**112th Session** **Judgment No. 3071**

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Mrs O. F. against the International Labour Organization (ILO) on 5 October 2009 and corrected on 6 January 2010, the Organization's reply of 19 April, the complainant's rejoinder of 27 July, the ILO's surrejoinder of 8 November, the complainant's additional submissions of 18 December 2010 and the Organization's comments thereon dated 4 February 2011;

Considering the complainant's second complaint against the ILO, filed on 11 February 2010 and corrected on 19 April, the Organization's reply of 18 June, the complainant's rejoinder of 16 September and the ILO's surrejoinder dated 17 December 2010;

Considering the complainant's third complaint against the ILO, filed on 22 February 2010 and corrected on 27 March, the Organization's reply of 13 July, the complainant's rejoinder of 6 September and the ILO's surrejoinder dated 8 December 2010;

Considering the complainant's fourth complaint against the ILO, filed on 22 February 2010 and corrected on 16 April, the Organization's reply of 18 June, the complainant's rejoinder of 16 September and the ILO's surrejoinder dated 17 December 2010;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a French national born in 1946, joined the International Labour Office, the ILO's secretariat, in February 2004 as a Technical Cooperation Officer at grade P.4. She was assigned to the Programme on HIV/AIDS and the World of Work (ILO/AIDS) and was initially granted a special short-term contract. As from 23 July 2004 she was appointed at grade P.5 to the position of Senior Research and Policy Adviser, Head of Research and Policy Analysis Unit (RPAU), within the same Programme under a one-year fixed-term contract for technical cooperation project staff. This contract was extended initially for the second half of 2005, then twice for a whole year for 2006 and 2007.

In April 2005 the post of Director of ILO/AIDS became vacant. The complainant submitted her candidature but she was not successful. In July a new Director took office. Working relations between the complainant and the new Director soon became strained. At a meeting of 11 January 2006 the Director questioned the relevance of the research work carried out by the RPAU and announced that she intended to have it evaluated by external consultants. She referred to a number of work-related issues and instructed the complainant to meet with her and report on her work at regular intervals.

On 30 November 2007 the complainant was handed a letter notifying her that her contract would not be renewed upon its expiry on 31 December 2007 because her position was to be suppressed in the context of a restructuring of the RPAU. The letter also indicated that, as the Office's practice was to give two months' notice of non-renewal, she would receive an additional one month's salary in lieu of the second month of the notice period. The complainant reported this decision to the President of the Staff Union the following morning, requesting assistance and advice. She asserted inter alia that there was no plan to restructure the Unit and that there had been no consultation

on this matter. Through a series of meetings and e-mail exchanges with the Legal Officer of the Human Resources Development Department (HRD), the President of the Staff Union urged the Administration to find a solution to the complainant's case before the end of the year, but without success. Meanwhile, the complainant submitted her curriculum vitae to the heads of various other departments, including the Partnerships and Development Cooperation Department (PARDEV). In the event, she was offered an assignment in PARDEV, which she took up on 14 January 2008, and on 21 February her fixed-term contract was extended, with retroactive effect from 1 January, to 30 June 2008. The letter of extension specified that she would be "assigned to specific tasks related to the position of Senior Policy Adviser on UN Reform" and that she would be funded from the regular budget. That position had been advertised in October 2007 with a closing date of 17 November 2007 and the recruitment process was still under way, but the complainant had not applied for it.

In April 2008 a vacancy notice was published for a grade P.5 position of Senior Legal Officer in ILO/AIDS. The Legal Officer of HRD applied and was in due course shortlisted for this position.

On 21 May 2008 the complainant submitted a first grievance to HRD alleging moral harassment on the part of the Director of ILO/AIDS culminating in the non-renewal of her contract without valid grounds. She requested inter alia that the decision not to renew her contract in ILO/AIDS be set aside and that an independent investigation be conducted in respect of her allegations of harassment.

In June 2008 the complainant reached the mandatory retirement age of 62. Her contract in PARDEV was due to expire at the end of that month, but she was granted an exceptional extension of her contract until 31 August 2008. The letter informing her of this extension stated that, in light of Article 11.3 of the Staff Regulations, the Office would not be able to offer her any further extension of her fixed-term contract. Although the complainant officially separated from service on 31 August 2008, she accepted a two-month short-term contract for a technical cooperation project in the Bureau for Gender

Equality (GENDER) beginning on 2 September. She left the Office upon the expiry of that contract.

By a letter of 19 September 2008 the Director of HRD rejected the complainant's grievance of 21 May as entirely unfounded. With regard to her allegations of harassment, the Director stated that there was no *prima facie* evidence of harassment justifying an independent investigation, and that the difficulties that the complainant had encountered with the Director of ILO/AIDS appeared to stem largely from her reluctance to accept the latter's authority. As for the decision not to renew her contract, the Director of HRD considered that it was both lawful and properly motivated.

On 20 October 2008 the complainant lodged a grievance with the Joint Advisory Appeals Board challenging the Director's decision. In addition to the redress claimed in her grievance of 21 May, she sought retroactive reinstatement and the cancellation of the appointment of the HRD Legal Officer to the position of Senior Legal Officer in ILO/AIDS, which, according to the complainant, was tainted with abuse of authority. In its report dated 20 May 2009 the Board concluded that there was no evidence of harassment that would justify an investigation and that the decision not to renew the complainant's contract was lawful. It found that a genuine restructuring had taken place within ILO/AIDS, although it considered it "very regrettable" that the Guidelines on Managing Change and Restructuring Processes, which included "detailed rules on information and consultation with regard to restructuring", appeared to have been "completely ignored". The Board also found that there had been no abuse of authority on the part of either the Director of ILO/AIDS or the HRD Legal Officer. It recommended dismissing the grievance in its entirety, which the Director-General did by letter of 3 July 2009. The complainant impugns that decision in her first complaint.

In the meantime, the complainant had submitted three further grievances to HRD. One, filed on 11 December 2008, challenged the Office's failure to apply Rule 3.5 of the Rules Governing the Conditions of Service of Short-term Officials (the Short-term Rules) to the short-term contract she had accepted in GENDER. Rule 3.5

relevantly provides that, whenever the appointment of a short-term official is extended by a period of less than one year so that his/her total continuous contractual service amounts to one year or more, the terms and conditions of a fixed-term appointment shall apply to him/her as from the effective date of the contract which creates one year or more of continuous service. The complainant argued that the decision to employ her under a short-term contract after the expiry of her fixed-term contract was contrary to the spirit of the applicable provisions, particularly as it entailed a loss of benefits, and that she had suffered unequal treatment in relation to other officials who, unlike her, had benefited from the application of Rule 3.5. Having received no reply from HRD, she referred the matter to the Joint Advisory Appeals Board on 14 May 2009.

The other grievance, her third, filed on 26 February 2009, was directed at the Office's decision to appoint Ms A. to the post of Senior Policy Adviser on UN Reform in PARDEV, the functions of which had been performed by the complainant from 14 January to 31 August 2008. Ms A. had been appointed to the post on 11 July 2008 and had taken up her functions on 1 September. The complainant stated that, shortly before leaving PARDEV, she had discovered in her computer a draft report, dated 12 December 2007, drawn up by the selection panel that had conducted the technical evaluation of the candidates for the post. As this report indicated that Ms A. was not one of the four shortlisted candidates, the complainant considered that the competition procedure was unlawful and requested that Ms A.'s appointment be set aside. She also claimed damages. HRD did not respond to this grievance and the complainant referred it to the Joint Advisory Appeals Board on 26 May 2009. In its submissions to the Board, the Office explained that the first candidate recommended by the selection panel had been eliminated when it transpired that she did not possess one of the diplomas listed among her qualifications. A second candidate had then been recommended, but she was ultimately appointed to a different post. As the remaining two candidates on the panel's shortlist were considered unsuitable for the post, the Director-General had decided that the competition should be cancelled, unless

the panel was able to identify other candidates satisfying the requirements of the vacancy announcement amongst those who had initially applied for the post. Ms A. and one other candidate had then been interviewed and Ms A. had been selected.

In the last grievance, her fourth, filed on 28 February 2009, the complainant alleged that the Office had discriminated against her on the basis of her age. Pursuant to Article 11.3 of the Staff Regulations, during the period when she had worked in ILO/AIDS she had not been subject to any mandatory retirement age, because she was assigned to a technical cooperation project. As from 1 January 2008, however, she became subject to the mandatory retirement age of 62, because her position in PARDEV was funded from the regular budget. The complainant argued that the Office's decision to change her status in this respect when it assigned her to PARDEV shortly before she reached the age of 62, coupled with the subsequent decision to employ her on short-term conditions in GENDER, adversely affected her conditions of employment and revealed discrimination on the part of the Office. On 28 May 2009, having received no reply from HRD, the complainant referred this grievance to the Joint Advisory Appeals Board.

On 23 September 2009 the Board issued reports on each of these three grievances, unanimously recommending that they be dismissed as devoid of merit. By a letter of 24 November 2009 the Executive Director of Management and Administration informed the complainant that the Director-General had decided to follow the Board's recommendations. In her second, third and fourth complaints, the complainant challenges that decision insofar as it rejected her grievances of 28 February 2009, 26 February 2009 and 11 December 2008, respectively.

B. In her first complaint the complainant submits that the decisions not to renew her contract, to abolish her position and to restructure the RPAU were taken by the Director of ILO/AIDS without authority, as the Director-General alone has the authority to take decisions that modify the status of staff, and in this case he did not delegate that authority to the Director of ILO/AIDS. These decisions, which were

taken without her being previously informed and consulted, contravened her defence rights as well as the Organization's duty to respect her dignity. Referring to the Tribunal's case law as well as the ILO's Guidelines on Managing Change and Restructuring Processes, she submits that the right to be heard requires that a staff member is kept informed of any action that may affect his rights or legitimate interests. She had a legitimate expectation that her contract would be renewed for 2008, particularly since the Director of ILO/AIDS had expressed her intention to renew it in an e-mail of 30 April 2007 to HRD concerning her request to take home leave, and had approved her request to enrol in a postgraduate course ending in May 2008 for which the Office would pay part of the fees.

The complainant argues that the evidence clearly shows that the decision not to renew her contract was taken for a purpose other than that stated. The fact that the reasons initially given were inaccurate and deliberately vague is, in her view, a sign of misuse of power. Indeed, whereas the letter of 30 November 2007 informing her of the non-renewal of her contract mentioned the restructuring of the RPAU and the abolition of her post "to reflect the evolving needs of the ILO/AIDS Programme", the decision of 19 September 2008 rejecting her grievance and the Office's submissions to the Joint Advisory Appeals Board referred to the abolition of the RPAU and the creation of a legal unit instead. She also draws attention to inconsistencies in the ILO's statements before the Board regarding "two major developments" that allegedly justified these measures, and she points out that the Organization's reliance on a Governing Body document of March 2006 is misleading and incorrect, as that document did not in fact call for any reorientation of the Programme warranting the abolition of the RPAU, as confirmed by other ILO documents, such as the Programme and Budget for 2006-07 and Circular No. 629, Series 1.

In the complainant's view, the reason given to justify the creation of a legal unit, namely the fact that the adoption of an "autonomous Recommendation on HIV/AIDS in the world of work" was on the agenda of the 98th Session of the International Labour Conference, is

likewise insufficient. The RPAU already had a lawyer and, as from June 2007, the ILO/AIDS Programme counted two lawyers among its staff, one to deal with the HIV/AIDS Recommendation and the other to deal, inter alia, with requests by constituents for advice on legal questions surrounding HIV/AIDS. The drafting of the Recommendation was already subject to review by senior lawyers from the International Labour Standards Department (NORMES), and the lawyer assigned to the RPAU had been providing legal advice to constituents for years, to their entire satisfaction. The creation of a legal unit within ILO/AIDS thus resulted in a duplication of responsibilities.

The complainant draws attention to the fact that the ILO has been incapable of specifying the date at which the alleged restructuring was decided. Although it asserts that the decision was taken between April and November 2007, it provides no explanation as to why she was not informed earlier of a decision that had allegedly been taken "after thoroughly reviewing and evaluating the technical needs of the ILO/AIDS Programme".

She contends that the decision not to renew her contract was taken by the Director of ILO/AIDS in collusion with the Legal Officer of HRD, who was looking for a new post within the Office. In this connection she observes that the ILO's rules on recruitment do not preclude favouritism, owing to the leading role conferred on the responsible chief in the selection procedure, in this case the Director of ILO/AIDS. In addition, when she submitted her initial grievance to HRD in May 2008, the Legal Officer of that department refused to deal with the case because she felt criticised, yet at that stage there was nothing in the grievance to warrant such a refusal.

The complainant argues that the impugned decision violates the Organization's duty of care and its duty of good governance, as no investigation of her allegations of harassment was carried out. The failure by HRD and the Joint Advisory Appeals Board to ensure a proper examination of the case breached her right to an effective internal appeal. Furthermore, there was a misuse of procedure by HRD because, after having persuaded her to accept an extension of the time

limit for responding to her grievance by suggesting that the matter might still be resolved informally, it made no effort whatsoever to contact her before issuing the decision to reject the grievance. This and other procedural breaches contributed to the moral injury she suffered.

The complainant produces a large number of documents to show that she was the victim of moral harassment by the Director of ILO/AIDS for a period of approximately two and a half years. She explains that this harassment took various forms, including public denigration and criticism of her work and discriminatory treatment in relation to missions, which contributed to isolating her and reducing her role to that of an assistant researcher. She asserts that she was subjected to unreasonable supervision, which resulted in an intimidating and humiliating working environment, and that the way in which she was treated by the Director of ILO/AIDS seriously affected her health.

She asks the Tribunal to quash the impugned decision and to reinstate her retroactively with full benefits. In addition, she requests that the appointment of the HRD Legal Officer to the post of Senior Legal Officer in ILO/AIDS be set aside; that the Office take appropriate measures against the Director of ILO/AIDS; that the case be referred back to the Joint Advisory Appeals Board so that an independent investigation may be conducted in respect of her complaint of harassment; that an investigation be conducted both in respect of possible reprisals against herself or against other staff of ILO/AIDS following her complaint of harassment, as well as in respect of potential violations of the principle of independence of the international civil service and of the Standards of Conduct for the International Civil Service. She seeks moral damages in the amount of 12 months of her last monthly salary, post-adjustment and benefits in ILO/AIDS and costs in the amount of 10,000 Swiss francs. Subsidiarily, she asks that the impugned decision be set aside and claims material damages equivalent to the salary she would have received had she remained in her position in ILO/AIDS until the date of the judgment, moral damages and costs. She also requests that the ILO be obliged to reimburse her any income tax she might have to pay on the amounts awarded by the Tribunal in this case.

In her second complaint the complainant argues that the absence of a mandatory retirement age for technical cooperation staff was an essential and fundamental condition of her accepting the initial offer of employment at ILO/AIDS in July 2004. Referring to the case law, she contends that the change of contractual status imposed on her as a result of her transfer to PARDEV was clearly prejudicial to her terms of employment and conditions of work and breached her acquired right not to be subjected to the mandatory retirement age. Additionally, she contends that the rules governing the mandatory retirement age are discriminatory and that the distinctions that they draw between different categories of staff result in "an apparent inequality in treatment which is incompatible with conditions of employment at ILO". She further submits that the way in which these rules were applied to her involved discrimination, as she fulfilled the conditions required for an extension beyond the mandatory retirement age. In this regard, she points to the cases of several senior officials who were granted such an extension. In her second complaint she claims material and moral damages.

In her third complaint the complainant acknowledges that she did not apply for the vacant post in PARDEV within the specified time limit but states that, at the time when the post was advertised, she had a legitimate expectation that her contract in ILO/AIDS would be extended. Had the Office notified her in a timely manner that no extension would be granted, she would have been able to apply. In any case, the vacancy announcement did not require any particular formalities for applications, and the submission of her curriculum vitae to PARDEV in December 2007 may therefore be treated as an application for the post. In this connection she also argues that the vacancy announcement was not published for "at least one calendar month", as required by paragraph 9 of Annex I to the Staff Regulations, and that her cause of action is in no way affected by the fact that she reached the mandatory retirement age before the recruitment procedure was completed, particularly in view of the discriminatory nature of the provisions governing the age of retirement.

On the merits, she contends that the Office breached paragraph 11 of Annex I by conducting the technical evaluation of the candidates before they had completed the assessment centre process, thereby reversing the order of the stages provided for in that paragraph. She argues that it was unlawful for the Director of PARDEV to have delegated her powers to a selection panel, and that the merits of the two candidates on the second shortlist ought to have been compared with those of the two remaining candidates on the initial shortlist. Given the circumstances surrounding the non-renewal of her contract in ILO/AIDS, the Organization's duty of care required it to consider her application, even though it was submitted late. Lastly, she asserts that there is evidence to suggest that the appointment of Ms A. is tainted with favouritism, which warrants an order by the Tribunal for disclosure of the competition file.

She asks the Tribunal to set aside the impugned decision, the disputed competition and the appointment of Ms A. or, failing this, to award her compensation in an amount equal to one year's gross salary at grade P.5, step 13. She also claims 50,000 Swiss francs in moral damages and 8,000 francs in costs, and she seeks an order enabling her to claim reimbursement by the ILO of any national taxes levied on the above sums.

In her fourth complaint the complainant contends that, since she was employed by the Office for an uninterrupted period of more than one year, any extension of her appointment had to be made in accordance with Rule 3.5 of the Short-term Rules, the aim of which, according to her, is to afford "suitable protection" for short-term officials who have served more than one year. She argues that this Rule, which applies where a short-term contract is extended for a period bringing the total period of uninterrupted service to more than one year, applies *a fortiori* where the extension of a fixed-term contract is effected by granting a short-term contract, which is in itself unlawful in light of Circular No. 630, Series 6, concerning the inappropriate use of employment contracts in the Office. She asks the Tribunal to set aside the impugned decision and to order the Organization to apply Rule 3.5 to her short-term contract in GENDER, which should be "converted retrospectively into an extension of [her]

fixed-term contract", and to grant her the corresponding salary and benefits. She also claims material and moral damages, and costs.

C. In its reply to the first complaint the Organization contests the receivability of the claim to set aside the appointment of the former HRD Legal Officer to the Senior Legal Officer position in ILO/AIDS, on the grounds that the complainant did not apply for the post in question and therefore has no cause of action. It argues that the claim for an investigation into possible reprisals against other officials working in ILO/AIDS is likewise irreceivable for want of a cause of action, since this claim does not concern the rights of the complainant.

On the merits, it submits that the Director of ILO/AIDS had the authority to decide on the renewal of the complainant's fixed-term contract by virtue of a long-standing practice in the Office whereby, in the case of technical cooperation projects, the Director-General's authority to decide on human resources matters is delegated to the manager of the project. The applicable procedure was followed, as the Director of ILO/AIDS consulted with the Chief of the Staff Resourcing and Servicing Branch of HRD before taking the decision not to extend the complainant's appointment and communicating it to her.

The Organization denies that the decisions not to renew the complainant's contract, to suppress her position and to restructure the RPAU were procedurally flawed because they were taken without previously consulting and informing her. It argues that its duty to inform staff of actions that may affect their rights or legitimate interests, in the case of the non-renewal of an appointment, cannot go so far as to require, in addition to the reasonable notice that has to be given, another prior notification. It further submits that, in the case of a technical cooperation programme which is by nature temporary, the duty to inform staff of the possibility of non-renewal is less stringent. In the case at hand, the complainant was duly informed that the Director was considering abolishing the RPAU. The latter had informed her at the meeting of 11 January 2006 that the research carried out by the unit would not be of sufficient relevance to the programme under the new orientations that the Director intended to

give it. Furthermore, following the evaluation of the Unit's work by two external consultants, the Director discussed the consultants' report with the complainant before informing her that maintaining a research unit at headquarters was not sustainable.

The defendant contests the evidential value of the Director's e-mail of 30 April 2007, since the indication that the complainant's contract would be renewed was a mere formality carried out so as not to deprive her of her home leave. Similarly, the Director did not wish to deprive the complainant of learning activities as long as the decision not to renew her contract was not final, hence the approval of her request to enrol in a postgraduate course.

The Organization rejects the complainant's interpretation of the Governing Body document of March 2006, which, in its view, gave the Programme an orientation that justified both aspects of the restructuring, namely the abolition of the research unit and the creation of the legal unit. It adds that, although ILO/AIDS was not facing funding restrictions, the Director could not justify the creation of a new senior position at headquarters without suppressing another. Given that the complainant's post no longer served a useful purpose, the decision not to renew her contract was validly motivated.

It also rejects the complainant's allegations of abuse of authority. It submits that there were objective grounds for creating the position of Senior Legal Officer in ILO/AIDS and that the former HRD Legal Officer was selected for the position by means of a regular competition. With regard to the fact that the HRD Legal Officer declined to deal with the case, the defendant considers that she had sufficient reason to do so.

Concerning the complainant's claim of harassment, the Organization states that there were two separate examinations of the documentation submitted by her, but neither HRD nor the Joint Advisory Appeals Board was able to find proof of any act that could be considered as harassment. In its view, the difficulties in the working relationship between the complainant and her superior stemmed primarily from the fact that the former had difficulties accepting the latter's authority. It acknowledges that the Director of ILO/AIDS may

have made mistakes, but submits that none of her actions amounted to harassment as defined by the Tribunal's case law. While it recognises that the Director failed to comply with her obligation to establish regular performance appraisals, it explains that this failure was based partly on the will to avoid further conflict and partly on inefficiency, but that in any event it cannot be viewed as harassment. It denies that the complainant was placed under unreasonable supervision.

The defendant contends that there is insufficient evidence of harassment to justify the cost of an independent investigation. As for the complainant's claim for reinstatement, it notes that the conditions under which the Tribunal may exceptionally allow reinstatement are not fulfilled and that she has already reached the mandatory retirement age.

In its reply to the second complaint the ILO stresses that it is not for the Tribunal to decide whether or not a mandatory retirement age is to be maintained, as this is a question of policy for each organisation to answer. It denies that the applicable rules are discriminatory in nature, or that they have been applied in a discriminatory manner. The decision to extend an official's appointment beyond the mandatory retirement age, where permitted, is purely discretionary and hence subject to only limited review by the Tribunal. In its view, the complainant has not demonstrated that her continued employment was essential in the interest of the Organization and that the job she held could not be performed by a serving staff member, as required by Circular No. 436, Series 6. Nor has she produced any evidence to support her allegations of unequal treatment. The Organization considers that there was no breach of acquired rights in this case, since the complainant accepted her new position in PARDEV by signing a contract explicitly stating that her position would be "funded from the regular budget". She therefore accepted the change in her employment conditions.

In its reply to the third complaint the ILO submits that, as the complainant did not apply for the post to which Ms A. was appointed, she has no cause of action with respect to that appointment. The usual

formal requirements for applications were complied with and the vacancy announcement was in fact published for one month, in accordance with paragraph 9 of Annex I to the Staff Regulations. Moreover, the fact that the complainant was paid one month's salary in lieu of the second month of her notice period in December 2007 was perfectly lawful and cannot be considered as having prevented her from applying for the post within the applicable time limit. She also lacks a cause of action because she reached the mandatory retirement age before the competition was completed and thus could not have been appointed to the post in question.

On the merits, the Organization submits that appointment decisions, being discretionary in nature, are subject to only limited review by the Tribunal. Regarding the alleged breach of Article 11 of Annex I to the Staff Regulations, it explains that although the order of the stages mentioned in that provision is "logical", it is not obligatory, and it may sometimes be reversed in the interests of procedural efficiency, without any adverse consequences for candidates. There is nothing to prevent the responsible chief from establishing a panel for the technical evaluation, and indeed this long-standing practice tends to ensure objectivity and transparency. Moreover, since the last two candidates on the initial shortlist were "eliminated automatically", there was no need to compare their merits with those of the two candidates on the second shortlist. Lastly, the allegation of favouritism is plainly contradicted by the fact that Ms A. was only the third candidate recommended by the selection panel.

In its reply to the fourth complaint the ILO explains that, since Rule 3.5 applies whenever a short-term contract is extended by means of a contract of the same type, it is not applicable to this case. The short-term contract which the complainant accepted in GENDER was not an extension of her fixed-term contract, because she had retired upon the expiry of her fixed-term contract. In this respect, Article 4.11 of the Staff Regulations provides that a former official, on reappointment, shall be regarded as becoming an official for the first time. Moreover, the reappointment of the complainant under a short-term contract was not contrary to Rule 3.5 or to Circular No. 630, Series 6, as the purpose of these texts is to remedy or avoid a situation

of "precarious employment", and a retired official cannot be considered as being in such a situation.

D. In her rejoinder to the first complaint the complainant presses her pleas. She argues that, even if it were admitted by the Tribunal that the Director of ILO/AIDS had the authority to take the decision not to renew her contract, she nevertheless lacked authority to take the decisions to abolish a post and to restructure the RPAU, since such decisions are not human resources matters but measures relating to the internal organisation of the Programme and, as such, exceed the scope of the delegation of authority invoked by the defendant. She notes that the Organization continues to change the reasons for the disputed decision, as it now indicates that it "could not have justified a new senior position at headquarters without suppressing another one instead", which not only indicates misuse of power but also involves an error of fact and law insofar as no legal provision, nor any specific set of circumstances, required that the creation of a new position be linked to the abolition of another equivalent position. She adds that the sequence of events after 30 November 2007 demonstrates the ill will and hostility of the Director, as it would have been possible to extend her contract as long as the new position of Senior Legal Officer remained vacant, which was likely to last for several months. She also draws attention to the fact that another former member of the RPAU has likewise lodged a grievance alleging harassment by both the Director of ILO/AIDS and the newly recruited Senior Legal Officer. Lastly, the complainant denounces the Organization's reliance on witness statements that were never shared with her, nor indeed with the Joint Advisory Appeals Board, and also the fact that the Board did not even hear her before drawing conclusions regarding her working relations with the Director.

In her rejoinder to the second complaint she acknowledges that the actual rules governing the age of retirement are not within the purview of the Tribunal, but argues that the way in which they are applied to staff members is clearly within its competence. She points out that the Office could not lawfully have given her a different contract when she was assigned to PARDEV, as she was not recruited by competition and

the duration of her appointment was less than the one-year minimum for a fixed-term contract. She infers from this that the contractual conditions that she enjoyed in ILO/AIDS, including the absence of a mandatory retirement age, necessarily continued to apply when her fixed-term contract was extended in January 2008.

In her rejoinder to the third complaint the complainant reiterates her arguments and, subsidiarily, puts forward two new pleas. First, she sees a flaw in the fact that the composition of the selection panel did not remain the same throughout the selection procedure. Second, referring to Judgment 2906, she argues that her acquired rights were breached inasmuch as the initial decision to shortlist four candidates necessarily implied that all other candidates, including Ms A., were eliminated. That decision, which in effect gave her a right to remain in the disputed post if none of the shortlisted candidates was appointed, was unlawfully reversed by the decision to draw up a second shortlist instead of cancelling the competition.

In her rejoinder to her fourth complaint the complainant denies that she retired on 31 August 2008, since she was reappointed in GENDER effective 2 September 2008. Under the Staff Regulations the one-day break in service that was artificially imposed on her does not allow her short-term contract to be treated as a new appointment. She also alleges unequal treatment in relation to two officials retained beyond the mandatory retirement age, one of whom was able to benefit from Rule 3.5 at the age of 66.

E. In its surrejoinders the ILO points out, with regard to the first complaint, that the practice whereby the Director-General delegates his authority to decide on the renewal of contracts in technical cooperation programmes is reflected in the ILO's Technical Cooperation Manual, and that there is no principle according to which he could not likewise delegate his authority to decide on the restructuring of the ILO/AIDS Programme and the abolition of a post. It adds that the fact that the complainant's contract was not extended pending the entry into service of the Senior Legal Officer shows no sign of hostility by the Director of ILO/AIDS, who expected that the recruitment would take much less than a year.

Regarding the second, third and fourth complaints, it maintains its position in full. It emphasises that the complainant's fixed-term contract could not be extended beyond 31 August 2008 because the conditions laid down in Article 11.3 of the Staff Regulations and Circular No. 436, Series 6, were not met. It adds that the possibility of retaining an official in service beyond retirement age through a contract extension does not apply in cases such as this, where the official concerned is to be assigned different duties after the date of retirement. The complainant's allegations of unequal treatment are therefore unfounded.

F. In her additional submissions to the first complaint the complainant produces an e-mail dated 26 November 2007 from the Director of ILO/AIDS to the Director of HRD, which, in her view, proves not only that the recruitment of the Senior Legal Officer was tainted with favouritism, but also that no restructuring was then envisaged. In that e-mail, the Director of ILO/AIDS requested that HRD detach its Legal Officer to ILO/AIDS "for at least the next 2-3 years", as she wished to recruit a senior legal officer. She added that she had discussed this possibility with the HRD Legal Officer, who was "open to considering it". This e-mail, which was sent only a few days before the complainant was notified of the non-renewal of her contract, made no mention of any restructuring or post abolition.

