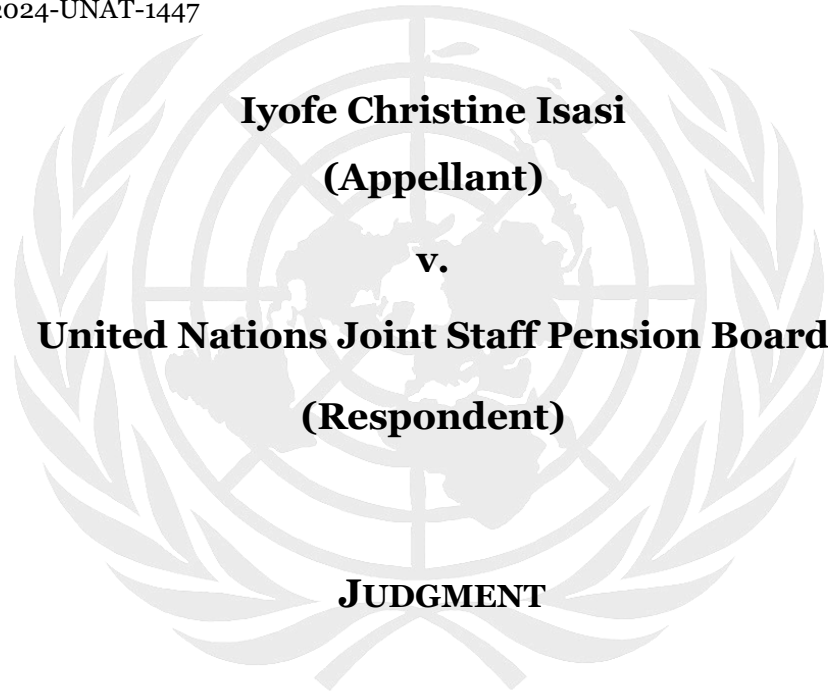




**UNITED NATIONS APPEALS TRIBUNAL**  
**TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2024-UNAT-1447



**Iyofe Christine Isasi**  
**(Appellant)**

**v.**

**United Nations Joint Staff Pension Board**  
**(Respondent)**

**JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Gao Xiaoli Judge Nassib G. Ziadé
Case No.:	2023-1834
Date of Decision:	28 June 2024
Date of Publication:	22 July 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Self-represented

Counsel for Respondent: Rosemarie McClean

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Iyofe Christine Isasi (Ms. Isasi or the Appellant) contested the decision of the Chief of Operations of the United Nations Joint Staff Pension Fund (UNJSPF or Fund) that she was not eligible to receive a divorced surviving spouse's benefit under Article 35 *bis* of the Regulations, Rules and Pension Adjustment System of the UNJSPF (Regulations). This is because she had not been married to the late participant, Mr. Mbaya Kankwenda (Mr. Kankwenda), for a continuous period of at least ten years, during which he paid contributions to the Fund (contested decision).
2. By decision dated 7 July 2023 (impugned Decision),<sup>1</sup> the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) upheld the contested decision.
3. Ms. Isasi lodged an appeal against the impugned Decision with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Decision.

**Facts and Procedure**

5. Mr. Kankwenda joined the Organization in 1988. He participated in the Fund from 14 August 1988 until 31 July 2005, as a staff member of the United Nations Development Programme (UNDP). Throughout his participation in the Fund, Mr. Kankwenda reported that he was married to Ms. Isasi.
6. In September 2016, Ms. Isasi informed the Fund that she had divorced Mr. Kankwenda, providing a copy of a Judgment and an Order dated 16 August 2016 issued by the Circuit Court for Montgomery County, Maryland (Maryland Court).<sup>2</sup>
7. On 29 October 2016, following a request by the Fund soliciting Mr. Kankwenda's comments concerning the Judgment and the Order dated 16 August 2016, he provided the Fund with an affidavit dated 13 September 2016. In the affidavit, he stated, *inter alia*, that he had never

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<sup>1</sup> UNJSPF case No. UID 000160353.

