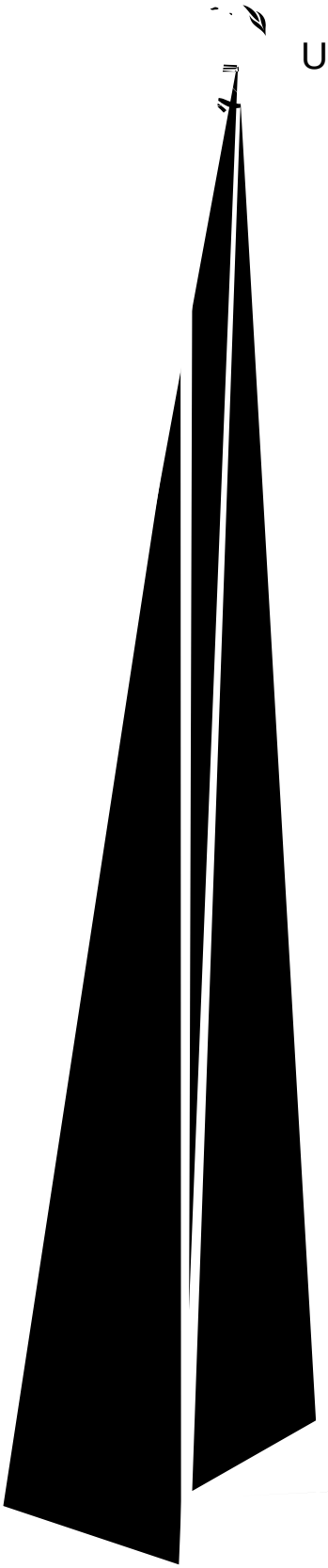

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Introduction and Procedural History

1. On 26 June 2012, the Applicant, a former staff member of the International Criminal Tribunal for Rwanda (ICTR), filed an Application before the Dispute Tribunal challenging the decision not to renew his fixed-term appointment beyond 31 December 2011 (impugned decision).

2. On 24 July 2012, the Respondent filed a Motion for Leave to Have Receivability Considered as a Preliminary Issue. In addition to leave, the Respondent moved for the Application to be dismissed on grounds of receivability. A Reply to the substantive Application was also filed.

3. The Applicant was afforded the opportunity to respond to the Respondent's Motion, which Reply was filed on 2 April 2013.

4. Having reviewed the submissions of the Parties, the Tribunal considered necessary to first rule on whether the present Application was receivable before adjudicating the matter on the merits.

5. On 5 August 2013, the Tribunal rendered its Judgment on Receivability (UNDT/2013/100) refusing the Respondent's motion to have this matter dismissed on grounds of receivability.

6.

8. As part of its completion strategy, ICTR established a Staff Retention Task Force (SRTF) to advise the Registrar on the criteria for objectively comparing staff performing similar functions and to recommend the retention of staff based on those criteria. The SRTF

14. As a result of the retention exercise, the Applicant was identified for separation.

15. On 21 November 2011, the Chief of the SSU, Mr. Diakite, informed the Applicant that his fixed-term appointment would not be renewed upon its expiry on 31 December 2011.

16. On 22 November 2011, the Applicant met with the Chief of ICTR Security, Mr. Samuel Akorimo, who informed him that the functions of his post would be transferred to Arusha and to a post at a lower level (FS-4). When the Applicant requested a transfer to Arusha with the functions of his post, Mr.

transparent in accordance with the principles laid down in the Manyara Accord and in Circular 77".

22. The Applicant was notified of the Retention Review Committee's findings upholding his separation on 13 March 2012.

Submissions

Applicant

23. The Applicant submits that there was (a) "wrongful application of the retention criteria;" (b) unfair practice; (c) discrimination; (d) nepotism; and (e) irregular movement of posts.

24. Staff members who scored less than he did were to be extended beyond 31 December 2011.

25. In the 16 years he spent at the ICTR, he has worked across almost all departments within SSS, which makes him "fully multifunctional as far as the work of the section is concerned". Although he has been consistently appraised as frequently exceeding expectations and promoted for having been good at his job, he is the only person, amongst those who joined ICTR prior to 2002, to have not been retained.

26. As his post was "transferred to Arusha", he should have been given the opportunity to move with his post, even at a lower grade which the Applicant had willingly accepted to do. Furthermore, two officers on temporary posts were regularized at the FS-3 and 4 levels without the Applicant being considered for those posts.

27. As to the suggestion that it would have been too costly to effect the move, the Applicant refers to two of his colleagues who were transferred from Arusha to Kigali

and vice-versa. The Applicant makes the point that this was not the first time he was subjected to unfair treatment. Similar treatment was meted out to him during a promotion exercise in 2009, which took the intervention of the Registrar to resolve.

28. Staff members on regular budget posts such as the Applicant were separated whereas those on temporary appointments were being retained. This was being done to "allow the friends of certain officials to be kept on"

Respondent

29. The decision not to renew the Applicant's contract was based on a retention exercise, properly conducted and over which the Applicant presided.

30. The Applicant chaired the Retention Panel. He raised no objection as to the propriety of the process. Nor did he contest the rating he had received when compared to the other FS-5 Security Lieutenant who was reviewed. It was not until it was clear that the outcome would not be in his favor that he claimed that the process was unfair. This is not a credible claim.

31. Consistent with Information Circular No. 77, the Kigali retention exercise made "an objective comparative analysis of the staff performing similar functions to determine the number of staff and the needed competencies required for effective completion of the work of the Tribunal"

32. Contrary to the Applicant's claims, he and the comparator were both FS-5 Security Lieutenants performing the same functions. That the Applicant was called an Operations Officer and the comparator was called an Officer-in-Charge does not change their primary functions. The Operations Officer or OiC designations are meant only for organisational distribution of responsibilities. Those designations do not change the classified job description of Security Lieutenant.

33. The Applicant's and the comparator's PAS records demonstrate that they performed the same functions and that the Applicant was not the only Security Lieutenant responsible for daily operations, even though he was called Operations Officer. The comparator's PAS record also shows that as the OiC of the ICTR Kigali Security and Safety Unit, his primary goal was to manage and administer the daily operations of the whole Unit in accordance with the United Nations Staff Regulations and Rules and relevant Standard Operating Procedures as required.

34. After being compared to3drfers as7(e).n(r)-22(S.52 Tm [( )] TJ ET Q q BT /F1 12 Tf 0 0 0

some spillover into the first half of 2012, and appears to be completed in 2014. To this end, the ICTR developed a set of staff retention criteria in 2007 which was used to identify the posts which were no longer required, and to compare the competence and skills of staff performing similar functions.

39. The Applicant's contention is that the impugned decision is unlawful because the staff retention process, as applied to him, did not properly take into account his length of service and senior

retained.[5] The Applicant also claims that his separation Personnel Action (PA) notification contained an incorrect post number, which he claims was "a clear indication that the outcome of the retention exercise was preempted by placing [him] against an Arusha temporary post without [his] knowledge" …

44. The Tribunal finds that in making all of these broad assertions and allegations, the Applicant has provided no evidence that the Retention Panel made decisions based on the type of funding for a specific position as he alleges. The criteria for retention were specifically set out and the type of funding was not one of them.

45. Given that the Applicant chaired the Panel which assessed him against the criteria for retention, it would be reasonable to expect him to have cried foul over the inclusion of a random criterion in addition to those specifically set out during

> [t]he Applicant's post number did not change between January 2011 and December 2011, as he alleges. The PA extending the Applicant's appointment on January 1, 2011 indicates a post number of 23674 and a BIS post number of TUA-034-2011-TS-S0007[7]. The PA issued upon his separation indicates the same post number 23674 with a BIS post number of TUA-034-2011-TS-S0028. The post number, not the BIS indicates the post. The BIS post number merely relates to the budget for the post. Therefore, Applicant's contention that he was separated under a different post than his Kigali FS-5 post is incorrect.

49. The Tribunal is also unable to properly examine the Applicant's claims of nepotism, discrimination and unfair treatment because no evidence has been adduced by the Applicant to demonstrate that those elements were meted out against him.

50. The Tribunal finds no impropriety in the Respondent's application of the staff retention criteria in respect of the Applicant.

51. The Application is therefore dismissed.

(signed)

Judge Vinod Boolell

Dated this 14th day of February 2014

Entered in the Register on this 14th day of February 2014

(signed)

Abena Kwakye-Berko, Acting Registrar, UNDT, Nairobi

[7] Respondent's Annex 12.