1.   ! a""#$%at$on f$#ed on 28 August 2015& t ' e A""#$%ant& a staff mem(e) of

")omot$ons to t'e P02 #e3e# a)e %on%e)ned& 9'$%' fo##o9s t')ee)ounds of e3a#uat$ons of e#$g$(#e staff mem(e)s.

5.

t'e P02 #e3e#& 9 '$%'& 'e de%$ded& 9 ou#d (e e6ua##!

1<.   ! memo)andum dated 2 ; a)%' 2015 and d$st)$(uted to a## t'e UN*C+ staff mem(e)s 3$a ema$# on 1 ; a)%' 2015& t'e *$g' Comm$ss$one) announ%ed '$s de%$s$ons fo##o9$ng t'e)e%ou)se sess$on. T'e A""#%ant 9as not among t'e %and$dates ")omoted u"on)e%ou)se.

20.   =n 1 ; a! 2015& t'e A""#%ant su(m$tted to t'e De"ut! *$g' Commssone) a)e6uest fo) management e3a#uat$on of t'e de%$s$on not to ")omote 'e) to t'e P02 #e3e#.

21.   =n 1 June 2015& t'e A""#%ant)e%e$3ed an $nte)$m)es"onse $nfo)m$ng 'e) t'at 'e))e6uest fo) management e3a#uat$on 9as st$## unde) %ons$de)at$on. 4'e d$d not)e%e$3e an! fu)t'e))es"onse.

22.   T'e A""#%ant f$#ed 'e) a""#%at$on 9$t' t'e +eg$st)! of t'$s T)$(una# on 28 August 2015.

21.   T'e +es"ondent su(m$tted '$s)e"#! on 2 =%to(e) 2015.

22.   8)om 21 to 26 Janua)! 2016& t'e T)$(una# 'e#d a 'ea)$ng on t'e me)$ts of t'e $nstant %ase& :o$nt#! 9$t' s$F ot'e) %ases %'a##eng$ng %ontem"o)aneous de%$s$ons and)a$s$ng s$m$#a) $ssues& name#! Cases Nos. UNDT/GVA/2015/076 ,Tsone3a/& UNDT/GVA/2015/112 ,Natta/& UNDT/GVA/2015/157 ,De #a Va)ga 8$to/& UNDT/GVA/2015/161 ,4"annut' Ve)ma/ UNDT/GVA/2015/165 ,+od$gue70 V$6ue7/ and UNDT/GVA/2015/166 , ; uft$%/. 8$3e 9$tnesses f)om t'e D*+ ; 9e)e 'ea)dΑ t'e *ead of t'e *uman +esou)%es Po#$%! and P#ann$ng 4e)3%e& t'e C'$ef of t'e Ass$gnments and P)omot$ons 4e%t$on& t'Cemgut

me)3e$3395-0.

26.   During the course of the proceedings, the Respondent filed a number of documents ex parte, which contain confidential information. The Tribunal made all these available to the Applicant, with redactions as necessary and on an under seal basis.

27.   The Applicant's principal contentions are:

   a.   The UNHCR promotions mechanism entails that the UNHCR staff

?. T'e UN＊C+ fa$#ed to ％ons$de） t'e mat'emat$%a# and s

(.

staff and d§d not ")e3ent se"a)ate)e3§e9 of fema#e and ma#e %and§dates du)§ng t'e 4e%ond +ound. H3en §f t'§s %onst§tuted a

2<.

11.

,$$/   8o) ")omot$on to an! #e3e#&
and "a)t$%u#a)#! to t'e P05 #e3e# and a(o3e& a staff mem(e)

%o))e%t#! a""#$ed. I 'e)eas t'e)e $s no dou(t t'at t'e T)$(una# 'as no aut'o)$t! -to amend an!)egu#at$on o))u#e of t'e =)gan$7at$on. , $ e#touche 20100UNAT0025& "a)a. 11/& a de%$s$on ma! (e)es%$nded $f $t $s ta?en "u)suant to a "o#$%! 9 '$%' does not %om"#! 9$t' a '$g'e) no)m. 5n t'$s %onteFt& t'e T)$(una# ma! a#so -"o$nt out 9 'at $t 1256(m)-0.0858734(a)-35nu#

se"a)ate#! f)om t'e 4e%ond +ound on 9a)ds as not'$ng $n t'e P)omot$ons Po#$%! ")e3ented $t.

50.   5t 'as (een esta(#$s'ed t'at fema#e and ma#e %and$dates fo) ")omot$on 9e)e %ons$de)ed $n t9o se"a)ate g)ou"s $n t'e 4e%ond and T'$)d +ounds& #ead$ng t'e Pane# to)e%ommend& and u#t$mate#! t'e *$g' Commssone) to se#e%t& an e6ua# num(e) of fema#e and ma#e staff mem(e)s. ; o)e s"e%f%a##!& $t a""ea)s t'at afte) 'a3$ng $dent$f$ed t'e %and$dates 9'o 'ad "assed t'e 8$)st +ound& t'e D*+ ;

9 'e)e se%. 5.10.2 ")o3§des t'at -Ba(t g)ade #e3e#s 9 'e)e gende) "a)§t! 'as not !et (een a%'$e3ed& at #east 50E of t'e ")omot$on s#ots 9$## (e a9a)ded to su(stant$a##! e6ua##! me)§to)§ous fema#e staff..

51.   4gnf$%ant#!& t'e P)omot$ons Po#$%! %ons$stent#!)efe)s to t'e %om"a)at$3e assessment and)an?$ng of a s$ng#e "oo# of %and$dat

g)ou" $n t'e 4e%ond +ound to ")odu%e a #$st of -su(stant$a##! e6ua##! me)$to)$ous.
%and$dates fo) %ons$de)at$on (! t'e Pane# $n t'e T'$)d +ound.

56.   8u)t'e)mo)e& t'e T)$(una# $s of t'e 3$e9 t'at t'e *$g' Comm$ss$one)@s
de%$s$on to set t'e a3a$#a(#e num(e) of ")omot$on s#ots fo) fema#e and ma#e
%and$dates (efo)e t'e a%tua# ")omot$ons sess$on 9as %om"#eted&)at'e) t'an at t'e
t$me of a9a)d$ng ")omot$ons& a#so)a$ses some %on%e)ns.