<sup>2</sup> Judgment of absolute divorce and Order for spousal support arrears and pension benefits issued by the Maryland Court on 16 August 2016.

been married to Ms. Isasi and, instead, had been married to Ms. M.T. since 17 January 1971.<sup>3</sup>

8. Mr. Kankwenda died on 9 December 2020. On 4 January 2021, Ms. Isasi sent a letter to the Fund stating, *inter alia*, that she married Mr. Kankwenda on 17 January 1971 and requesting guidance regarding the process for “alimony payments in light of the recent passing of [her] late ex-husband”.<sup>4</sup> In support of her request, Ms. Isasi provided several documents, including an attestation of monogamous customary marriage issued on 10 May 1988 by the City of Kinshasa, Democratic Republic of Congo (DRC) and a marriage certificate dated 24 April 2008 and issued by the Embassy of the DRC in Washington, DC, United States. These two documents stated that Ms. Isasi married Mr. Kankwenda on 17 January 1971. On the basis of this information, a divorced surviving spouse’s benefit was put into payment to Ms. Isasi.

9. In April 2021, the Fund received another claim for a widow’s benefit from Ms. M.T. along with a death certificate stating that at the time of his death, Mr. Kankwenda was married to her.<sup>5</sup> In support of her claim, Ms. M.T. also provided an attestation of monogamous customary marriage issued by the City of Kinshasa stating that she married Mr. Kankwenda on 17 January 1971.<sup>6</sup>

10. On 28 May 2022, the Fund requested by e-mail that Ms. Isasi confirm her “marital history with Mr. Kankwenda and explain the information contained in the divorce order regarding [her] marriage date”.<sup>7</sup> On 16 June 2022, Ms. Isasi replied to the Fund, explaining that the marriage certificate submitted to UNDP at the time of Mr. Kankwenda’s recruitment had been falsified by him.<sup>8</sup>

11. In another e-mail dated 19 June 2022, following a request for additional information from the Fund, Ms. Isasi specified that she got married to Mr. Kankwenda in March 1980 in the DRC and that she did not know about the existence of Ms. M.T. However, she did not provide a copy of her marriage certificate as requested by the Fund.<sup>9</sup>

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<sup>3</sup> Affidavit dated 13 September 2016 from Mr. Kankwenda.

<sup>4</sup> Letter dated 4 January 2021 from Ms. Isasi to the Fund.

<sup>5</sup> Death certificate of Mr. Kankwenda dated 20 February 2021.

<sup>6</sup> Attestation of monogamous customary marriage between Ms. M.T. and Mr. Kankwenda dated 25 March 2017.

<sup>7</sup> E-mail dated 28 May 2022 from the Fund to Ms. Isasi.

<sup>8</sup> E-mail exchange between the Fund and Ms. Isasi dated 15 and 16 June 2022.

<sup>9</sup> E-mail dated 19 June 2022 from Ms. Isasi to the Fund.

12. Following the information provided by Mses. Isasi and M. T., the Fund gathered information about the dates of birth of Mr. Kankwenda's children and found that he had six children with Ms. M.T. between 1972 and 1983 and two children with Ms. Isasi between 1986 and 1991.<sup>10</sup>

13. On 16 February 2023, Ms. M.T. provided an affidavit dated 18 January 2023 to the Fund stating that she married Mr. Kankwenda on 17 January 1971 in the DRC and that they never underwent divorce proceedings.<sup>11</sup>

14. On 24 February 2023, the UNJSPF Chief of Operations informed Ms. Isasi by letter that she was not eligible to receive a divorced surviving spouse's benefit under Article 35 *bis* of the Regulations, because she did not meet the first condition set out in Article 35 *bis* (b)(i), which requires having been "married to the former spouse for a continuous period of at least ten years, during which contributions were paid to the Fund on account of the participant". Since Ms. Isasi never met this condition, the Fund was also bound to fully recover all amounts incorrectly paid to her.<sup>12</sup>

15. On 22 March 2023, Ms. Isasi submitted a request for review to the Standing Committee of the UNJSPB. In support of her request, Ms. Isasi submitted, *inter alia*, an attestation of monogamous customary marriage dated 16 March 1980.<sup>13</sup>

#### *The impugned Decision*

16. The Standing Committee of the UNJSPB considered the case at its meeting held on 5 July 2023. It concluded that Mr. Kankwenda married Ms. M.T. in the DRC in 1971 and that there was no evidence of divorce between them. Consequently, since polygamy is not legal in the DRC, the Standing Committee of the UNJSPB held that the Fund could not recognize Ms. Isasi's subsequent marriage to Mr. Kankwenda's in 1980, because he was still married to Ms. M.T. at that time.