G. In its final comments the Organization submits that the e-mail of 26 November 2007 merely shows that the Director of ILO/AIDS had identified a person who was qualified for and interested in the position of Senior Legal Officer. It points out that, notwithstanding the Director's request, the position was ultimately filled by means of a competition.

## CONSIDERATIONS

1. The facts giving rise to each of these complaints and the legal issues are relevant to each of the other three complaints. Accordingly, it is convenient that they be joined.

The complainant, who had a distinguished career as an international civil servant, joined the ILO on 1 February 2004 as a Technical Cooperation Officer on a special short-term contract. That contract expired on 22 July 2004. She was then appointed as Senior Research and Policy Adviser, Head of Research and Policy Analysis Unit (RPAU), within the Programme on HIV/AIDS and the World of Work (ILO/AIDS), on a 12-month fixed-term contract commencing on 23 July 2004. In July 2005 the contract was extended until the end of the year. Her post was funded from technical cooperation funds and, in consequence, she was not subject to mandatory retirement at the age of 62.

2. The post of Director of ILO/AIDS became vacant in April 2005 and the complainant applied unsuccessfully for it. A new Director was appointed with effect from 1 July 2005. It is not disputed that the relationship between the complainant and the new Director was strained, as evidenced by what the Organization describes as "controversial discussions concerning the work of the [RPAU]" at a meeting on 11 January 2006. Although her contract, as well as those of others in ILO/AIDS, had expired on 31 December 2005, the complainant had not been given any information as to its renewal before that meeting when the Director informed her, amongst other things, that her research was irrelevant to the ILO/AIDS Programme, that she, the Director, intended to seek an external evaluation of the research and that, in consequence, the complainant's contract would only be renewed for six months. The complainant sought advice from the Staff Union and a further meeting took place with the Director the next day. At the subsequent meeting, the complainant informed the Director that she had been advised that her contract should be renewed for 12 months. The Director then agreed to a 12-month extension. Although the Director had not completed the complainant's performance appraisal report, she also raised various work-related issues at that meeting and insisted on regular fortnightly meetings so that she could follow the work done by the complainant and the RPAU.

3. By letter dated 30 January 2006 the complainant's contract was extended from 1 January until 31 December 2006. On 4 December 2006 it was again extended from 1 January until 31 December 2007. On 30 November 2007 the complainant was called to a meeting with the Director. She was then handed a letter signed by the Director informing her that:

> "after thoroughly reviewing and evaluating the technical needs of the ILO/AIDS Programme, it has been determined that it is not in the best interests of the Programme to maintain the position of Head of Research and Policy Analysis Unit, which you currently occupy. The profile of the position is being modified and the post as it currently exists will be suppressed. In addition, the unit will be restructured to reflect the evolving needs of the ILO/AIDS Programme. In the circumstances, I regret to inform you that the Office will not be in a position to renew your fixed-term technical cooperation contract at its expiration on 31 December 2007."

The letter also contained certain information as to the complainant's entitlements in consequence of the non-renewal of her contract.

4. Following receipt of the letter informing her of the non-renewal of her contract, the complainant again consulted the Staff Union. There were discussions and e-mail communications between the Staff Union and the Legal Officer of the Human Resources Development Department (HRD), which seem to have resulted in some misunderstanding as to the possibility that some proposals might be put to the complainant to alleviate her situation. However, the Legal Officer of HRD insisted that "the proper procedures ha[d] been complied with in relation to the decision of non-renewal of contract". As it happened, the complainant met with a former colleague who was able to assist her in taking up the then vacant post of Senior Policy Adviser on UN Reform within the Partnerships and Development Cooperation Department (PARDEV). She took up the position in PARDEV on 14 January 2008. On 21 February her fixed-term contract was extended from 1 January to 30 June 2008 and she was informed that she would "be placed on special leave with pay retroactively from 1 to 13 January 2008". That position was funded from the regular budget and, in consequence, the complainant became subject to mandatory retirement at the age of 62.

Although the complainant reached the age of 62 in June 2008, she was granted a further extension of her fixed-term contract on 30 June 2008 for the period from 1 July to 31 August 2008. She was informed at the time that her contract was extended that, in view of the provisions of Article 11.3 of the Staff Regulations, which is concerned with mandatory retirement, the Office would not be able to offer her any further extension. Her employment came to an end when her fixed-term contract expired on 31 August 2008. However, the complainant was able to find an opening in the Bureau for Gender Equality (GENDER) and she was offered and accepted a short-term contract as Senior Technical Specialist/Statistician for two months commencing after a one-day break in her employment, namely on 2 September 2008. The complainant left the ILO when that short-term contract expired.

5. At this stage, it is convenient to refer to two other events that are relevant to these complaints. The first is that the post of Senior Policy Adviser on UN Reform in PARDEV, to which the complainant was assigned following her removal from ILO/AIDS, was advertised on 24 October 2007 with a closing date of 17 November 2007, shortly before she was informed by the Director of ILO/AIDS on 30 November 2007 that her post was to be suppressed and that her fixed-term contract would not be renewed. Nonetheless, the complainant indicated to the Director of PARDEV that she was interested in the post and forwarded her curriculum vitae to her. The complainant was not interviewed for the post and another person was appointed on 11 July with effect from 1 September 2008. The second event to which reference should be made is that after the complainant was removed from her post in ILO/AIDS, a new post of Senior Legal Officer was created in its stead. That post was advertised in April 2008 and the Legal Officer of HRD, with whom the Staff Union had entered into discussions concerning the decision of the Director of ILO/AIDS not to renew the complainant's contract, was the successful candidate. She was appointed to the post in December 2008.

6. On 21 May 2008 the complainant lodged a grievance with HRD, claiming that she had been harassed by the Director of ILO/AIDS from 18 July 2005 and challenging the legality of the decision of 30 November 2007 not to renew her contract. Amongst other things, she asked for "an independent investigation […] in respect of [her] complaint of harassment". On 11 August 2008 the complainant met with the person handling her grievance and was told that, if she agreed to an extension of time to allow for fact-finding, it might assist in reaching a mutually satisfactory conclusion. On 14 August the complainant agreed to a one-month suspension. Having heard nothing further in the meantime, she wrote to HRD on 19 September 2008 requesting that her grievance "be formally reviewed and decided upon". On the same day she received a reply from HRD stating:

> "After having carefully reviewed your grievance, […] and conducted the necessary preliminary fact-finding, HRD considers that the matter cannot be resolved through informal conflict resolution and that your grievance has to be rejected as unfounded".

So far as is presently relevant, the reasons given for rejecting the complainant's grievance were that "[t]he decision not to renew [her] contract was taken legally" and "[t]here [was] not sufficient evidence that [she was] the victim of harassment". That decision was the subject of a grievance filed by the complainant with the Joint Advisory Appeals Board on 20 October 2008 in which she again requested "an independent investigation" of her complaint of harassment. She also requested a hearing and nominated several persons, including herself, as witnesses.

7. The Board issued its report on 20 May 2009 without holding a hearing and, indeed, without hearing the complainant. So far as is presently relevant, it concluded that "there [was] no evidence of harassment that would justify an investigation" and that "the decision not to renew [her] contract […] was taken legally". In consequence, it recommended that the complainant's grievance be dismissed. The Director-General accepted that recommendation and the complainant

was so informed on 3 July 2009. The Director-General's decision to that effect is the subject of the first complaint.

8. Following the expiry of her short-term contract relating to her work in GENDER, the complainant lodged three further grievances with HRD and, subsequently, three further grievances with the Joint Advisory Appeals Board. Those grievances related to the non-renewal of her fixed-term contract and, hence, her separation from service on 31 August 2008 by reason of her having reached the mandatory retirement age, the appointment of Ms A. to the post of Senior Policy Adviser on UN Reform in PARDEV that she, the complainant, had occupied following removal from her post in ILO/AIDS, and the failure of the ILO to apply Rule 3.5 of the Rules Governing Conditions of Service of Short-term Officials (the Short-term Rules) in relation to the two-month period in which she worked for GENDER. On 23 September 2009 the Board recommended that all three grievances be dismissed. The Director-General accepted those recommendations and the complainant was so informed on 24 November 2009. His decisions to that effect are the subject of the second, third and fourth complaints.

9. It is convenient to deal first with the second, third and fourth complaints. It is claimed, in the second complaint, that because her post in ILO/AIDS was funded from technical cooperation funds and, thus, she was not subject to mandatory retirement at the age of 62, the complainant had an acquired right to be continued in employment after reaching that age. Additionally, it is argued that Article 11.3 of the Staff Regulations discriminates improperly upon the basis of age. It is also put that Article 11.3 is applied in a discriminatory manner. Further, it is argued that its application to the complainant involved discrimination against her.

