



## Introduction

1. The Applicant is a Deputy Representative working with the United Nations Population Fund (UNFPA). She serves on a fixed-term appointment at the P-4/10 level,

7. On 16 August 2019, the UNFPA Director, Office of Audit and Investigation Services (OAIS) endorsed the Investigation Report and referred it to the UNFPA Chief, Legal Unit for appropriate a

fully and correctly reasoned. The Administration has also failed to provide reasons justifying the extension of her placement on ALWP. With regard to urgency, the Applicant contends that the continuing legal effect of the impugned decision means that at any stage during its continuance, there is an element of urgency. For the irreparable harm, the Applicant submits that if she continues to be placed on ALWP,



b. The reason the Applicant failed to take up the post related to health concerns for her baby. The Respondent was in the process of identifying a suitable work place for her when issues relating to her being investigated for misconduct surfaced.

19. The Applicant was notified about the investigations on 6 September 2019<sup>12</sup> and on 16 September 2019 she notified the Respondent about her readiness to take up the position in Guinea.<sup>13</sup>

20. The events that followed after the issue of her being under investigation came to light seem to suggest that her change of mind/position in as far as her being unable to work in Guinea bear close connection to the fact of her being investigated and do not support the view that she is being victimized by the Respondent. And, in agreement with the Respondent, the fact that the Applicant left Guinea in February 2019 and has since not returned, yet submitted an email from medical staff in Guinea indicating that she was able to return to work as of 19 September 2019, raises authenticity issues since it is unclear how such assessment was made in her absence. It is also surprising that the medical finding does not include an assessment of the medical well-being of the Applicant's young child, a primary motivating factor for the Applicant's leaving Guinea in the first place.

21. The above facts support a finding, as the Tribunal does, that the Applicant cannot be heard complaining that she was irregularly replaced and is under threat of being denied her right to work when she did not avail herself for work, and only did so when it was convenient to her.

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<sup>12</sup> Application, annex F.

<sup>13</sup> Application, annex J.

22. About the complaint that no reason/justification was given for her to be placed on ALWP, and for its extension until 31 December 2019 contrary to Staff Rule 14.2., the Tribunal agrees with the Applicant that the Respondent did not give detailed reasons for placing her on ALWP. However, since the Applicant was aware that the position was occupied since July 2019 (and had not raised objections until the issue of her being under investigation surfaced), she must be taken to be aware that her redeployment or temporary reassignment is not feasible and/or reasonable under the circumstances.

23. The Tribunal is of the considered opinion that if the application were granted it would cause unnecessary disruption to the normal work flow and yet the Applicant's

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Entered in the Register on this 16<sup>th</sup> day of December 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi