismissed by ASG Bragg.<sup>231</sup> She did not ask the Applicant any questions about the humanitarian situation in Zimbabwe, the political violence in Zimbabwe, or about the CAP of Zimbabwe. He did not have a chance to speak to her again on that day.<sup>232</sup> He thereafter sent an email to ASG Bragg expressing concerns on a number of issues including the attitude of RC/HC Zacarias, the attitude of his deputy Mr. Muktar, and the difficulties in having the CAP completed.<sup>233</sup>

279. In a mail<sup>234</sup> purporting to be confidential that ASG Bragg sent to Mr. Kaatrud, and copied to one Mr. Gaby Douek, she gave a list of the topics that were raised at the meeting begdo2t.000.7(coBh )-5.3(0 -1.7n-10.8(-5.2(r6 )5.3(RC/)6.4(H)-11.6(C ))T8(-5.2(

281. In an email<sup>237</sup> dated 20 December 2008 addressed to RC/HC Zacarias and copied to ASG Bragg, USG Holmes wrote: "For your information only at this stage, we are taking action to ensure that [the Applicant] does not return to Harare after leave, and urgently looking for at least temporary capacity to help you the next few weeks. Mukhtar [sic] may well need to move on too but not yet." Earlier, on 11 December 2008, USG Holmes wrote a mail<sup>238</sup> to Mr. Kaatrud in which he said:

“As we have discussed, as the cholera situation - and the humanitarian situation more widely- becomes more critical, the resolution of the Head of Office in Zimbabwe is now urgent. We need to withdraw Georges next week, whether or not we know what is going to happen to him next, and get some surge capacity in there very rapidly, while we find a longer-term replacement. I would be grateful if you, with Catherine, could initiate action accordingly’.

282. In fact, the Applicant had applied for two days’ leave on health grounds and had gone to South Africa.<sup>239</sup> He then sent an email<sup>240</sup> dated 5 January 2009 to his assistants and copied RC/HC Zacarias, informing them that for health reasons he was delaying his return. RC/HC Zacarias immediately wrote<sup>241</sup> to Mr. Kaatrud about this request of the Applicant: “I have alerted HQ of this systematic practice by [the Applicant], which brings an admh8ettu,w6(p).6(p)-4.7(licant),-5.t(tuiv6(p).6rote: )2.3(xt,igh6(p)

the Respondent.<sup>244</sup> The thrust of the argument of Counsel for the Respondent was that the original of the conversation was not available and that the transfer of the recording on a CD showed that the conversation had been broken in parts and was not complete.

284. The Tribunal ruled<sup>245</sup> the recording admissible and stated:

instruction<sup>246</sup>

unclear as to whether [the Applicant] has agreed. I think he was informed, but he was not agreed”.<sup>252</sup>

289. The next day, 26 January 2009, ASG Bragg sent another mail to USG Holmes, Mr. Hyslop, Ms. Dagash, Mr. Muller and Mr. Kaatrud and copied Andrew Cox, Shani Harris and Paola Emerson and said: “Now that [the Applicant] has been formally notified, Chris and Rania are working with Muktar to be OIC for two months now.” She also wrote: “I had spoken to Zac [HC] on the weekend and told him we saw the internal management problems as caused by many people, not just one, so that what we were doing with [the Applicant] was not scapegoating one person. But we have to get on with addressing the situation in the country. I also indicated from my trip to Canada last week, it seemed that the donors were still unhappy with him and that he needed to engage more with them”.<sup>253</sup> She added that the Canadians on different occasions had complained about both the head of office and the humanitarian coordinator.<sup>254</sup>

290. When asked by the Bench why it was urgent to get the Applicant out of Zimbabwe, Ms. Bragg answered:

“By January I believe that the number of deaths from cholera has already reached the thousands at that point. The number of affected has already reached tens of thousands. I don't think this is a situation where we – it was rolling so fast and spreading so quickly that we needed all to be on top of that, and we did not have the right team on the ground and so we needed to do something about that. Part of that not having the right team was not having the OCHA head of office who could pull together the OCHA office in order to do what we needed to do. That was the main reason why we did that. For humanitarian reasons we could not have waited any longer”.<sup>255</sup>

291. She added that though she was having problems with the two other persons, namely RC/HC Zacarias and Mr. Muktar, and that the UNCT had a weak

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<sup>252</sup> 10/7 p.45

<sup>253</sup> A2 p.361 & 10/7 p.16

<sup>254</sup> 10/7 p.26

<sup>255</sup> 10/7 p.50

team, it was the Applicant that was the source of most problems, as he had lost the confidence of the NGOs, the UN Agencies and a number of donors. The Applicant also had management difficulties in the sense that the OCHA office was badly managed, as found by Mr. Muller.<sup>256</sup>

292. Also on 26 January 2009, the Applicant challenged the decision to send him to South Africa before the New York JAB. The JAB questioned OCHA during the hearing that took place on whether it was a mission or reassignment.<sup>257</sup> In reply to the JAB, ASG Bragg stated that she was sending the Applicant on mission to Johannesburg. Further, in her evidence, ASG Bragg stated that the Applicant was being sent on mission to Johannesburg. Her exact words were: “We chose Johannesburg because his family was there, and we also sent him on mission and that's an important word because he could then collect DSA.”<sup>258</sup> She added that that was a way to ease the situation in which they found themselves in Zimbabwe.<sup>259</sup>

293. The same Monday evening, the Applicant went back to Harare and was told by his driver who came to fetch him in a taxi that his office lock had been changed and that Mr. Muktar, his deputy, was the Officer in Charge (OIC) of OCHA.<sup>260</sup> A staff member of OCHA showed him an email<sup>261</sup> from Mr. Muller to Mr. at fro



294. Ms. Tomás testified that it was decided to change the locks of the office of the Applicant and the decision was reversed but by that time the locks had been changed. A key was remitted to the driver of the Applicant to be given to him but the Applicant refused to take it and it was returned to Ms. Tomás. She said that she had assumed that the Applicant who was not coming to the office as from 23 January because he was sick.<sup>264</sup>

295. In an email<sup>265</sup> dated 27 January 2009 that ASG Bragg addressed to the Applicant, she wrote that the OCHA office in Zimbabwe was not capable of delivering adequate support to the RC/HC and the humanitarian community. She indicated that many of the interlocutors of the humanitarian community did not have confidence in the leadership of the Applicant. She also expressed concerns about management of staff and OCHA's partnership building – in particular with NGOs and to some extent with the HC. She then wrote "I understand you have been fully briefed on these concerns on three occasions immediately following the mission and have held extensive telephone discussions with David Kaatrud." The email stated, *inter alia*, "...after discussion with senior management, OCHA does not intend to renew your contract after its expiry on 23 March, 2009."<sup>266</sup>

296. The Applicant testified that these issues had not been addressed as alleged by Ms. Bragg. He did receive a phone call from David Kaatrud but "the phone call from David Kaatrud had nothing to do with these issues. David Kaatrud called me to know how the humanitarian situation in Zimbabwe was and what were my views on how – what we can do to strengthen it, the response. And then I say here the truth in front of the Court, he also asked me what are my plans, my career plans".<sup>267</sup>

297. In an email<sup>268</sup> entitled "End of Assignment in Zimbabwe" dated 09 February 2009 and sent to ASG Bragg the Applicant wrote: "I have not received a

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<sup>264</sup> 8/7 p.23

<sup>265</sup> A2 p.364

<sup>266</sup> R1 p.92

<sup>267</sup> 24/2 p.p. 160/161

<sup>268</sup> A2 p.391

TA (Travel Authorisation), air ticket and DSA (Daily Subsistence Allowance) for my mission to Johannesburg”. The Applicant stated he was never paid any of this.<sup>269</sup>

298. On 10 April 2009 the Applicant sent an email<sup>270</sup> to USG Holmes in which he requested to talk to him about his non-renewal. The Applicant was hoping that USG Holmes would give him a chance to talk to him and avoid his termination. He never received a response to that correspondence.<sup>271</sup> He returned to his country on 16 April 2009.<sup>272</sup>

299. USG Holmes testified that he took the decision to move the Applicant and not to renew him. He took full responsibility for that decision in discussions with ASG Bragg, David Kaatrud and others in which he told them that the immediate concern was to get the Applicant out of Zimbabwe. Given that the Applicant had been very uncooperative, it was very hard to imagine that they were going to be able to find a productive role for him in the future.

300. At the end of March 2009, since there was no obligation to renew the kind of contract that the Applicant was on, USG Holmes decided that the most logical conclusion was not to renew that contract because he did not think that they would be able to find a good use for the Applicant elsewhere, given the continuing difficulties they were having with him.<sup>273</sup> In his view, the issues that RC/HC Zacarias had raised about the difficulties with the Applicant were related to his work performance. There were also elements about the personal behaviour of the Applicant, but the distinction between personal behaviour and work performance is not a black and white one. The difficulties largely related to work issues.<sup>274</sup>

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<sup>269</sup> 24/2 p 170/171

<sup>270</sup> A2 p.491

<sup>271</sup> 25/2 p. 16

<sup>272</sup> 25/2 p. 16

<sup>273</sup> 6/7 p.87

<sup>274</sup> 6/7 p.88

*Findings on the Applicant's separation process*

301. After discussing the Muller report as recorded by David Kaatrud, USG Holmes decided that they needed to find a way to get the Applicant out of

304. The Tribunal finds that the Applicant was sent to South Africa as a prelude to his ultimate separation not so much in the interest of the Organization, or in the pursuit of using the best resources of the Organization for the achievement of the purposes under the Charter, and Rules and Regulations made under its authority. Strangely, the removal of the Applicant would serve the interests of RC/HC Zacarias and to a lesser extent of Farah Muktar both of whom USG Holmes, ASG Bragg and other OCHA personnel had acknowledged were part of the problem. Why was it a better choice to get rid of the Applicant who had predicted and confronted the humanitarian challenges facing the country by his early warning assessment and commendable management of the Ruwa crisis?

305. The Tribunal also finds that by appointing Mr. Muktar as OIC without the knowledge of the Applicant and by having the lock to the Applicant's office changed, also without his knowledge, OCHA senior management showed clearly that they had had no intention of dealing fairly with the Applicant or according him a modicum of due process. He had, obviously, already been tried in absentia and sentenced by a mock court, which had nothing but disdain for the principles of law and justice.

306. Based on foregoing, the Tribunal finds that the requirements of due process and fairness were completely disregarded by OCHA in relation to the manner in which the Applicant was separated from service as Head of Office in OCHA Zimbabwe and as such, his rights as a staff member of OCHA were violated. A humanitarian Organization such as OCHA must act in a humane manner towards its own staff members.

### **Conclusions**

307. This case has brought to light not only managerial ineptitude and high-handed conduct but also bad faith from the top management of OCHA. This mismanagement and bad faith were compounded by a sheer sense of injustice against the Applicant who was hounded right from the beginning by the RC/HC

for not doing his work according to the RC/HC's methods but according to his own style of management and leadership.

308. Even ASG Bragg had testified that there were problems with the RC/HC and Mr. Mukhtar and that the UNCT was weak so that by January 2009 deaths from cholera had reached the thousands. In spite of this, the Tribunal finds that whenever something went wrong in Zimbabwe at the material time, the blame was laid at the door of the Applicant. It appeared that while he achieved some positive results no credit was given to him. In fact, ASG Bragg told the Tribunal that the achievements made by the Applicant in Zimbabwe were nothing extraordinary because it was his job. Management listened to rumours from all quarters instead of objectively assessing the situation and the performance of the Applicant.

309. The matter of the Applicant's said interpersonal relationships with some of those in the humanitarian community in Zimbabwe at the material time and the criticisms of him by these people or groups constituted the singular issue that informed his removal by OCHA. The critical question is: what was the Applicant doing wrong? Principal among his wrongdoing is that by the time he had spent one month in the country, he had published an early warning suggesting that the UNCT, which had been operating before he came on the scene was ill prepared for an impending humanitarian crisis. In spite of the fact that no one could successfully counter his prediction, he appeared to have stepped on some big toes by stating the obvious. Thus the Applicant, a new-comer, had attempted to upset the applecart in a situation where, clearly, humanitarian considerations only played second fiddle to political issues.

310. Based on the totality of the evidence adduced, the Tribunal concludes that the Applicant was not, at all material times, treated fairly and in accordance with due process, equity and the core values of the Charter of the Organization.

311. It is pertinent to recall the opening words of the Charter of the United Nations in which the founding fathers of the Organization

314. In view of the foregoing, the Tribunal holds that the non-renewal of the Applicant's employment contract was unlawful.

315. The case for the Applicant succeeds.





Applicant from Zimbabwe and send him to Johannesburg and that the issue of disciplinary proceedings does not arise.

*Whether the manner in which these proceedings were conducted on behalf of the respondent amounted to an abuse of process or which an order for costs would be appropriate under art. 10.6 of the Tribunal's Statute*

320. The Tribunal was concerned about the manner in which the proceedings were conducted by and on behalf of the Respondent in certain material respects, which raise issues regarding the application of art. 10.6 of the Statute of the Dispute Tribunal which provides:

"Where the dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party."

321. The Tribunal was concerned at the Respondent's introduction, partway through the proceedings, of an allegation of sexual harassment on the part of the Applicant. Such allegations are properly regarded by the Organisation as extremely serious under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

322. At paragraphs 95-97 above the Tribunal describes briefly, the nature of this allegation. It is clear that this allegation had never been the subject of an investigation under the relevant rules and regulations of the Organisation. It is also clear that any such conduct played no part in the decision not to renew the Applicant's contract. It was never even suggested that the decision-makers were aware of this allegation. In so far as this allegation was introduced in order to cast doubt on the credibility of the Applicant, it was totally lacking in justification. There is a heavy onus on parties making serious allegations to have a sufficiency of evidence before bringing such allegations to the attention of the Tribunal.

323. In any event, the Respondent, who was represented by experienced counsel, failed to produce any credible evidence that was capable even of raising a mere suspicion that the Applicant had sexually harassed any person. The Tribunal

is confident that counsel would not have brought this serious allegation on such flimsy grounds, unless he was asked to do so by those instructing him. Bringing this allegation and the manner in which it was presented served no purpose that was relevant to the task before the Tribunal.

324. The Tribunal concluded that the allegation was brought for improper purposes, which had nothing to do either with the legal or factual issues that the Tribunal had to determine. If ever there was an appropriate case in respect of which the Tribunal's power under article 10.6 of the Statute applies, it is this case. The Tribunal holds therefore that by trying to bring in evidence of an alleged sexual harassment that had never been the subject of an investigation under the relevant rules and regulations of the Organisation and devoid of any substance, the Respondent's conduct constituted a manifest abuse of proceedings.

325. Further, the Tribunal finds that the Respondent manifestly abused the proceedings with his motion to recall RC/HC Zacarias after he had been thoroughly examined, cross-examined and re-examined. The reason put forward by the Respondent in his motion was that the witness had been taken by surprise by a number of questions that were put to him during cross-examination. It is a well-established rule of evidence that when a witness has given testimony, it is under rare circumstances that he may be recalled. In the present case, the Tribunal finds that this was not one of those rare circumstances.

326. Lastly, the Tribunal finds that the Respondent manifestly abused the proceedings in his handling of the motion for reconsideration of Order No. 052 (the grant of interim relief) by filing submissions that were irrelevant, unnecessary, gratuitous and intended solely to undermine the credibility of the Applicant before the Tribunal and to cause needless distress to the Applicant.

327. The Tribunal holds that the foregoing are examples of the Respondent's manifest abuse of process, which unnecessarily complicated the conduct and management of this case. Consequently, the Tribunal orders the Respondent to



*Unlawful loss of employment and reinstatement*

332. According to article 10.5 of the Statute of the Tribunal:

“As part of its judgment, the Dispute Tribunal may 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, which shall normally not exceed the equivalent

formal investigation into the harassment exercised against the Applicant by the RC/HC. These recommendations of the PDOG should be implemented by the Respondent.

338. As an alternative to reinstatement, the Tribunal ORDERS that the Respondent shall further pay the Applicant two years' net base salary as compensation.

*Nullification of PAS and Purging of all false statements from personnel files*

339. It is crystal clear that the requirement of due process was totally disregarded in this case. It is also noteworthy that the process not to renew the contract of the Applicant was initiated even before the Rebuttal Panel that had been convened to decide on the rebuttal of his PAS for the year 2008-2009 had delivered their conclusions, which was on 30 July 2009.

340. The Applicant's PAS for the cycle 2008-2009 was prepared hastily and improperly; it was unclear who, as first reporting officer, had the responsibility to complete it; it contained untrue statements; it was not fully edited in line with the recommendations of the Rebuttal Panel; and the whole PAS process was infected by the sour relationships between the Applicant and those around him who took it upon themselves to complete his PAS.

341. The Tribunal therefore ORDERS that the Applicant's PAS for 2008-2009 be nullified and that all adverse material in relation to this PAS be purged from his personnel file.

*Exemplary or punitive damages*

342. In line with article 10.7 of the Statute, the Tribunal cannot award exemplary or punitive damages to the Applicant.

343. These two requests of the Applicant are rejected.



vi) That the Applicant's PAS for 2008-2009 be nullified and that all adverse material in relation to this PAS be purged from his personnel file; and

vii) The referral of the Humanitarian Coordinator, Mr. Agostinho Zacarias, the Under-Secretary-General for Humanitarian Affairs, Mr. John Holmes, the Assistant Secretary-General for Humanitarian Affairs, Ms. Catherine Bragg, and the Deputy Head of OCHA, Mr. Farah Muktar, to the Secretary-General for accountability pursuant to paragraph 6.5.5(e) of the 2005 World Summit Outcome Document (A/60/L.2/VII). 52

*(Signed)*

Judge Vinod Boolell

*(Signed)*

Judge Nkemdi

*(Signed)*