10. An acquired right may derive from the contract, the terms of appointment, or from a decision and, sometimes, the staff rules. An acquired right may not be impaired without the consent of the staff member concerned. In the present case, it is claimed that there is an

acquired right resulting from the complainant's initial contract. It is said that there was a breach of that right when the complainant was moved from a post which was funded from technical cooperation funds to one funded from the regular budget. There is no reason why the question whether a staff member has an acquired right cannot arise in consequence of an alteration in contractual status (see Judgment 1886, under 9). Although the complainant puts her case in terms of an acquired right not to be subjected to the mandatory retirement age, it might, with equal logic, be framed as a question whether she had an acquired right to work only in technical cooperation programmes. If the right is framed in those terms, it is apparent that, faced with the possibility that her contract would not be renewed, the complainant consented to accept a post funded from the regular budget. If, on the other hand, the matter is approached on the basis of a right not to have her employment terminated on the ground that she had reached 62, it is for the complainant to show that that term was integral to the structure of "her contract of appointment" or that it was a "fundamental term of appointment in consideration of which [she] accepted appointment" (see Judgment 2696, under 5) or which "induced [her] to stay on" (see Judgments 832, under 13, and 1226, under 3). It may well be that the complainant was influenced to accept her short-term appointment and, later, her fixed-term contract within ILO/AIDS because there was a possibility that she might be retained in service beyond the age of 62. However, a term to the effect that her employment would not be terminated on the basis of the mandatory retirement age cannot be said to be integral to the structure of her contract. In this regard, it is sufficient to note that the complainant's fixed-term contract contained a provision entitling her to "present [her] candidature for any ILO competition open to external candidates", thus allowing for the possibility of her successful appointment to posts funded from the regular budget. The "acquired right" asserted by the complainant does not sit comfortably alongside a right to apply for posts funded from the regular budget and, thus, cannot be said to be integral to the structure of the contract. Moreover, as in the case considered in Judgment 2682, it is not possible to treat the right now asserted as one of the "fundamental terms […] in consideration of

which [the complainant] accepted an appointment" or which "induced […] her to stay on". There are two reasons for this. First, the asserted right was, at the time of the complainant's appointment, merely a contingent future right, and could be claimed only in the event that her contract did not come to an end before her 62nd birthday, for example for lack of technical cooperation funds. Second, even if the possibility of working beyond her 62nd birthday was an important factor in the complainant's decision to accept her post in ILO/AIDS, it was not sufficiently important to deter her from applying for the post of Director of ILO/AIDS – a post funded from the regular budget – when it became vacant in 2005. Thus, it cannot be accepted that, without the right now asserted, the complainant would not have accepted appointment or would not have stayed with ILO/AIDS.

11. Although contending that the rules with respect to the mandatory retirement age are discriminatory, the complainant accepts that it is the UN common system that "should determine and enforce equity in retirement across all UN agencies and programmes". However, she contends that "there are multiple ways in which an age at retirement may be applied within the staff rules governing the employment conditions of officials of the ILO". The primary question directed by the complainant's argument is whether the existing provisions are discriminatory in nature. Article 11.3 of the Staff Regulations provides:

> "An official shall retire at the end of the last day of the month in which he reaches the age of 62. An official appointed before 1 January 1990 shall retire at the end of the last day of the month in which he reaches the age of 60. In special cases the Director-General may retain an official in service until the end of the last day of the month in which the official reaches the age of 65. The Joint Negotiating Committee shall be consulted before a decision is taken to retain in service an official below the grade of P.5. The Joint Negotiating Committee shall be informed of any decision to retain in service any other official. The provisions of this article shall not apply to an official appointed for a fixed-term to a technical cooperation project."

12. The complainant correctly points out that Article 11.3 creates four different classes of persons, namely:

- those who must retire at 60;
- those who must retire at 62;
- those who, as a matter of discretion, may be retained in employment until 65;
- those appointed to a technical cooperation project who may be retained indefinitely.

When a provision such as Article 11.3 provides for the different treatment of different classes of persons, the question whether the provision is discriminatory depends on two issues. The first is whether the specified differences in respect of which different treatment is allowed are differences that justify different treatment; if so, the second issue is whether the different treatment is appropriate and adapted to those differences (see Judgment 2915, under 7).

13. In Judgment 2915 the Tribunal noted that the different mandatory retirement ages of 60 and 62 there under consideration resulted from the need to effect changes in the United Nations Joint Staff Pension Fund and it held, under 7, that the different pension entitlements resulting from those changes "warrant[ed] different retirement ages" and that it could not be said that "the specification of different retirement ages without any choice in the matter [on the part of a staff member] was not appropriate and adapted to the change [that occurred] in the Fund". That reasoning is equally applicable to the distinction between those who must retire at 60 and those who must retire at 62 in Article 11.3 of the ILO Staff Regulations. To some extent, the discretion of the Director-General to extend the retirement age beyond 60 or 62, as the case may be, in "special cases" tempers the rigidity of the rule relating to mandatory retirement. Paragraph 4 of Circular No. 436, Series 6, provides that exceptions to the mandatory retirement ages

> "may be authorised when it can be clearly demonstrated that the temporary appointment of a retiree is essential in the interest of the Organisation and that the job cannot be performed by a serving staff member".

Again, the fact that there is no other serving staff member who can perform the job in question is a criterion that reflects a relevant difference and it cannot be said that allowing for the continued

employment of a person who has reached the mandatory retirement age is not an appropriate and adapted method for dealing with that situation.

14. The exemption of persons employed on technical cooperation projects from a mandatory retirement age directs a comparison between them and those staff members employed on posts funded from the regular budget. The crucial difference between the two classes is that technical cooperation programmes are mainly funded by voluntary extra-budgetary contributions and are more likely to be of a temporary nature or subject to change in focus or structure. That is a relevant difference and, again, it cannot be said that allowing persons to continue in employment in technical cooperation programmes without specification of a mandatory retirement age is not an appropriate and adapted method of ensuring availability of staff members to work on what may prove to be short-term projects.

15. It follows that Article 11.3 is not discriminatory in substance. However, the complainant contends that it is discriminatory in effect or, at the very least, is applied in a discriminatory manner. In this regard, she contends that there are several senior officials who have been retained beyond the relevant mandatory retirement age and, even, officials who are older than 65 years. In the absence of more detailed evidence relating to the general situation, it is not possible to conclude either that Article 11.3 is discriminatory in effect or that it is applied in a discriminatory manner. Nor is it possible to conclude that the complainant was subject to discrimination on the basis of age, there being nothing to establish that she was in the same position in fact and in law as any other person who has been retained in service beyond his or her mandatory retirement age. Accordingly, the second complaint must be dismissed.

16. By her third complaint the complainant seeks an order setting aside the appointment of Ms A. with effect from 1 September 2008 to the post that she, the complainant, occupied in PARDEV from January until the end of August 2008, as well as damages and costs. She claims

that there were irregularities in the selection process and that she is entitled to the relief claimed even though she was not a candidate for the post.

17. The ILO submits, amongst other things, that as the complainant was not a candidate for the post in question, her third complaint is irreceivable. The complainant counters that submission by arguing that she was adversely affected by the decision to appoint Ms A. to the post because it was that appointment that led to her contract not being further extended and, ultimately, the termination of her appointment on the basis that she had reached the age of 62. It may be accepted that the appointment in question contributed to the situation in which the complainant's contract came to an end and, in that sense, she was adversely affected by the appointment. However, that is not the question directed by Article 13.2 of the ILO Staff Regulations which allows for the filing of "a grievance on the grounds that [an official] has been treated in a manner incompatible with her/his terms and conditions of employment". That provision directs two questions, namely:

(a) did the competition for the post, including the appointment of the successful candidate, involve any treatment of the complainant? and

(b) if so and, assuming without deciding, that there were irregularities in the conduct of the competition, was that treatment incompatible with the terms and conditions of the complainant's employment?

18. The only basis on which it could possibly be said that the holding of the competition, including the appointment of the successful candidate, involved any treatment of the complainant is that the competition went ahead without her candidature even though she had made her interest in the position known to the Director of PARDEV and provided her with her curriculum vitae. However, that treatment was not incompatible with the terms and conditions of the complainant's employment. Indeed had the complainant been allowed to participate in the competition without having submitted her

candidacy or, even, had she been allowed to submit a late application for the post, that would have been incompatible with the terms and conditions of those serving officials who were candidates for the post. They were entitled to have the rules of the competition strictly observed, including the announced deadline (see Judgment 1549, under 13). Nothing in the terms and conditions of her employment gave the complainant any right or interest in the regular conduct of a competition for which she was not a candidate. In this regard, her situation is comparable with that considered in Judgment 2754. In that case a serving official of the ILO who held a post at grade G.6 challenged the appointment of a person to a P.5 post. He provided no evidence that he could have been selected for the post and his claim was held to be "irreceivable for want of a cause of action". So, too, in the present case, the complainant could not have been appointed to the post because she was not a candidate for it.

19. As a result, the third complaint must be dismissed on the basis that, even if there were irregularities in the competition for the post in PARDEV, that did not involve any treatment of the complainant in a manner incompatible with the terms and conditions of her employment.

20. Before turning to the fourth complaint, it is convenient to note that the complainant points out in her third complaint that she did not apply for the advertised post in PARDEV because she had not been informed of the non-renewal of her appointment within ILO/AIDS before the closing date for application. This is not a matter that is relevant to the outcome of her third complaint.

21. As already noted, the fourth complaint concerns the short-term contract applicable to the period in which the complainant worked in GENDER from 2 September to 31 October 2008. The complainant contends that Rule 3.5 of the Short-term Rules should be applied to that contract so that it is converted with retrospective effect to an extension of her fixed-term contract that came to an end on 31 August 2008. She also claims payment of the benefits she would

have received if her fixed-term contract had been extended, including the education allowance for her children, and material damages.

22. Rule 3.5(a) of the Short-term Rules relevantly provides:

> "Whenever the appointment of a short-term official is extended by a period of less than one year so that his total continuous contractual service amounts to one year or more, the terms and conditions of a fixed-term appointment under the Staff Regulations of the ILO shall apply to him as from the effective date of the contract which creates one year or more of continuous service […]."

Rule 3.5(c) provides that, for the purpose of Rule 3.5, "continuity of service shall not be considered to have been broken by any interruption which does not exceed 30 days".

23. Rule 3.5 has no application in relation to the contract pursuant to which the complainant worked in GENDER. The short-term appointment which the complainant accepted from 2 September 2008 was never extended. Moreover, there is nothing in the Rule which would permit her previous service under a fixed-term contract to be taken into account so as to make the Rule applicable to the short-term appointment that commenced on 2 September 2008. Further, because Rule 3.5(a) has no application, Rule 3.5(c) cannot operate to convert the short-term appointment to an extension of the complainant's fixed-term contract that came to an end on 31 August 2008. Furthermore, the purpose of Rule 3.5 is to alleviate the precarious situation of persons who are granted only short-term contracts, a position quite different from that of the complainant who had a series of fixed-term contracts.