17. Therefore, the Standing Committee of the UNJSPB upheld the contested decision and affirmed that Ms. Isasi was not eligible to receive a divorced surviving spouse's benefit because

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<sup>10</sup> Birth certificates of Mr. Kankwenda's children.

<sup>11</sup> Affidavit dated 18 January 2023 from Ms. M.T.

<sup>12</sup> Letter dated 24 February 2023 from the UNJSPF Chief of Operations to Ms. Isasi.

<sup>13</sup> Attestation of monogamous customary marriage between Ms. Isasi and Mr. Kankwenda dated 16 March 1980.

she had not been married to Mr. Kankwenda for a continuous period of at least 10 years, during which he paid contributions to the Fund.

### **Submissions**

#### **Ms. Isasi's Appeal**

18. Ms. Isasi reiterates that Mr. Kankwenda submitted a falsified marriage certificate to UNDP at the beginning of his employment. She highlights that the marriage certificate contained “the marriage date with his first wife, but [her] name”. She also contends that she was not aware of this situation until early 2023.

19. Ms. Isasi argues that as polygamy is illegal in the DRC, it is unlikely that Mr. Kankwenda and she could have been married without him being divorced from Ms. M.T. first.

20. Ms. Isasi also refers to the Judgment and the Order dated 16 August 2016 issued by the Maryland Court, which, she submits, demonstrate that “a legal marriage took place”.<sup>14</sup>

21. Last, concerning the affidavit dated 13 September 2016, Ms. Isasi submits that Mr. Kankwenda admitted that she was his wife during the divorce proceedings, but nevertheless told the Fund otherwise.<sup>15</sup> Ms. Isasi contends that she is “struggling to understand why this one affidavit supersedes all the legal documentation [Mr. Kankwenda] submitted to the [United Nations], as well as both the [United States] and Canadian governments over the course of his seventeen-year long career showing that [she] was his wife”.

#### **The UNJSPB's Answer**

22. The UNJSPB requests the Appeals Tribunal to dismiss the appeal and to uphold the impugned Decision.

23. First, the UNJSPB submits that the documentation provided to the Fund establishes that Mr. Kankwenda married Ms. M.T. in 1971 in the DRC, while any document showing that he married Ms. Isasi is not genuine.

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<sup>14</sup> Judgment of absolute divorce and Order for spousal support arrears and pension benefits issued by the Maryland Court on 16 August 2016.

<sup>15</sup> Affidavit dated 13 September 2016 from Mr. Kankwenda.

24. The UNJSPB observes that there is no reason to doubt the authenticity of the marriage certificate provided by Ms. M.T., especially as it is “consistent with the information on record regarding the dates of birth of Mr. Kankwenda’s children and identities of their mothers”. On the contrary, the UNJSPB highlights that the two marriage certificates submitted by Ms. Isasi to the Fund show that her marriage with Mr. Kankwenda occurred on 17 January 1971, when she admitted herself that they were falsified and that she married him in 1980.

25. The UNJSPB also relies on the affidavit dated 13 September 2016 in which Mr. Kankwenda confirmed that he married Ms. M.T. in 1971 and that they have remained married since then.<sup>16</sup>

26. The UNJSPB contends that the fact that during all his participation in the Fund, Mr. Kankwenda reported Ms. Isasi as his spouse does not, “in the absence of a legally recognizable marriage between them, entitle her to a benefit from the Fund”. With regard to Ms. Isasi’s argument that her divorce with Mr. Kankwenda “shows that a legal marriage took place”, the UNJSPB, relying on *Ansa-Emmim*,<sup>17</sup> recalls that a divorce certificate is not sufficient alone to establish an underlying marriage.