57.   T'e *$g' Comm$ss$one)@s "o9e) to set t'e num(e) of a3a$#a(#e ")omot$on
s#ots $s def$ned $n se%. 2.1.2 of t'e P)omot$ons Po#$%! 9'$%' ")o3$des⅄

> ßT'e℃ D3s$on of *uman +esou)%es ; anagement ,D*+ ; / 9$##
> su(m$t to t'e Jo$nt Ad3$so)! Comm$ttee ,JAC/& at #east 10 9o)?$ng
> da!s ")$o) to t'e)e#e3ant ")omot$ons sess$on& $ts)e%ommendat$ons
> on t'e num(e) of a3a$#a(#e ")omot$on s#ots us$ng)e#e3ant stat$st$%s
> on "os$t$ons and staff$ng& $n%#ud$ng (ut not #$m$ted to& d$st)$(ut$ons
> (! g)ade #e3e#& eF"e%ted se"a)at$on and)e%)u$tment and t)ends $n
> $nte)0agen%! eF'anges. T'e num(e) of ")omot$on o""o)tun$t$es&
>)ef#e%ted 6uanttat3e#! as ")omot$on s#ots& 9$## (e de%$ded (! t'e
> *$g' Comm$ss$one)& ta?$ng $nto a%%ount t'e ad3$%e of t'e JAC.

58.   A(sent an!)efe)en%e $n t'$s ")o3$s$on to gende) %ons$de)at$ons& t'e *$g'
Commssone)@s d$s%)et$on $s #$m$ted& at t'$s stage& to dete)m$n$ng t'e num(e) of
a3a$#a(#e s#ots fo) ")omot$on at ea%' #e3e#& (ased on t'e UN*C+@s staff$ng ta(#e
and staff mo3ements ")ognost$%s. A#t'oug' t'e *$g' Commssone) ma! 'a3e
soug't to a%'$e3e gende) "a)$t! $n sett$ng $n ad3an%e t'e num(e) of s#ots a3a$#a(#e
fo) ea%' gende) g)ou"& 9'$%' $s most %e)ta$n#! a %ommenda(#e and #a9fu#
o(:e%t$3e $n #$g't of t'e UN C'a)te) and t'e -Po#$%! on A%'$e3$ng Gende) H6u$t!
$n UN*C+ staff$ng. ,5= ; 018/2007 J 8= ; 01</2007/ of 8 ; a)%' 2007
,-Gende) Po#$%!./ ,see $e#touche UNDT/200</01<& "a)a. 17/& 'e ended u"
ma?$ng a ")edete)m$nat$on of $ssues t'at 'ad to (e add)essed at a #ate) stage& t'at
$s& at t'e t$me of a9a)d$ng t'e ")omot$ons& afte) t'e e3a#uat$on of t'e %and$dates

5<. 5n t'$s)es"e%t& t'e T)$(una# st)esses t'at t'e P)omot$ons Po#$%! does not ")o3$de fo) ")omot$on 6uotas (ased on gende)& as seemed to (e %ons$de)ed (! t'e *$g' Commssone). +at'e)& $t ")o3$des fo) a

61.   In view of the foregoing the Tribunal finds that the separation of female and male candidates for their comparative assessment and ranking at the second

t'e s%o)es fo) ea%' o(:e%t$3e 9e)e t'en %om($ned (! t'e s!stem to gene)ate an
o3e)a## 9o)? "e)fo)man%e)at$ng on 9o)? o(:e%t$3es⅄

$.	Not A%'$e3ed	1& 2
$$.	Pa)t$a##! A%'$e3ed	1& 2& 5

75.   5n tu)n⸲ se%. 5.<.1,$$/ states t'at -BmⒸanage)$a# a%'$e3ements s'a## (e demonst)ated (! t'e$))ef#e%t$on $n t'e PA+/e0PAD "e)fo)man%e e3a#uat$ons and 8a%t 4'eet na))at$3e.. T'e "e)fo)man%e e3a#uat$on $s 9$t'out an! dou(t t'e one found $n t'e e0PAD⸲ 9'%' %ons$sts not on#! of t'e na))at$e⸲ (ut a#so of t'e)at$ngs of 9o)? o(:e%t$3es and %om"eten%$es. T'e T)$(una# notes t'at t'e st)u%tu)e of t'e o(#gaton unde) se%. 5.<.1,$$/ to %ons$de) mate)$a# $s d$ffe)ent f)om t'at $n se%. 5.<.1,$/. +at'e) t'an)efe))$ng to t'e %ons$de)at$on of t'e na))at$3e $n (ot' t'e e0PAD and t'e fa%t s'eet⸲ se%. 5.<.1,$$/ %onta$ns a %#ea) d$st$n%t$on (et9een t'at 9'%' $s)ef#e%ted $n t'e PA+/e0PAD "e)fo)man%e e3a#uat$ons and t'at)ef#e%ted $n fa%t s'eet na))at$3e. T'e 9o)ds -"e)fo)man%e e3a#uat$on. atta%' to t'e PA+ and t'e e0PAD⸲ 9'$#e t'e 9o)d -na))at$3e. atta%'es to t'e fa%t s'eet. C#ea)#!⸲ $n #$g't of t'e unam($guous 9o)d$ng of t'$s ")o3$s$on⸲ $t $s f)om (ot' t'e e0PAD "e)fo)man%e e3a#uat$ons and t'e fa%t s'eet na))at$3e t'at t'e assessment 'ad to (e made $n)es"e%t of t'e -manage)$a# a%'$e3ements..