24. The complainant also contends that there was no reason why her fixed-term contract should not have been extended when she left PARDEV. In this regard, she argues that the break of one day between the end of her fixed-term contract and her short-term appointment in GENDER was "artificial" and not required by the Staff Regulations. This argument must be rejected. As the complainant had already reached the age of 62, her fixed-term contract could, in terms of Circular No. 436, Series 6, only be extended if it could be

demonstrated that that was "essential in the interest of the Organization and the job [in GENDER could] not be performed by a serving staff member". The complainant has not provided any evidence to suggest that that requirement was satisfied. Indeed, there is nothing to suggest that, at the time in question, she or anyone else asked for an exemption from mandatory retirement on the basis that that requirement was satisfied.

25. The complaint refers to two persons who have been retained in employment past their mandatory retirement age and who have either had their fixed-term contracts extended or have had Rule 3.5 applied to their short-term contracts. Reference to those persons does not establish that the Organization took the course it did with respect to the complainant in bad faith or for any other improper motive. Nor does reference to the situation of those persons establish that the complainant was the victim of unequal treatment. There is nothing to suggest that the complainant was in the same position in fact and law as the two persons concerned. Accordingly, the fourth complaint must also be dismissed.

26. Before turning to a consideration of the first complaint, it is appropriate to note that the complainant's grievance before the Joint Advisory Appeals Board and, indeed, the pleadings before the Tribunal are expressed in terms of a decision not to renew her contract. Although the letter of 30 November 2007 was, in terms, a decision to that effect, it was subsequently replaced by a decision extending the complainant's fixed-term contract without any break in her employment. The consequence is that, in substance, the decision that is in issue in the first complaint is a decision to remove the complainant from her post with effect from 1 January 2008. Consideration of the first complaint must include consideration of the substance of the decision of 30 November 2007.

27. The complainant challenges the decision of 30 November 2007 on three main grounds. She claims that it was taken without authority, that she was not properly consulted and that it was taken for

an improper purpose. So far as concerns the argument that the decision of 30 November 2007 was taken without authority, it is not disputed that the decision in question was taken by the Director of ILO/AIDS, and not by the Director-General who, under Article 4.1 of the ILO Staff Regulations, selects and appoints officials and, under Article 11.1, terminates the appointment of officials. Under Article 14.1, he is also responsible for the application of the Staff Regulations. It is not in doubt that the Director-General may delegate his authority to other officials. However, and as pointed out in Judgment 2028, under 8(3), "when a complainant calls for proof that power has in fact been delegated to a specific person, it is a matter for the Organisation to produce such proof" (see also Judgment 2558, under 4(a)). In the present case, the defendant claims that, "in the case of technical cooperation appointments, such as those in ILO/AIDS […], the authority to decide on human resources matters, including the renewal of fixed-term contracts, is delegated to the manager of the project, who […] in the case of a headquarters-based technical cooperation programme, [is] the Director of the Programme". It asserts that this "delegation of authority […] has been a long-standing practice". It nevertheless provides no proof of actual delegation. Instead, it offers as evidence of the "long standing practice" provisions in the ILO Technical Cooperation Manual. Under the heading "Extension of Contract" that Manual provides that the project manager initiates action to extend an official's contract and "makes a

recommendation to the ILO office director or responsible technical unit official at headquarters". The Manual further provides that in the case of centralised (headquarters-managed) projects, the responsible technical unit creates a personnel action (PA) for the extension. This is sent to HRD, which "checks [it] for accuracy […], approves [it] and issues an offer of extension". Under the heading "Cessation of Contract", the Manual relevantly provides, in the case of centralised (headquarters-managed) projects, that "the responsible headquarters technical unit initiates action by informing the official and [HRD] that the official's contract is ending. [HRD] then contacts the expert, informing them [sic] of the required formalities".

28. The Manual does not specifically state that the Director of a Programme has authority to decide whether or not a person's contract will be renewed. It may be that that is implicit in the quoted provisions and is in keeping with established practice. However, established practice does not constitute proof of delegation. In this regard, the practice now asserted would be lawful only if it was based on a valid delegation by the Director-General. That is because the Staff Regulations vest in the Director-General the authority to make and terminate appointments and the practice in question is inconsistent with those Regulations. A practice that is inconsistent with staff regulations cannot obtain legal force (see Judgment 1390, under 27). Thus, in the absence of proof of delegation, it must be concluded that the Director of ILO/AIDS had no authority to take the decision of 30 November 2007 insofar as it purports to be a decision not to renew the complainant's contract. Moreover, there is nothing in the Technical Cooperation Manual to suggest that she had authority to take the underlying decision to suppress the complainant's post. Further, and insofar as the decision of 30 November 2007 was, by reason of subsequent events, in substance, a decision to remove the complainant from her post, there is nothing to suggest that that decision was within the authority of the Director of ILO/AIDS. It follows that the decision of 30 November 2007 was unlawful and must be set aside.

29. Although the decision of 30 November 2007 must be set aside on the ground that it was taken without authority, it is convenient to consider, also, the complainant's argument that the decision was procedurally flawed in that she was denied an opportunity to be heard on the questions whether her post should be suppressed and whether she should be removed from it. That issue is relevant to the question whether the decision of 30 November 2007 was taken for an improper purpose and, also, the complainant's entitlement to moral damages.

30. It is well established that "no decision adverse to a staff member may be taken unless he has been made aware of the organisation's intention and been given an opportunity to state his case" (see Judgment 907, under 4). Moreover, and as pointed out in Judgment 2861, under 27, the obligation to respect the dignity of staff members requires an "international organisation […] to involve the Chief of a Section or Department in plans for its reorganisation". The complainant contends that the first she heard of the decision to suppress her post and, hence, not to renew her contract was when she was handed the letter of 30 November 2007. The Organization does not argue otherwise. Rather, it contends that at the meeting of 11 January 2006, when the Director informed the complainant that she would renew her contract for only six months, "the complainant was sufficiently informed that the Director [of ILO/AIDS] was considering abolishing the [RPAU] of the Programme". The evidence is that the Director of ILO/AIDS then said, amongst other things, that the complainant's research "was irrelevant to the ILO/AIDS Programme", not that she was considering abolishing the RPAU. However, even if the Director of ILO/AIDS did say she was "considering abolishing the [RPAU]", that falls far short of what is required in terms of consultation with the head of a unit on the subject of its abolition or restructuring. And given that after the meeting of 11 January 2006, the complainant's contract was twice renewed for a period of 12 months, it cannot be treated as notification of a decision or, even, of the intention to suppress the complainant's post. For the same reason it cannot be treated as notification of a decision or, even, an intention not to renew her contract.

31. The Organization also refers to the report of the external consultants engaged to review the research work of the RPAU. It was stated in that report that, in the opinion of the authors, "the next step for [ILO/AIDS] research activities is to get down to the workplace level". It is claimed that, in the context of the provision of that report to the complainant in October 2006, the Director of ILO/AIDS "stressed […] that maintaining a research unit at headquarters was not sustainable". The defendant provides no note or other evidence of this conversation. Further, the proposal by the external consultants that research should "get down to the workplace level" does not necessarily encompass suppression of the complainant's post, or restructuring or abolition of the unit that she headed.

32. Moreover, it refers to a statement by a person who was employed in ILO/AIDS at the relevant time and who was later interviewed in the course of the "fact-finding" exercise conducted with respect to the complainant's claim of harassment. It was said in that statement that "restructuring of the [P]rogramme ha[d] been envisaged relatively soon after the arrival of the [new Director of ILO/AIDS] when the need for a new standard arose (end of 2005)". If that is so, it is difficult to understand the absence of any evidence that the complainant was consulted as to the restructuring of the RPAU. It is also difficult to understand why the complainant was not given two months' notice of the non-renewal of her contract, as required by the Technical Cooperation Manual. The failure to give two months' notice is explicable only on the basis that there was no decision to suppress the complainant's post and, hence, no decision with respect to the non-renewal of her contract until 30 November 2007. In these circumstances, the complainant's claim that the first she heard of those decisions was on 30 November must be accepted. Accordingly, it must be concluded that there was a breach of the duty to inform the complainant of the intention to suppress her post and not to renew her contract. There was also a breach of the obligation to consult with her as to the restructuring of the RPAU. That latter breach was recognised by the Joint Advisory Appeals Board. However, the Board erroneously considered that it had no legal consequence.

33. The complainant's third argument with respect to the decision of 30 November 2007 is that it was taken for an improper purpose. In this respect, her first claim is, in essence, that the Director of ILO/AIDS colluded with the then Legal Officer of HRD to remove her from her post as Head of RPAU so that the Legal Officer of HRD could eventually be appointed as Senior Legal Officer in ILO/AIDS in her place. The complainant claims, but offers no independent evidence, that the Legal Officer of HRD had been searching for another position and that, some weeks before the complainant was informed of the decision not to renew her contract, she had told a third person that she had "strong prospects of a position in ILO/AIDS". The complainant provided this information to the Staff Union's Legal Adviser on 13 December 2007, well before the person in question was appointed Senior Legal Officer in ILO/AIDS. The complainant points to several matters in support of her theory of collusion, including that the Legal Officer of HRD, and not the officer who normally dealt with ILO/AIDS technical cooperation contracts, had assisted the Director of ILO/AIDS in the preparation of the letter of 30 November. She also provides a copy of an e-mail sent by the Director of ILO/AIDS to the Director of HRD dated 26 November 2007, indicating that she needed a senior legal officer within ILO/AIDS, asking for assistance in the detachment of the Legal Officer of HRD to ILO/AIDS and stating that the latter was "open to considering [the idea]". However, that e-mail does not suggest that the detachment of the Legal Officer of HRD was contingent upon the suppression of the complainant's post. The complainant points out that the Legal Officer of HRD had participated in discussions with the Staff Union with respect to the decision of 30 November 2007 but, later, recused herself from the investigation of the complainant's claim of harassment on the ground of conflict of interest. Lastly, the complainant points to the fact that the

Legal Officer of HRD was ultimately appointed to the post of Senior Legal Officer in ILO/AIDS. These matters are such that the complainant might properly entertain a reasonable suspicion as to the role of the then Legal Officer of HRD in the decision taken by the Director of ILO/AIDS on 30 November 2007. However, in the absence of independent evidence that the Legal Officer of HRD clearly stated prior to 30 November 2007 that, subject to restructuring of the RPAU, she had good prospects of obtaining a post in ILO/AIDS, there is no proof of collusion as alleged by the complainant.

34. Although the complainant's claim of collusion must be rejected, there is other material to cast doubt on the claim that the decision of 30 November 2007 was taken because of the planned restructuring of the RPAU. It is correct that the RPAU was eventually abolished and replaced by a legal unit. Moreover, it may be accepted, as the ILO submits, that there had been an "increase in requests by constituents for advice on the integration of HIV/AIDS in national legislation, on national and workplace HIV/AIDS policy development and on the unfolding legal concerns related to the criminalisation of HIV/AIDS". It may also be accepted, as the Organization points out, that there was, at the relevant time, "a stronger focus on increasing effective action at the workplace, which meant that planning and resource allocation were increasingly done in the field at the regional and country level". However, there are a number of matters that indicate that they were not pressing concerns as at 30 November 2007 or at any time prior thereto. As already indicated, it must be concluded that there was no consultation with the complainant as to the restructuring or ultimate abolition of the RPAU. And notwithstanding the statement to which reference has already been made, in which it was said that "restructuring of the [P]rogramme ha[d] been envisaged" at the end of 2005, there is no evidence that there was, at any stage, any concrete plan or proposal with respect to the restructuring or abolition of the RPAU. Certainly, the evidence would suggest that there were no discussions of any such plan or proposal with the Executive Director of Social Protection, he being the immediate supervisor of the

Director of ILO/AIDS, or with anyone in HRD, save perhaps with the then Legal Officer. There is evidence in the e-mail of 26 November 2007 to which reference has already been made of the desire to obtain a senior legal officer for ILO/AIDS. However, and as already pointed out, there is nothing in that e-mail to indicate that that course was contingent upon the restructuring or abolition of the RPAU or, even, the suppression of the complainant's post. Moreover, the letter of 30 November speaks only in general terms and of future action, stating that the complainant's post "is being modified" and that it "will be suppressed" and "the unit will be restructured". Further, it was only in April 2008 that a vacancy notice was issued for the new post of Senior Legal Officer in ILO/AIDS that eventually replaced the complainant's post. Moreover, it may be noted that the reasons given for the decision have changed from time to time during the course of the proceedings. When regard is had to these matters, the finding that no decision was made until 30 November 2007 and the admission by the Organization as to the strained relationship between the Director of ILO/AIDS and the complainant, the inescapable inference is that the real decision taken on 30 November 2007 was a decision not to renew the complainant's contract and that that decision was taken for the purpose of ridding the ILO/AIDS Programme of a person whom the Director found uncongenial. Thus, it must be concluded in terms used in Judgment 1231, that the proposal to modify and ultimately suppress the complainant's post was "used as a pretext for dislodging [an] undesirable staff [member]". Accordingly, the decision of 30 November 2007 was taken for an improper purpose.

35. Before turning to the complainant's claim of harassment, it is convenient to note that, although there is a definition of "sexual harassment" and a sexual harassment grievance procedure in the current Collective Agreement on Conflict Prevention and Resolution between the International Labour Office and the ILO Staff Union, it would appear that there is no longer a definition of "harassment" and no specific procedure for the investigation of other harassment claims. They are dealt with in accordance with the general grievance

procedure. Article 3.I of the current Collective Agreement relevantly provides:

> "The parties to a general grievance procedure are the official concerned and the Office. This procedure shall consist of the following stages:
>
> - Review by HRD;
> - Review by the Joint Advisory Appeals Board."

36. It is well established that an international organisation has a duty to its staff members to investigate claims of harassment. That duty extends to both the staff member alleging harassment and the person against whom a complaint is made (see Judgment 2642, under 8). It may be doubted whether a procedure in which the parties are "the official concerned and the Office" sufficiently recognises the duty owed to the person against whom a complaint of harassment is made. Further, the duty is a duty to investigate claims of harassment "promptly and thoroughly" (see Judgment 2642, under 8). In the present case, HRD stated in its letter to the complainant of 19 September 2008 that it had "thoroughly examined the documentary evidence [she had] provided and interviewed a number of former and current officials of the [P]rogramme". It did not interview the complainant but, nonetheless, expressed the view that she was reluctant to accept the Director's authority, had failed "to adapt to her management style, to accept the change of orientation she gave to the [P]rogramme and to fully collaborate with her". The letter concluded with the statement:

> "For these reasons, on the basis of the preliminary fact-finding carried out, HRD considers that there is no *prima facie* evidence of harassment that would justify commissioning an independent investigation."

37. It is not clear precisely what was involved in the "preliminary fact-finding". In its surrejoinder the Organization states that "it interviewed several serving and former officials" but the interviews were not disclosed to the complainant as "some of the interviewees had requested confidential treatment". In response to an argument by the complainant that some interviews which were adverse to her claim were used in the proceedings before the Joint Advisory Appeals Board

and that others that were supportive of her claim were not provided to the Board, it is simply said that as "[o]bjectivity [was] at [that] stage required from the [Board], […] [it was] therefore normal that the Office presented only those facts and arguments that supported its decision to reject the initial grievance". The complainant was entitled, as part of the investigation, to be informed of all the evidence against her, as was the Director of ILO/AIDS. Both had the right to test and answer such evidence at that stage, including by giving evidence themselves if they so wished. So far as concerns the complainant, the failure to provide her with that information constituted a serious breach of the requirements of due process. That breach was not remedied in the subsequent proceedings before the Joint Advisory Appeals Board.

38. As already indicated, the Board did not hold an oral hearing and did not interview the complainant. Rather, it adopted an approach similar to that taken by HRD, finding as a fact that "the deterioration of working relations between the [complainant] and the new Director of [ILO/AIDS] […] was mainly due to the fact that the [complainant] found it difficult to accept the managerial decisions and the management style of the new Director and to the fact that these disagreements on professional issues developed into a general personal conflict". This was not a finding open to the Joint Advisory Appeals Board without first hearing the complainant and giving her an opportunity to answer that assertion.

39. The Board made no analysis of the complainant's claims of harassment. Rather, it stated that "the written submissions of the [complainant] and of HRD include a number of documents that have little or no evidential value *per se* (e.g. the 'notes to the file' or 'notes for the record') submitted by the [complainant] or the written or oral testimonies submitted by HRD". This, too, involved a serious error. Contemporaneous notes, as are many of the documents on which the complainant relied, always have evidentiary value, the more so if they are not controverted by other evidence. Moreover, much of the evidence consisted of e-mail communications which are evidence of

their contents and, again, assume particular evidentiary weight if their contents are not challenged.

40. It follows that the recommendation of the Joint Advisory Appeals Board with respect to the complainant's claim of harassment is seriously flawed. And because the Director-General's decision to reject the complainant's claim of harassment is based on that recommendation, it must be set aside. That being so, the question now arises whether that claim should be remitted for further consideration or whether the Tribunal, itself, should consider the claim.

41. As indicated above, the contemporaneous notes of the complainant and the e-mails that she has produced have evidentiary value. It is sufficient to note, at this stage, that they constitute *prima facie* evidence of harassment. Thus, there should have been a prompt and thorough investigation of her claims. It is no longer possible for there to be a prompt investigation. Nor does it seem likely that there can be a thorough investigation by the ILO. Many of the persons who worked in ILO/AIDS and, it seems, the three persons who worked in RPAU, have since left the Organization. Further, it appears that the ILO has no established procedure for the investigation of general claims of harassment. The complainant has invited the Tribunal, in her complaint, to deal with the question of harassment and the defendant has had ample opportunity to submit evidence in response to her claims. In these circumstances, it is appropriate that the Tribunal consider for itself whether the claim is substantiated.

42. Before turning to an analysis of the complainant's claim of harassment, it is convenient to note that the RPAU was a small unit comprised of three persons, namely the complainant, a legal officer and a statistician. The terms of the complainant's post description required her, amongst other things, to "[m]anage and lead the work of the [RPAU]" and to "[e]stablish contact and liaison with relevant officials within the ILO […] and of other organizations, institutions, donor agencies, governments, employers' and workers' organizations for the formulation and elaboration of research and

policy analysis activities". The complainant was also required to "[a]llocate work assignments to staff of unit; supervise, monitor and evaluate the work prepared by the staff". It is also convenient to note that no performance appraisal report was prepared with respect to the complainant for any of the years 2005, 2006 and 2007. The ILO submits that this failure was based partly on the Director's wish to avoid further conflict and partly on inefficiency "but can in any event therefore not be considered as harassment". Whatever the reason, the fact that no performance appraisal was conducted has the consequence that the ILO cannot now point to alleged deficiencies in the complainant's performance to justify actions by the Director of ILO/AIDS as the proper exercise of managerial functions. Moreover, the failure to conduct regular performance appraisals leaves it open to doubt whether performance objectives were established and whether, also, the change in focus of the ILO/AIDS Programme was sufficiently communicated to the complainant.

43. As already noted, it appears that there is no definition of harassment within the Staff Regulations or the current Collective Agreement. However, the definition that appeared in the former Collective Agreement reflects what is generally accepted as constituting harassment. Accordingly, it is convenient to refer to aspects of that definition. So far as is presently relevant, that definition provided:

> "The expression 'harassment' encompasses any act, conduct, statement or request which is unwelcome […] and could, in all the circumstances, reasonably be regarded as harassing behaviour of a discriminatory, offensive, humiliating, intimidating or violent nature or an intrusion of privacy."

The definition indicated that "harassment" included "bullying/mobbing" which was defined to include:

> "(ii) persistent negative attacks on personal or professional performance without reason or legitimate authority;
>
> […]
>
> (iv) abusing a position of power by persistently undermining a […] person's work […];
>
> (v) unreasonable or inappropriate monitoring of […] performance".

44. The complainant's claims of harassment fall into the three examples of "bullying/mobbing" set out above. It is convenient to deal first with the allegation of "inappropriate monitoring". It is not disputed that, following the meeting of 11 January 2006, the Director of ILO/AIDS insisted on regular fortnightly meetings with the complainant to follow the work done by her and the RPAU. Nor is it denied that meetings were held for this purpose and that, although they were rescheduled from time to time, they were held more or less on a fortnightly basis. The defendant contends that the purpose of these meetings was "exchange of information, […] discussion of current issues and making decisions", as well as supervision. It also contends that that supervision was necessary, referring to an incident in which it is claimed that the complainant overlooked the necessity to consult with employer and worker groups and another incident in which, it is claimed, the complainant had failed to ascertain whether an "ethical clearance" had been obtained for a proposal for a joint research project of persons living with HIV. The complainant offers explanations of both incidents. Without turning to those explanations, it is sufficient to note that the incidents, even if unexplained, do not justify close supervision of the kind undertaken. And in the absence of performance appraisal reports in which such incidents might have been properly documented, explained and, if necessary, later challenged, there is no reason why the Tribunal should not accept the explanations provided by the complainant. Accordingly, the Tribunal concludes that, by means of these fortnightly meetings, the complainant was subjected to "inappropriate monitoring of performance", even though the meetings may also have involved discussions and the exchange of information.

45. There is one other matter that can conveniently be dealt with in relation to "inappropriate" monitoring. Although the complainant's job description clearly specified that she should supervise the staff of the RPAU, the Director of ILO/AIDS assumed responsibility for their supervision and for the signing of their performance appraisal reports, notwithstanding that those reports were prepared by the complainant. The Organization claimed before the Joint Advisory Appeals Board

that this reflected the Director's "flat" management style and was implemented across the Programme. Whether or not that is so, the curtailing of functions specifically vested in the complainant by her job description is a conduct that might reasonably be regarded by her as humiliating and offensive.

46. The complainant contends that the Director of ILO/AIDS made persistent negative attacks on her personal and professional performance without reason. The first incident to which the complainant refers is a staff meeting on 29 August 2005 when the Director of ILO/AIDS invited her to speak and then castigated her at the meeting for disagreeing with a colleague. There is no contemporaneous note of this event and the Organization submits there is no proof of what happened. Rather, it relies on a statement that the complainant had no opportunity to test or answer to, arguing that she, herself, behaved "rudely" in staff meetings. In the circumstances, the Tribunal cannot make a finding on this aspect of the complainant's claim. However, it is necessary to note that had the ILO conducted a prompt and thorough investigation of the complainant's claim in accordance with its obligation, the position might well be otherwise.

47. Even though the Tribunal cannot make a finding with respect to the staff meeting on 29 August 2005, the complainant has produced a number of e-mails from the Director of ILO/AIDS addressed to her, but copied to other people, in which the Director either expressly or implicitly criticised the complainant or her work. For example, in an e-mail of 24 May 2007, copied to five other persons, the Director criticised the complainant for having responded to a request for legal and/or policy advice, a function of the RPAU. The lawyer whom the complainant supervised was then on maternity leave. According to the complainant, another lawyer who was not under her supervision, had refused to provide assistance with respect to the request. The complainant then had the advice checked by the lawyer who was absent on maternity leave but who agreed to provide assistance. The Director's e-mail included the following statement:

> "ILO/AIDS has a responsibility to respond to legal and other requests of ILO constituents in an informed and qualified manner. It is not appropriate to take on the role of the legal officer, to make such a decision unilaterally and to send the response to the constituents. […] It was also not fair to bother [the RPAU lawyer] during her maternity leave […]."

48. In other e-mails to the complainant and copied to other persons, the Director of ILO/AIDS implied, for example, that the complainant had ignored her request to discuss a particular matter, had not completed a task in a timely manner, and had failed to inform the Director that she could not complete a project within the required time. In another e-mail, apparently to a person outside ILO/AIDS, the Director referred to her having discussed "certain concerns […] related to the internal ILO/AIDS research process" with the "research team". It cannot be doubted that these e-mails were such as to disparage the work and competence of the complainant. In the case of those copied to other persons working in ILO/AIDS, the Organization submits that copying of e-mails "to a limited number of senior colleagues" does not constitute harassment because they are "the expression of a collegial, participatory management style". This argument must be rejected. An international organisation has a responsibility to treat its officials with dignity. If criticism is warranted – and in the absence of performance appraisal reports and a proper investigation of the complainant's claims, it is impossible to conclude that it was – that should be done either by means of the performance appraisal reports or in a manner that ensures respect for the staff member's dignity.

49. The complainant also contends that she was treated in an offensive and humiliating manner by reason of the failure of the Director of ILO/AIDS to respond to a number of her e-mails, or to respond in sufficient time so as to enable action to be taken. In this regard, she refers to the failure to respond in time to requests for the other members of her team to participate in meetings. She also refers to the failure to respond to her e-mails requesting a decision on certain publications. The defendant answers these allegations on the basis of the Director's busy schedule and refers to the Tribunal's statement

in Judgment 2745, under 19, that "conduct that […] [is] the result of […] mere inefficiency [does] not constitute harassment". However, this conduct has to be assessed in the overall context of the treatment afforded to the complainant, and when so assessed it is more probable than not that the failure to respond to the complainant's e-mails was the result of the Director's disdain for her work and that of the RPAU.

50. Moreover, the complainant alleges that she was the victim of discrimination in that she was assigned few missions in comparison with other staff members of ILO/AIDS and was never delegated the task of officer-in-charge during the Director's absence. The defendant answers the former claim by pointing out that there is no right to go on mission and asserting that the Director of ILO/AIDS saw the role of researchers mainly in the presentation of their work at international conferences. Similarly, it answers the claim with respect to the complainant's non-appointment as officer-in-charge by reference to the need to limit the number of officials with "access to the [Integrated Resource Information] system". The complainant's claims were never investigated to determine whether or not she was the victim of discrimination and, in the absence of further evidence, the Tribunal accepts the explanations put forward by the Organization. Even so, the explanation with respect to the complainant not having been assigned missions in more or less the same proportion as other staff members indicates that the Director of ILO/AIDS did not place a high value on the work of the complainant or the RPAU.

51. In a context in which it is clear that relations between the Director of ILO/AIDS and the complainant were strained and the Director did not place a high value on the work of the complainant or the RPAU, it must be concluded that the actions of the Director in closely supervising the complainant, in denigrating her work and competence in e-mails copied to other members of the ILO/AIDS Programme and, in one case, in an e-mail to a person outside the Programme and in failing to respond in a timely fashion to the

complainant's e-mails, constituted, in terms of the definition of "harassment" in the former collective agreement, "conduct […] which [was] unwelcome […] and could, in all the circumstances, reasonably be regarded as harassing behaviour of a[n] […] offensive [and] humiliating […] nature".

52. As earlier indicated, the Director-General's decision of 3 July 2009 must be set aside, both with respect to the decision of 30 November 2007 and the complainant's claim of harassment. In view of the restructuring of ILO/AIDS this is not an appropriate case in which to order reinstatement. However, the complainant is entitled to notional reinstatement for a period of 12 months from 1 January 2008 with the consequence that the ILO should pay her the salary, allowances and other benefits, including pension and health insurance contributions, that she would have received if her contract had been extended to 31 December 2008. The complainant must give credit for the amounts actually earned by her during the period from 1 January to 31 December 2008. As the complainant was in fact employed until the end of October 2008, the Tribunal will award interest on the resulting balance at the rate of 5 per cent per annum from 1 November 2008 until the date of payment. The complainant is entitled to moral damages for the harassment to which she was subjected, as well as for the affront to her dignity in the failure to consult her with respect to the restructuring of the RPAU, and the cursory manner in which she was informed of the decision of 30 November 2007. She is also entitled to moral damages because that decision was taken for an improper purpose and, also, for the failure to investigate properly her claim of harassment and the unfair manner in which the case was presented to the Joint Advisory Appeals Board. The Tribunal assesses those damages at 50,000 Swiss francs. The complainant is also entitled to costs in the sum of 8,000 francs.

53. It should be noted that the complainant also sought an order relating to the appointment of the person appointed as Senior Legal

Officer in ILO/AIDS and orders for investigation of possible reprisals, as well as potential violations of the principle of independence of the international civil service and of the Standards of Conduct for the International Civil Service. The Tribunal has no power to make such orders and the complainant's claims in relation to these matters must be dismissed.

## DECISION

For the above reasons,

1. The second, third and fourth complaints are dismissed.
2. The Director-General's decision of 3 July 2009 is set aside.
3. The ILO shall pay the complainant the full salary, allowances and other benefits, including pension and health insurance contributions, that she would have received if her contract had been extended from 1 January to 31 December 2008. The complainant must give credit for amounts actually earned by her in that period. The ILO shall pay interest on the resulting balance at the rate of 5 per cent per annum from 1 November 2008 until the date of payment.
4. The ILO shall also pay the complainant the amount of 50,000 Swiss francs by way of moral damages.
5. It shall pay her costs in the sum of 8,000 francs.
6. All other claims are dismissed.

In witness of this judgment, adopted on 15 November 2011, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba
Mary G. Gaudron
Patrick Frydman
Catherine Comtet