27. Second, the UNJSPB submits that due to Mr. Kankwenda’s existing marriage to Ms. M.T., his subsequent purported marriage to Ms. Isasi cannot be recognized by the Fund, as polygamy is prohibited in the DRC. Indeed, relying on Appeals Tribunal jurisprudence, the UNJSPB recalls that the UNAT has consistently held that “in cases where a participant’s first marriage is entered into under a regime that does not allow polygamy, that marriage must be validly dissolved in accordance with the laws that apply to it before the participant is deemed capacitated to re-marry for the purpose of recognition of a spouse under the (...) Regulations”.<sup>18</sup> Therefore, in the present case, since Mr. Kankwenda and Ms. M.T. got married under a monogamous customary marriage in the DRC and in the absence of evidence that they divorced, his purported subsequent marriage to Ms. Isasi in 1980 cannot be recognized by the Fund.<sup>19</sup>

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<sup>16</sup> Affidavit dated 13 September 2016 from Mr. Kankwenda.

<sup>17</sup> *Ansa-Emmim v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-155, para. 27.

<sup>18</sup> *El-Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-007; *Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-1004; *Tebeyene v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-016.

<sup>19</sup> The UNJSPB refers to Ms. M.T.’s affidavit dated 13 September 2016, in which she stated that she was married to Mr. Kankwenda and that they never divorced.

28. In this regard, the UNJSPB observes that Ms. Isasi's affirmation that she was not aware of Ms. M.T.'s existence lacks credibility, especially as he had six children with Ms. M.T. at the beginning of his relationship with Ms. Isasi.

29. Last, the UNJSPB submits that the issue of remedies does not arise because Ms. Isasi is not eligible to receive a divorced surviving spouse's benefit under Article 35 *bis* of the Regulations.

### **Considerations**

30. The sole issue in the appeal is whether the Appellant, Ms. Isasi, is entitled to receive a divorced surviving spouse's benefit under Article 35 *bis* of the Regulations. She contends that, as of Mr. Kankwenda's death, she is his divorced surviving spouse. In the impugned Decision, the Standing Committee of the UNJSPB disagreed and found, on a balance of probabilities, that she was not legitimately married to Mr. Kankwenda as he was married to another individual since 17 January 1971.

31. Article 35 *bis* of the Regulations provides, in relevant parts, that:

(a) Any divorced spouse of a participant or former participant, separated on or after 1 April 1999, who was entitled to a retirement, early retirement, deferred retirement or disability benefit, or of a participant who died in service on or after that date, may, subject to the provisions of article 34(b) (applicable also to widowers), request a former spouse's benefit, if the conditions specified in paragraph (b) below are fulfilled.

(b) Subject to paragraph (d) below, the divorced spouse is entitled to the benefit set out in paragraph (c) below, payable prospectively following receipt of the request for a divorced surviving spouse's benefit, if, in the opinion of the Chief Executive of Pension Administration, all of the following conditions are fulfilled:

(i) The participant had been married to the former spouse for a continuous period of at least ten years, during which contributions were paid to the Fund on account of the participant or the participant was awarded a disability benefit under article 33 of the Regulations;

(ii) The participant's death occurred within 15 years of the date when the divorce became final, unless the former spouse proves that at the time of death the participant was under a legal obligation to pay maintenance to the former spouse;

(iii) The former spouse has reached the age of 40. Otherwise the benefit entitlement shall commence on the day immediately following the day that age is reached; and

(iv) Evidence is provided that a divorce settlement does not have an express renouncement of UNJSPF pension benefit entitlements;

32. The Appeals Tribunal has previously held that “as a matter of practice and principle, the surviving spouse asserting entitlement to a widow’s benefit normally bears the burden to prove the condition precedent to entitlement, namely that [she/he] was married to a participant who died in service at the date of [her/his] death”.<sup>20</sup>

33. Therefore, the participant or the person claiming a benefit has the burden of providing proof of entitlement on a balance of probabilities.<sup>21</sup> Rule B.3(a) of the Administrative Rules of the UNJSPF provides that “the participant shall be responsible for providing the information in rule B.2 and for notifying the organization of any changes which occur therein; the participant may be required to submit documentary or other proof of such information to the organization or the secretary of the committee”.