76.   T'e +es"ondent@s a)gument t'at se%. 5.<.1 s'ou#d (e $nte)")eted $n su%' a 9a! t'at t'e e0PAD and t'e fa%t s'eet)efe) to t'e same do%ument⸲ name#! t'e fa%t s'eet a#one⸲ must (e)e:e%ted as $t 'as (een %#ea)#! esta(#$s'ed t'at t'e fa%t s'eet does not ent$)e#!)ef#e%t t'e e0PADs (e%ause $t does not)e")odu%e t'e)at$ngs %onta$ned $n t'e #atte). 5f $t 'ad (een $ntended to)efe) on#! to t'e na))at$3e⸲ t'en t'e P)omot$ons Po#$%! 'ad to (e d)afted to so s"e%$f! t'$s. 5t $s a#so %#ea) f)om t'e P)omot$ons Po#$%! t'at t'e $nfo)mat$on %onta$ned $n t'e e0PADs⸲ $n%#ud$ng t'e)at$ngs⸲ 9as d$)e%t#!)e#e3ant to t'e Pane# mem(e)s@ assessment du)$ng t'e 4e%ond +ound.

77.   8$)st#!⸲ se%. 5.<.1,$/)e6u$)ed t'e Pane# mem(e)s to assess 9'et'e) t'e staff mem(e)@s "e)fo)man%e met t'e m$n$mum t')es'o#d of -A%'$e3ed. o) $ts e6u$3a#ent fo) o3e)a## 9o)? o(:e%t$3es⸲ and -P)of$%$ent. o) $ts e6u$3a#ent fo) o3e)a## %om"eten%$es. T'ese "e)fo)man%e t')es'o#ds d$)e%t#!)efe) to t'e)at$ngs)ef#e%ted $n t'e e0PADs⸲ as "e) t'e PA ; 4. I$t'out (e$ng ")o3$ded su%')at$ngs⸲ t'e Pane# mem(e)s 9e)e not $n a "os$t$on to 3e)$f! $f t'e m$n$mum)e6u$)ements set fo)t' $n se%. 5.<.1,$/ 9e)e met.

81.   It is apparent from the consolidated tables of hearings of candidates for

")o3$des $n $ts se%. 16 t'at -A%'$e3ed. and -P)of$%$ent. %o))es"ond to a)at$ng (et9een 5.1 and 8.0& 9'$%' a#so seems to (e t'e "os$t$on ado"ted (! t'e D*+ ; & as "e) t'e ()oad%ast sent on 18 ; a! 2011 ,see "a)a. 71 a(o3e/. T'e T)$(una# %annot)e%on%$#e t'ese t9o a""a)ent#! %ont)ad$%to)! ")o3$s$ons of t'e PA ; 4 and& g$3en t'at $t $s not dete)m$nat$3e of t'e ")esent a""#$%at$on& 9$## #m$t $tse#f to

88.   T'e se#e%t$on (! t'e Pane# mem(e)s of t9o %and$dates 9'o d$d not meet t'e m$n$mum t')es'o#d %)$te)$on $n se%. 5.<.1,$/ of t'e P)omot$ons Po#$%! to ad3an%e to t'e T'$)d +ound e3a#uat$on %onst$tutes a ")o%edu)a# e))o) $n t'e $m"#ementat$on of t'e P)omot$ons Po#$%! t'at $m"a%ted on a## t'e e#$g$(#e %and$dates as $t de")$3ed t9o of t'em of t'e "oss$($$t! to ad3an%e to t'e T'$)d +ound. T'$s matte) a#so)a$ses mo)e fundamenta# 6uest$ons as to t'e 9'o#e ")o%ess.

8<.   *o9 $s $t "oss$(#e t'at among a "oo# of 187 fema#e e#g(#e %and$dates¿ t9o %and$dates 9'o d$d not e3en meet t'e m$n$mum)e6u$)ement 9e)e se#e%ted to ad3an%e to t'e T'$)d +ound and e3en %ons$de)ed to (e t'e (est ones (! t9o Pane# mem(e)sM I as t'e $nfo)mat$on %o##e%ted (! t'e Pe)fo)man%e ; anagement Asso%$ate du#! %on3e!ed to t'e Pane# mem(e)sM 5s $t due to t'e fa%t t'at t'e Pane# mem(e)s 9e)e not a(#e to 3e)$f! %om"#$an%e 9$t' t'e)e6u$)ement t'emse#3es¿ as t'e! 9e)e not ")o3$ded t'e e0PADsM 5s $t t'at t'e)e6u$)ement set out $n 5.<.1,$/ 9as tota##! $gno)ed o) m$s$nte)")etedM I e)e t'e Pane# mem(e)s)e%?#ess $n t'e$))e3$e9 and)an?$ng of t'e %and$datesM D$d t'e na))a

$dent$f! st)engt's and 9ea?nesses $n t'e 3a)$ous staff mem(e)s@ %and$da%!& and %om"a)e t'em aga$nst one anot'e).

<2.   8o) $nstan%e&)at$ngs of -HF%e"t$ona##! A%'$e3ed. o) -HF%e"t$ona##! P)of$%$ent. 9e)e most %e)ta$n#!)e#e3ant to t'e Pane#@s %ons$de)at$on of& inter alia& 9'et'e) %and$dates 'ad -%ons$stent#! demonst)ated eF%e"t$ona# "e)fo)man%e and do%umented eFem"#a)! se)3$%e.& as "e) se%. 5.<.1,$/ of t'e P)omot$ons Po#$%!. As t'e +es"ondent a%?no9#edged $n '$s)e"#!& t'e eF")ess$on -eF%e"t$ona# "e)fo)man%e.)efe)s d$)e%t#! to t'e PA ; 4& $n 9'$%' t'e (est #e3e# of "e)fo)man%e 9as)ated as -HF%e"t$ona##! A%'$e3ed. o) -HF%e"t$ona##! P)of$%$ent.. 5f t'e Pane# mem(e)s 'ad (een ")o3$ded 9$t' t'e e0PADs& t'e! %ou#d 'a3e "oss$(#! $dent$f$ed outstand$ng %and$dates (! t'e$))at$ngs& 9$t' t'e ass$stan%e of t'e %omments ")o3$ded (! t'e su"e)3$so). A#t'oug' t'e)e ma! (e some %on%e)ns as to t'e)e#$a($#$t! of t'e)at$ngs& t'e! ne3e)t'e#ess %onst$tuted t'e essen%e of t'e a"")a$sa# s!stem at t'e)e#e3ant "e)$od& and ")o3$ded 6uanttat3e 3a#ues "oss$(#! usefu# to d$stngus' %and$dates $n a "oo# of 187.

