



## **Introduction**

1. The Applicant, a former staff member of the United Nations Development Programme (“UNDP”), has three cases before the Tribunal:

a. Case No. UNDT/NY/2012/012, in which the Applicant contests UNDP’s alleged failure to protect her from harassment and abuse of authority by her supervisors;

b. Case No. UNDT/NY/2013/015, in which the Applicant contests the decision of 20 December 2012 to issue her a written reprim.4 Tc-.0004w004 Tc-.0004 T.000,2t

3. During the pendency of the interim measures, the Tribunal directed that the

## Consideration

5. The desirability of finality of disputes within the workplace cannot be gainsaid (see *Hashimi* Order No. 93 (NY/2011) dated 24 March 2011 and *Goodwin* UNDT/2011/104). Equally, the desirability of finality of disputes in proceedings requires that a party should be able to raise a valid defence of *res judicata*, which provides that a matter between the same persons, involving the same cause of action, may not be adjudicated twice (see *Shanks* 2010-UNAT-026bis, *Costa* 2010-UNAT-063, *El-Khatib* 2010-UNAT-066, *Beaudry* 2011-UNAT-129). As stated in *Bangoura* UNDT/2011/202, matters that stem from the same cause of action, though they may be couched in other terms, are *res judicata*, which means that the applicant does not have the right to bring the same complaint again.

6. The object of the *res judicata* rule is that “there must be an end to litigation” in order “to ensure the stability of the judicial process” (*Meron* 2012-UNAT-198) and that a party should not have to answer the same cause twice. Once a matter has been resolved, a party should not be able to re-litigate the same issue. An issue, broadly speaking, is a matter of fact or question of law in a dispute between two or more parties which a court is called upon to decide and pronounce itself on in its judgment. Of course, a determination on a technical or interlocutory matter does not result in the final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case. An unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again. In regard to the doctrine of *res judicata*

[ILOAT] Judgment 2538. As explained in [ILOAT] Judgment 2316, under 11:

*Res judicata* operates to bar a subsequent proceeding if the issue submitted for decision in that proceeding has already been the subject of a final and binding decision as to the rights and liabilities of the parties in that regard.

A decision as to the “rights and liabilities of the parties” necessarily involves a judgment on the merits of the case. Where, as here, a complaint is dismissed as irreceivable, there is no judgment on the merits and, thus, no “final and binding decision as to the rights and liabilities of the parties”. Accordingly, the present complaint is not barred by *res judicata*.

7. In the instant three cases, the Applicant has confirmed that she is withdrawing all matters “fully, finally and entirely, including on the merits”. The Applicant’s unequivocal withdrawal of the merits signifies a final and binding resolution with regard to the rights and liabilities of the parties in all respects in all three cases, requiring no pronouncement on the merits but concluding the matter *in toto*. Therefore, dismissal of her cases with a view to finality of proceedings is the most appropriate course of action.

8. This matter has had a chequered history, as more clearly set out in order No. 94 (NY/2014), and has been the subject of several CMDs and *inter partes* discussions, with a view to resolution. Although it has taken time and strenuous effort to achieve resolution, the benefits of judicial intervention and active and vigourous case management cannot be gainsaid, and in this case have finally borne

Case No. UNDT/NY/2012/012  
UNDT/NY/2013/015  
UNDT/NY/2013/096