34. Rule B.2 states that this information “shall normally include the name of the participant and the date of commencement of participation, date of birth, sex and marital status, and, as the case may be, the names and dates of birth of the participant’s spouse, children under the age of 21, and secondary dependants; *the organization shall verify, to the extent possible, the accuracy of the information furnished*”.<sup>22</sup>

35. The UNJSPF relied on the information provided by Mr. Kankwenda when he joined the Organization in 1988. At the time, he reported that he was legally married to the Appellant since January 1971.

36. However, during divorce proceedings in the United States, he denied that he was ever legally married to the Appellant. Nevertheless, in 2016, the Maryland Court issued divorce judgments pronouncing that Mr. Kankwenda and the Appellant were lawfully married on 16 March 1980.

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<sup>20</sup> *Conforte Uwingabire Banyanga v. United Nations Joint Staff Pension Board*, Judgment No. 2023-UNAT-1326, para. 28.

<sup>21</sup> *Ibid.* See also *Betty Mukomah v. United Nations Joint Staff Pension Board*, Judgment No. 2022-UNAT-1277, para. 32.

<sup>22</sup> Emphasis added.



37. Subsequently, the UNJSPF received an affidavit from Mr. Kankwenda stating that he had been married to Ms. M.T. since 17 January 1971, but he failed to provide a marriage certificate as supporting evidence.

38. After Mr Kankwenda's death, the Appellant claimed to the UNSJPF that she was married to Mr. Kankwenda in the DRC on 17 January 1971 and provided an attestation of monogamous customary marriage issued by the City of Kinshasa on 10 May 1988. The attestation stated that the Appellant married Mr. Kankwenda on 17 January 1971. She also provided a marriage certificate issued by the Embassy of the DRC in Washington, DC on 24 April 2008, which stated that the Appellant married Mr. Kankwenda on 17 January 1971.

39. The date of marriage provided at this time is different from the date pronounced by the Maryland Court in the divorce proceedings and from what the Appellant had previously reported.

40. The UNSJPF also received Mr. Kankwenda's death certificate issued in the DRC which states that, at the time of his death, Mr. Kankwenda was married to Ms. M.T. They also received an attestation of monogamous marriage issued in the City of Kinshasa on 25 March 2017 stating that Mr. Kankwenda was married to Ms. M.T. on 17 January 1971.

41. The Appellant explains the conflicting attestations of marriages and discrepancies in her date of marriage by arguing that Mr. Kankwenda submitted falsified marriage documents to the Organization when he initially joined. She says that the documents he submitted at the time "had the marriage date with his first wife, but [the Appellant's] name".

41. Therefore, there seems to be no dispute that Mr. Kankwenda legally married Ms. M.T. on 17 January 1971 in the DRC, as the Appellant accepts her as his "first wife" with the marriage date of 17 January 1971, before the Appellant's purported marriage.

42. The Appellant now asserts that she married Mr. Kankwenda on 16 March 1980. She argues that as polygamy is illegal in the DRC, it is unlikely that she could have been married to Mr. Kankwenda without him having divorced his first wife beforehand. However, there is no evidence that Mr. Kankwenda ever legally divorced his first wife, Ms. M.T. Therefore, any subsequent purported marriage would be contrary to the laws of the DRC which undisputedly does not allow polygamy.