<1.   8u)t'e)mo)e& t'e T)$(una# $s of t'e 3$e9 t'at 9'$#e t'e Adm$n$st)at$on ma! 'a3e found $t mo)e a"")o")$ate not to d$s%#ose t'e %and$dates@ "e)fo)man%e)at$ngs to t'e Pane# due to t'e so0%a##ed -)at$ng $nf#at$on

<8.   >ast#!& t'e T)$(una# notes 9$t' su)")$se t'at t'e Pane# mem(e)s 9e)e ")esented& fo) t'e$) s$gnatu)e& 9$t' a %o"! of t'e %onso#$dated #$st of %and$dates unde))e3$e9 du)$ng t'e 4e%ond +ound. T'$s 9as ")e")a)ed (! t'e D*+; and %onta$ns t'e fo##o9$ng %e)tf%at$on₳ -5 'e)e9$t' %onf$)m t'at 5 'a3e)e3$e9ed t'e fa%t s'eets and ")efo)man%e a"")a$sa#s of t'e staff mem(e)s %onta$ned $n t'e a(o3e)an?$ng₳ 9 '$%')ef#e%ts m! %om"a)at$3e assessment of t'em $n #$ne 9$t' "a)ag)a"' ' 5.<.1 of t'e ₿P)omot$ons Po#$%!₵.. 5neF"#$%a(#!& t'e Pane# mem(e)s a## s$gned t'$s do%ument des"$te not 'a3$ng (een ")o3$ded t'e e0PADs. T'e T)$(una# f$nds t'at t'$s a"")a)ent#! $n%o))e%t %onf$)mat$on %)eated an a"")ea)an%e of %om"#$an%e 9$t' t'e P)omot$ons Po#$%!.

<<.   5n 3$e9 of t'e fo)ego$ng& t'e T)$(una# f$nds t'at t'e eF%#us$on of t'e e0PADs f)om t'e Pane# mem(e)s@ %om"a)at$3e assessment of t'e %and$dates du)$ng t'e 4e%ond +ound %onst$tutes anot'e) fundamenta# ")o%edu)a# e))o) $n t'e $m"#ementat$on of t'e P)omot$ons Po#$%!. T'e eF%#us$on of t'e %and$dates@ nume)$%)at$ngs& 9 '$%' 9e)e %ent)a# to t'e a"")a$sa# s!stem f)om 200< to 2011& de")$3ed t'e Pane# mem(e)s of essent$a# $nfo)mat$on fo) t'e$) %ons$de)at$on of t'e ")efo)man%e and manage)$a# a%'$e3ements %)$te)$a unde) se%. 5.<.1 of t'e P)omot$ons Po#$%!. 5t a#so ")e3ented t'em f)om "e)sona##! assess$ng 9 'et'e) t'e m$n$mum "e)fo)man%e standa)d set fo)t' $n se%. 5.<.1₵/ 9as met& as t'e! 9e)e)e6u$)ed to do. Aga$n& $t a"")ea)s t'at t'e D*+; soug't to a""#! t'e P)omot$ons Po#$%! $n t'e 9a! $t t'oug't $t 9as $ntended to (e and& as su%'& $t %ont)a3ened $ts a%tua# "#a$n 9o)d$ng. 8u)t'e)mo)e& t'e $n%#us$on of %and$dates 9 'o d$d not meet t'e m$n$mum "e)fo)man%e)e6u$)ement among t'ose 9 'o ad3an%ed to t'e T'$)d +ound %onst$tutes& $n $tse#f& anot'e) e))o) $n t'e $m"#ementat$on of t'e P)omot$ons Po#$%!.

Hsta(#$s'ment of an add$t$ona# e3a#uat$on %)$te)$on

100. T'e A"”#$%ant su(m$ts t'at t'e D*+; $nt)odu%ed an add$t$ona# e3a#uat$on %)$te)$on. D **D)aD Do6aD(D!#))o34(e)-3.66653()-14934345(()-1.44944(e)-3.66653())2.5788(s)-5.37099(

mem(e)@s se%t$on& 'e 9ou#d 'a3e& o) not& a (ette) %'an%e of)e%e3ng a '$g'
)an?$ng. 5n t'$s)es"e%t& $t $s fu)t'e) noted t'at fou) Pane# mem(e)s 9e)e se#e%ted
(! t'e Adm$n$st)at$on and fou) (! t'e staff mem(e)s

of 9'et'e) o) not t'e Pane# mem(e)s d§d a%tua##! %ons§de) t'§s %)§te)§on §n t'e§) %om"a)at§3e assessment of t'e %and§dates. T'e ")esum"t§on of)egu#a)§t! atta%'ed to t'e a%ts of t'e Adm§n§st)at§on 'as (een)e(utted₺ and §t 9as fo) t'e +es"ondent to addu%e e3§den%e t'at t'e Pane# mem(e)s d§d not ta?e §nto a%%ount t'§s §))e#e3ant e3a#uat§on %)§te)§on. Not on#! t'e +es"ondent d§d not addu%e e3§den%e §n t'§s)es"e%t₺ (ut 'e)at'e) §ns§sted t'at t'§s 9as a ")o"e) fa%to) fo) %ons§de)at§on.

<u>Use of "e)sona# ?no9#edge</u>

110.   T'e A""#§%ant ta?es §ssue 9§t' t'e fa%t t'at t'e D*+; §n3§ted t'e Pane# mem(e)s to ta?e §nto %ons§de)at§on t'e§) "e)sona# ?

112.   Aga$n& t'e T)$(una# $s not $n a "os$t$on to as%e)ta$n 'o9 t'e ad3$%e g$3en (! t'e D*+ ; $nf#uen%ed t'e Pane# mem(e)s@ assessment of t'e %and$dates.

111.   T'e P)omot$ons Po#$%! eF"#$%$t#! states& at se%. 5.<,$/ and ,$$/& t'at t'e Pane# mem(e)s must (ase t'e$) %om"a)at$3e assessment of t'e %and$dates on t'e #atte)@s fa%t s'eets and e0PADs. 5n tu)n& se%. 2.7 states t'at -Bt℃'e Pane#s s'a## ensu)e t'at %on%#us$ons a)e not $nf#uen%ed (! an! unsu(stant$ated $nfo)mat$on ")o3$ded o)a##! o) $n 9)$t$ng (! an! "e)son o) aut'o)$t! eFte)na# o) $nte)na# to t'e UN*C+& $n%#ud$ng (!& o) on (e'a#f of& staff mem(e)s 9'ose %ases a)e unde))e3$e9.& t'e)e(! s"e%$f$%a##! ")e3ent$ng t'e ta?$ng $nto %ons$de)at$on of $nfo)mat$on not)ef#e%ted $n t'e do%uments ")o3$ded to t'e 9'o#e Pane#. >$?e9$se& t'e P)omot$ons Po#$%! does not en3$sage an!)o#e fo) t'e D*+ ; to ")o3$de add$t$ona# $nfo)mat$on to Pane# mem(e)s (ut so#e#! to ")o3$de te%'n$%a# ad3$%e and gu$dan%e on t'e a""#$%a(#e)u#es ,see se%. 2.2.5/.

112.   T'e T)$(una# f$nds t'at t'e)e $s no)oom $n t'e P)omot$ons Po#$%! fo) t'e Pane# mem(e)s to $nfo)m t'e$))an?$ngs 9$t' add$t$ona# $nfo)mat$on t'e! ma! ?no9 a(out (ut t'at $s not)ef#e%ted $n t'e do%uments su(:e%t to t'e$))e3$e9. =t'e)9$se& %and$dates ma! (e ad3antaged o) d$sad3antaged (ased on t'e fa%t t'at t'e! a)e ?no9n to some of t'e Pane# mem(e)s& o"en$ng t'e doo) to ne"ot$sm and ($as. T'e T)$(una# a%?no9#edges t'at Pane# mem(e)s

115. 5n 3§e9 of t'e fo)ego§ng& t'e T)§(una# %on%#udes t'at& $))es"e%t$3e of 9'et'e) o) not t'e Pane# mem(e)s a%tua##! used $nfo)mat§on t'at 9as not)ef#e%ted $n t'e %and$dates@ fa%t s'eet& t'e D*+; @s ad3$%e to ta?e $nto a%%ount $nfo)mat§on not)ef#e%ted $n t'e do%uments su(m$tted to t'e %o##eg$a#)e3$e9 of t'e Pane# 9as $m")o"e) and %onst$tutes a ")o%edu)a# $))egu#a)§t! $n t'e $m"#ementat$on of t'e P)omot$ons Po#$%!.

+an?$ng met'odo#og!

116. T'e A""#$%ant 'as '$g'#$g'ted s$gn$f$%ant $ssues 9$t' t'e)an?$ng met'odo#og! ")o"osed (! t'e D*+;& t'e nd3$dua#)an?$ngs ")o3$ded (! t'e e§g't Pane# mem(e)s and t'e$) t)eatment (! t'e D*+; 9'en $t -%)un%'ed t'e data.& as one 9$tness stated. T'e +es"ondent a)gues t'at t'e met'odo#og! used 9as ")o"e) (ut a%?no9#edges t'at t'e)e 'a3e (een some m$sta?es %omm$tted (! t'e Pane# mem(e)s $n a""#!$ng t'e suggested met'odo#og!. *e a)gues& 'o9e3e)& t'at t'ese 'ad no $m"a%t on t'e A""#$%ant@s %and$da

121. A t'$)d Pane# mem(e) a#so s!stemat$%a##!)an?ed %and$dates 9t'n a g)ou" and $ndeed ass$gned t'e same)an?$ng to u" to 25 %and$dates. *e)an?ed 10 %and$dates num(e) 1& 11 %and$dates num(e) 11& 11 %and$dates num(e) 22& 8 %and$dates num(e) 11& 10 %and$dates num(e) 21& 10 %and$dates num(e) 51& < %and$dates num(e) 61& 12 %and$dates num(e) 70& 22 %and$dates num(e) 82& 15 %and$dates num(e) 105& 25 %and$dates num(e) 118& 1 %and$date num(e) 11<& 22 %and$dates num(e) 121 and 20 %and$dates num(e) 162. *e a#so %omm$tted e))o)s $n ass$gn$ng t'e neFt)an?$ng fo##o9$ng a g)ou"$ng& fo) $nstan%e& (!)an?$ng 25 %and$dates num(e) 118 and t'en assgnng t'e neFt %and$date num(e) 11<& $nstead of num(e) 121. A#so& t'$s Pane# mem(e) d$d not ass$gn a)an?$ng '$g'e) t'an 162 to an! %and$date.   ! not ass$gn$ng t'e #ast)an?$ngs to an! %and$dates& t'$s Pane# mem(e) ne%essa)$#! 'ad a d$ffe)ent $m"a%t on t'e %and$dates@ a3e)age.

122. A fou)t' Pane# mem(e) a#so)an?ed a#most a## %and$dates $n a g)ou" of 10. 5n "a)t$%u#a)& t'$s Pane# mem(e))an?ed 11 %and$dates num(e) 1& 10 %and$dates num(e) 11& 5 %and$dates num(e) 21& 10 %and$dates num(e) 27& 11 %and$dates num(e) 17& 10 %and$dates num(e) 28& 10 %and$dates num(e) 2<& 10 %and$dates num(e) 5<& 6 %and$dates num(e) 6<& 6 %and$dates num(e) 75& 10 %and$dates num(e) 81& 16 %and$dates num(e) <1& 10 %and$dates num(e) 107& 12 %and$dates num(e) 117& 10 %and$dates num(e) 111& 8 %and$dates num(e) 121& 2 %and$dates num(e) 12<& 10 %and$dates num(e) 152 and 16 %and$dates num(e) 162. 5n t'$s ")o%ess& 'e %omm$tted se3e)a# e))o)s $n t'e a""#$%at$on of t'e suggested met'odo#og!& (! not assgnng %o))e%t#! t'e neFt)an?$ng. Amongst ot'e)s& 'e)an?ed 10 %and$dates num(e) 28 and t'e neFt ten %and$dates num(e) 2< a#t'oug' t'e! s'ou#d 'a3e (een)an?ed num(e) 58. ; ost sgnf$%ant#!& t'$s Pane# mem(e))an?ed 128 %and$dates (e#o9 120& 9'$%' $s t'e t')es'o#d to ad3an%e to t'e T'$)d +ound. *e ga3e t'$s (enef$t to mo)e %and$dates t'at t'e Po#$%! a##o9ed '$m to do. >$?e t'e ")e3$ous Pane# mem(e)& 'e)an?ed no %and$date '$g'e) t'an 162.

121. A f$ft' Pane# mem(e) a#so)an?ed %and$dates $n g)ou"s of a m$n$mum of t9o "eo"#e& g)ou"$ng u" to 11 "eo"#e toget'e). 5n t'$s ")o%ess& 'e a#so %omm$tted a num(e) of e))o)s $n ass$gn$ng t'e neFt)an? fo##o9$ng a g)ou"$ng. 8u)t'e)mo)e&

ne%essa)! to get ")ofess$ona# ad3$%e g$3en t'e "otent$a# $m"a%t of t'e ")o"osed met'odo#og! on t'e %and$dates@ o3e)a##)an?$ng.

128. T'e T)$(una# %annot (ut 9onde) 'o9 and 9'! se3en of t'e e§g't Pane# mem(e)s ended u" g)ou"$ng a#most a## %and$dates 9t'n a g)ou" of 10 o) t'e)ea(out. I as $t ag)eed u"onꟾ 5f notꟾ 9'at 9e)e t'e %)$te)$a used to d3de t'e %and$dates $nto su%' g)ou"sꟾ T'e)e $s a d$ffe)en%e (et9een assgnng t'e same)an?$ng to t9o o) mo)e %and$dates 9'o a)e -undstngu$s'a(#e.ꟾ as suggested (! t'e D*+ ; ꟾ and engag$ng $n a g)ou"$ng eFe)%$se. T'e)an?$ng ")o%ess t'at most

111. 4'e 9as una(#e to ")o3$de an! fu)t'e) eF"#anat$on du)$ng 'e) test$mon! (efo)e t'e T)$(una#.

112. T'e ")o(#em 9$t' t'$s %o))e%t$on eFe)%$se $s t'at $t assumes t'at t'e met'odo#og! fo))an?$ng -und$stngus'a(#e. %and$dates suggested (! t'e D*+ ; 9as (ndng o)t at (est t'at t'e Pane# mem(e)s $ntended to fo##o9 $t. 8$)st#!t as t'ese -$nst)u%t$ons. 9e)e not t'e su(:e%t of an adm$n$st)at$3e $ssuan%et t'e! %annot (e %ons$de)ed as ($nd$ng u"on t'e Pane# mem(e)s. =ne 9$tness$ $ndeed$)efe))ed to t'e met'odo#og$%a# suggest$on as $n fa%t (e$ng no mo)e t'an t'at$ a suggeston as $t %ou#d not (e mo)e. 4e%ond#!t a(sent an! e3$den%e f)om t'e Pane# mem(e)s$ 9'o 9e)e not $n3o#3ed $n t'e %o))e%t$on eFe)%se $t %annot (e ")esumed t'at t'e! $ntended to fo##o9 t'e D*+ ; @s suggested a"")oa%'. 5ndeed$ most of t'em d$d not$ nota(#! 9'en t'e! e#e%ted to ")o%eed (! g)ou"$ng. 5n t'ese %$)%umstan%es$ t'e +es"ondent@s post factum)e%onst)u%t$on $s "u)e#! s"e%u#at$3e and of no ass$stan%e. T'e T)$(una# $s t'e)efo)e not $n a "os$t$on to assess t'e $m"a%t of t'e nume)ous e))o)s and du($ous met'odo#og! ado"ted (! some Pane# mem(e)s on t'e A""#$%ant@s %'an%es fo) ")omot$on.

115. 5n 3$e9 of t'e fo)ego$ng$ t'e T)$(una# %on%#udes t'at t'e)andom a""#$%at$on of a g)ou"$ng met'odo#og! (! !   n gsuggeston gf)om t'e

118.   At ot'e) t$mest t'e ta(#e "o$nts to9a)ds some %onsensus (ut 9$t' s$gn$f$%ant out#$e)s. 8o) $nstan%et one %and$date 9as)an?ed (e#o9 27 (! se3en Pane# mem(e)st (ut num(e) 121 (! t'e e$g't' Pane# mem(e).

121. T'e A""#$%ant a#so a##uded to ot'e) "oss$($#$t$es& mo)e s"e%f%a##! to t'e Pane# mem(e)s ta?$ng $nto %ons$de)at$on t'e) "e)sona# ?no9#edge of %and$dates& to a fa$#u)e to suff$%$ent#! def$ne t'e e3a#uat$on %)$te)$a and to t'e s%a#e of t'e tas?. T'e T)$(una# 'as a#)ead! add)essed t'e f$)st fa%to)& 9'$%' $ndeed %ou#d "oss$(#! eF"#a$n some out#$e))an?$ngs and demonst)ate t'at t'$s ad3$%e (! t'e D*+; gene)ated tang$(#e ")o(#ems. T'e T)$(una# 9$## no9 eFam$ne t'e t9o add$t$ona# suggested fa%to)s $n tu)n.

122. As)e%a##ed a(o3e& $t $s not t'e T)$(una#$s)o#e to

def§ned. T'at (e§ng sa§d& t'e T)§(una#& 9'§%' 'as (! no9 eFam§ned t'e 4e%ond
+ound)e3§e9 unde)ta?en (! t'e 4en§o) P)omot§ons Pane# ,see& e.g.& Rodriguez-
Viquez fo) ma#e %and§dates fo) ")omot§on to t'e P05 #e3e#& *pannuth Verma
UNDT/2016/021 fo) fema#e %and§dates fo) ")omot§on to t'e P05 #e3e#/& and& 9§t'
t'§s %ase& t'at (! t'e Pane#& §s '§g'#! %on%e)ned t'at §t ma! (e s§m"#! §m"oss§(#e&
§n ")a%t§%e& to fa§)#! and ade6uate#! %om"a)e and)an? t'e P01 %and§dates aga§nst
t'ese %)§te)§a& g§3en t'e num(e) of %and§dates and t'e §nfo)mat§on a3a§#a(#e.

128.   Tu)n§ng mo)e s"e%§f§%a##! to t'e tas? t'at t'e Pane# mem(e)s 9e)e as?ed to
unde)ta?e& t'e T)§(una# notes t'at t'e)e §s #§tt#e gu§dan%e& §f an!& §n t'e P)omot§ons
Po#§%! a(out t'e ")o%edu)e o) met'odo#og! to (e used to fu#f§# t'e '§g'#! %om"#eF
eFe)%§se t'at t'e 4e%ond +ound e3a#uat§on §n3o#3es. No adm§n§st)at§3e §ssuan%e
9as ")o3§ded e§t'e). §nstead& t'e D*+ ; attem"ted to de3§se t'e met'odo#og! to
(e fo##o9ed.

12<. §t 'as (een esta(#§s'ed t'at on 26 June 2012& t'e D*+ ; %on3ened t'e Pane#
to t'e P)omot§ons 4ess§on to (e 'e#d §n Gene3a f)om 21 Ju#! 2012 to
1 August 2012& fo) %ons§de)at§on of a## e#§g§(#e %and§dates fo) ")omot§on to t'e P0
2 #e3e#& ma#e and fema#e. T'e)e 9e)e 187 fema#e and 212 ma1e e#§g§(#e
%and§dates fo) ")omot§on to t'e P02 #e3e#. T'e Pane# mem(e)s 9e)e& at t'at t§me&
g§3en a%%ess to a## t'e %and§dates@ fa%t s'eets. 8)om 21 Ju#! to 25 Ju#! 2012& t'e
Pane# mem(e)s gat'e)ed §n Gene3a to %ondu%t t'e§) §nd§3§dua# assessment of a##
t'e %and§dates& §n a %ont)o##ed en3§)onment& a9a! f)om an! d§st)a%t§on. U"on
a))§3a#& t'e Pane# mem(e)s 9e)e ")o3§ded 9§t' a %om"ute)& a 'a)d %o"! of a## t'e
fa%t s'eets& d§3§ded (! gende) and g)ade #e3e#& and t'e fou) #§sts of %and§dates to
use as a tem"#ate fo) t'e§))an?§ng.

150. T'e D*+ ; ")o3§ded t'e Pane# mem(e)s 9§60221( )-378.863(04T(+)-4.49 92e)-3.665219(§)0.8

151. The Panel members were also encouraged to annotate any observations that might highlight the merits of the staff member on the template provided to facilitate the ranking, as these observations may prove useful for future reference, e.g. when determining the final individual ranking of staff members or during the 1st round review. Most importantly, the Panel members were also advised, based on the lessons learned from the Senior Promotions Session, to decide on criteria before starting the review. The Panel members, who were initially allocated three days for their overall review, thus an additional one if needed, appear to have completed their review within five days. The fifth day was initially reserved for the D*+? to consolidate the data, so the Third Round could proceed the following week, but the data processing appears to have been done during the weekend.

152. There is no doubt that the Panel members' task was enormous and highly complex, considering the large number of candidates that had to be assessed in a comparative fashion and the documents at their disposal. Comparing and ranking 187 candidates, which should in fact have been 221, based on their performance and managerial skills, was by nature a highly complex exercise. The Applicant's fact sheet, for instance, contains 21 pages of densely condensed information about their languages skills, academic background, employment record, performance evaluations, and development and learning events.

151. The Tribunal recalls that the fact sheet contains no quantitative value such as performance ratings (by a supervisor). For the relevant period, the fact sheet merely contains, in the Performance Evaluations section, the staff member's work objectives and the comments of his or her supervisor divided as follows:

    a.   Manager Comments on Values, Core Competencies, and Managerial Competencies;

    b.   Manager Comments on Cross-functional and functional Competencies; and

    c.   Manager Overall Competencies Comments.

152. T'ese)u()$%s a)e 3e)! gene)a# and t'e)e a)e no s"e%f% %omments& fo) $nstan%e& on manage)$a# a%'$e3ements. T'e %omments& 9'$%' 9e)e not meant to se)3e as a s"e%f% a"")a$sa# of t'e %and$dates@ %a"a%$t! to "e)fo)m at t'e P02 #e3e#& a)e e$t'e) 3e)! gene)a# o)& at t$mes& fo%us on "a)t$%u#a) ")o:e%ts t'at a)e not d$)e%t#!)e#e3ant fo) t'e ")esent eFe)%$se. T'e Pane# mem(e)s 9e)e)e6u$)ed to %om"a)e 187 fa%t s'eets 9t'n a da! o) t9o& and to do t'e same fo) t'e 212 ma#e %and$dates to t'e P02 #e3e# T'e 9'o#e)e3$e9 of t'e 221 %and$dates 9as %om"#eted 9t'n f$3e da!s.

155. *a3$ng)e3$e9ed t'e A""#$%ant@s fa%t s'eet and some ot'e)s $n s$m$#a) a""#$%at$ons (efo)e $t& t'e T)$(una# %annot (ut 9onde) 'o9 t'e Pane# mem(e)s %ou#d "oss$(#! fa$)#! and ade6uate#! %ons$de) and %om"a)e t'e 187 fema#e %and$dates@ "e)fo)man%e and manage)$a# a%'$e3ements $n t'e fa%e of t'e $nfo)mat$on d$s"#a!ed $n t'e$) fa%t s'eet a#one& and unde)ta?e t'e same tas? fo) t'e 212 ma#e %and$dates $n su%' a s'o)t "e)$od and 9$t'

158.   T'e T)$(una# 'as se)$ous dou(ts t'at e3en 9$t' t'e e0PADs& $t ma! not 'a3e (een feas$(#e fo) t'e Pane# mem(e)s to unde)ta?e t'e qualitative %om"a)at$3e assessment en3$saged $n t'e P)omot$ons Po#$%! 9'en fa%ed 9$t' 'und)eds of

to t'e '$g'est. None of t'e 9$tnesses ")esented (! t'e +es"ondent %ou#d ")o3$de an! %ogent eF"#anat$on as to 9'! t'$s met'odo#og! 9as %'osen. T'e e3$den%e d$s%#osed t'at no statst%a# ad3$%e 9as soug't o) o(ta$ned $n)es"e%t of t'e a"")o")$ate met'odo#og! to (e used.

162. T'e T)$(una#)e%a##s t'at t'e ne9 3e)s$on of t'e P)omot$ons Po#$%!& a"")$ed fo) t'e 2011 P)omot$ons 4ess$on& $s su(stant$a##! d$ffe)ent f)om t'e ")e3$ous "o#$%! as $t enta$#s a)an?$ng ")o%ess)at'e) t'an a s%o)$ng one. T'e %onso#$dat$on

and the Tribunals from reviewing administrative decisions affecting the contractual rights of staff members.. However, the Appeals Tribunal did not create an independent, positive obligation for the Administration to disclose reasons for its decision beforehand unless otherwise specifically provided for in administrative issuances. Most certainly, the Applicant was ultimately not prevented from meaningfully challenging the contested decision.

170. The Tribunal observes that the Administration's lack of consistency in disclosing the rankings, could with the opacity in the procedures followed by the DHRM and the Panel may have caused the Applicant not to fully understand the decision reached and the overall process. To alleviate this problem, the Tribunal strongly encourages the Administration to adopt clear and transparent procedures for the implementation of the Promotions Policy.

Conclusion in respect of the legality of the decision

171. The Tribunal has identified above several significant procedural errors in the implementation of the Promotions Policy during the 2011 Promotions Session, which may be summarised as follows:

    a.   The High Commissioner deciding in advance of the Promotions Session that an equal number of available slots for promotions would be allocated to female and male candidates, and thus limiting the slots awarded to women to 50%;

    b.   The DHRM separating the candidates by gender for the Second Round evaluation;

    c.   The DHRM failing to provide the Panel members with the ePADs ratings;

    d.   The Panel members not assessing compliance with the minimum performance threshold under sec. 5.8.1(i) of the Promotions Policy;

e.

180.   The errors in the implementation of the Promotions Policy are so significant that their impact on the Applicant's chance for promotion cannot be measured. Most certainly, the Applicant had a real chance for promotion.

181.   Therefore, the Tribunal rescinds the decision.

Specific performance

182.   The Applicant requests retroactive grant of promotion, with attendant payment of increased salary and benefits. Alternatively, she requests the Tribunal to remand her candidacy for further consideration, with strict guidance, as she considers that the Promotions Policy currently in place does not provide for reasonable consideration since it depends on the subjective view of a limited number of the UNHCR managers.

181.   The Tribunal reiterates that the contested decision is discretionary in nature, and that it is not its role to exercise the discretionary authority vested on the Panel and the High Commissioner by substituting its own assessment for that of the competent official (see Sanwidi 2010-UNAT-082, Abbassi 2011-UNAT-110). It is part of the concept of discretion that its exercise may lawfully result in decisions that are different from those the Tribunal might have preferred. Therefore, where the judicial review concerns the exercise of discretion, the Tribunal can order specific performance, such as it has been requested in the present case, solely in the rare hypothesis where the result of the exercise of discretion can be narrowed down in such a way as to only have one legally correct outcome (see Demagic et al UNDT/2015/115). This is not the case in the application at hand.

182.   The Tribunal has concluded that the Panel had not fairly and adequately considered the Applicant's candidacy for promotion to the P-2 level when comparing her with the other candidates. The High Commissioner, who is the competent decision-maker, has not received a proper and meaningful recommendation for making his decision as to whether or not to award one of the 158 available slots for promotion to the P-2 level to the Applicant. Until this exercise has been properly performed, its outcome remains open for the

A""#$%ant. 5f t'e T)$(una# 9e)e to g)ant t'e A""#$%ant a ")omot$on& $t 9ou#d (e tantamount to ")e:udg$ng t'e out%ome of t'e %om"a)at$3e assessment of a## e#$g$(#e %and$dates en3$saged $n t'e P)omot$ons Po#$%!& and su(st$tut$ng $ts assessment fo) t'at of t'e Pane# and t'e *$g' Comm$ss$one)& somet'$ng t'at t'e T)$(una# $s ne$t'e) a##o9ed no) $n a "os$t$on to do.

185. As to t'e A""#$%ant@s a#te)nat$3e)e6uest fo) '$s %

1<1. Cons$de)$ng t'e eFt)eme dff%u#t$es $n as%e)ta$n$ng t'e A""#$%ant@s %'an%es

9ou#d not automat$%a##!)e%e$3e)et)oa%t$3e "a!ment of sa#a)! at t'e '$g'e) #e3e#
f)om 20 =%to(e) 2012⥙ e3en $f ")omoted and⥙ as a)esu#t⥙)es%sson of t'e
%ontested de%$s$on 9ou#d not fu##! %om"ensate a #oss of sa#a)!. T'e T)$(una# must
t'e)efo)e eFam$ne $f t'$s "oss$(#e #oss of sa#a)!⥙ $n %ase t'e +es"ondent does not
e#e%t to "a! %om"ensat$on $n #$eu of)es%sson⥙ :ust$f$es a9a)d$ng mate)$a#

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a)   Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b)   Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation, and shall provide the reasons for that decision. (emphasis added)

201. The question arises as to whether the instant case is governed by this amended version of the Tribunal's Statute given that the High Commissioner's decision not to promote the Applicant predates the amendment, whereas his decision to reject the Applicant's recourse and the present application were issued and filed, respectively, after the amendment.

202. The Applicant argued that her right to claim compensation for moral damages accrued at the time of the fundamental breach of her substantive entitlements, which occurred when the High Commissioner decided not to promote her. The Applicant also submitted during the hearing that the challenged decision is the High Commissioner's decision of 20

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