43. The Appellant also relies on the divorce proceeding pronouncements issued by the Maryland Court. She contends that the Court pronounced that she was legally married to Mr. Kankwenda on 17 March 1980 and that he “admitted” to this in the court transcripts. There is no evidence provided that Mr. Kankwenda “admitted” to the legal marriage in the court proceedings. Rather, the divorce judgment specifically confirmed that Mr. Kankwenda denied that he was legally married to the Appellant. Indeed, Mr. Kankwenda had even provided an affidavit to the court attesting to this.<sup>23</sup> The Maryland Court did not accept this denial but relied solely on the evidence and testimony of the Appellant. Mr. Kankwenda subsequently stated to the UNJSPF that this Judgment from the Maryland Court was made in his absence. We accept this and find that the Maryland Court Judgment is not evidence of a legal marriage with the Appellant for the purposes of Article 35 *bis* of the Regulations.<sup>24</sup>

44. We find that the Standing Committee of the UNJSPB did not err in the impugned Decision in concluding that Mr. Kankwenda married Ms. M.T. in the DRC in 1971.

45. First, the Appellant does not contest that Ms. M.T. was his first wife, and their date of marriage was 17 January 1971. This is confirmed by a marriage certificate attesting to the marriage with Ms. M.T. on that date. On the other hand, the Appellant submitted two marriage certificates after Mr. Kankwenda’s death purporting to show that she married Mr. Kankwenda on 17 January 1971. She now concedes that these certificates were falsified so that their date of marriage was consistent with the UNJSPF records and that she in fact married him in 1980. Due to the falsification of these certificates, her evidence is not credible and cannot be relied upon.

46. Second, a marriage between Mr. Kankwenda and Ms. M.T. in 1971 is consistent with the information provided regarding the dates of birth of Mr. Kankwenda’s children and the identifies of their mothers which confirms that from 1972 to 1983, Mr. Kankwenda and Ms. M.T. had six children from that relationship.

47. Finally, the fact that Mr. Kankwenda reported the Appellant as his spouse to the Organization when he joined does not change the legal nature of his relationship with Ms. M.T. or the Appellant.

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<sup>23</sup> Affidavit dated 13 September 2016 from Mr. Kankwenda.

<sup>24</sup> *Ansa-Emmim* Judgment, *op. cit.*, paras. 26-27.

48. The marriage to Ms. M.T. took place in the DRC. The laws of the DRC, which prevail in these circumstances, prohibit polygamy.<sup>25</sup> The marriage attestation for the marriage to Ms. M.T. explicitly states that it is a “mariage coutumier monogamique” or “monogamous customary marriage”.

49. The Appeals Tribunal has consistently held that the laws of the country in which a marriage takes place must be respected. Where a participant has multiple purported marriages under a regime that does not allow polygamy, the first marriage must be validly dissolved in accordance with the laws that apply to it before a participant has capacity to remarry for the purpose of recognition of a spouse for the purpose of entitlements.<sup>26</sup>

50. In this instance, there is no evidence that Mr. Kankwenda’s first marriage to Ms. M.T. was ever validly dissolved. On the contrary, both Ms. M.T. and Mr. Kankwenda provided affidavits that they had never divorced.

51. As polygamy is not legal in the DRC and there is no evidence that Mr. Kankwenda and Ms. M.T. had ever divorced, the evidence shows, on a balance of probabilities, that the Appellant’s subsequent purported marriage to Mr. Kankwenda in 1980 was not legally valid as Mr. Kankwenda was still married to Ms. M.T. at the time.

52. Therefore, we find that the Standing Committee of the UNJSPB did not err in its impugned Decision that the Appellant is not eligible to receive a divorced surviving spouse’s benefit under Article 35 *bis* of the Regulations.

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<sup>25</sup> As highlighted by the UNJSPB in its answer, Article 330 of the DRC Code de la Famille provides as follows: “Le mariage est l’acte civil, public et solennel par lequel un homme et une femme, qui ne sont engagés ni l’un ni l’autre dans les liens d’un précédent mariage enregistré, établissent entre eux une union légale et durable dont les conditions de formation, les effets et la dissolution sont déterminés par la présente loi.”

<sup>26</sup> *Larriera* Judgment, *op. cit.*, para. 42; *El-Zaim* Judgment, *op. cit.*, paras. 23 and 28.

**Judgment**

53. Ms. Isasi's appeal is dismissed, and the Decision of the Standing Committee of the UNJSPB is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 22<sup>nd</sup> day of March 2024 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Ziadé

Judgment published and entered into the Register on this 22<sup>nd</sup> day of July 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar