

2023-UNAT-1319, Asr Ahmed Toson

UNAT Held or UNDT Pronouncements

The Appeals Tribunal found that the UNDT erred in law by applying the improper legal framework, the relevant legal framework not being ST/SGB/2008/5, but the UNFPA Disciplinary Framework and the UNFPA Harassment Policy. The UNAT explained that UNFPA, being one of the separately administered funds of the Organization, has its own legal framework and is not regulated by the Secretariat's general administrative issuances such as ST/SGB/2008/5, unless otherwise stated or unless it has expressly accepted their applicability. The UNAT held that the UNDT erred when it found that Mr. Toson's request to have access to the investigation report and its attendant annexes was well-founded. UNAT concluded that according to the applicable UNFPA legal framework and despite the right to appeal, the scope of the information provided to UNFPA staff members contesting the outcome of a complaint is restricted to the status of the matter, the outcome of the investigation, and the closure of the case with a record of the reasons. The UNAT granted the appeal and reversed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Toson challenged the decision to close the investigation into his complaint against the Regional Director, Arab States Regional Office; and the decision to deny him access to the investigation report and its attendant annexes. By Judgment No. UNDT/2022/021, the UNDT granted the application in part. As to the first claim, the UNDT found the application not receivable *ratione materiae* because it concerned a conclusion by OAIS and not by the Administration, which had not yet closed the case definitively, and as such the challenged decision was still preparatory and not final. As to the second claim, the UNDT found it receivable and well founded and held that Mr. Toson had the right to receive the report from the Administration.

The Secretary-General appealed.

Legal Principle(s)

Pursuant to Secretary-General's Bulletin ST/SGB/2009/4, administrative issuances shall not apply to the separately administered funds, organs and programmes of the United Nations, unless otherwise stated therein, or unless the separately administered funds, organs and programmes have expressly accepted their applicability.

As a general principle, once an investigation has been concluded, its outcome and administrative consequences, as well as any related acts or omissions, can be challenged in their own right via management evaluation and before the Dispute and Appeals Tribunals.

Despite the right to appeal, the scope of the information provided to UNFPA staff members contesting the outcome of a complaint is restricted, no mention having been made in the UNFPA legal framework to the full content of the investigation report or to its annexes, not even a summary of the findings and conclusions of the investigation (as is the case regarding ST/SGB/2008/5), but rather only to the status of the matter, outcome of the investigation and closure of the case with the record of the reasons, without any obligation to disclose the details of the investigation.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Asr Ahmed Toson

Entity

UNFPA

Case Number(s)

2022-1688

Tribunal

UNAT

Registry

New York

Date of Judgement

11 Apr 2023

President Judge

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNFPA Disciplinary Framework

Other UN issuances (guidelines, policies etc.)

- UNFPA Policy on Harassment

Secretary-General's bulletins

- ST/SGB/2009/4

Related Judgments and Orders

2015-UNAT-571

2014-UNAT-483

2014-UNAT-412

2017-UNAT-786

2015-UNAT-519

2015-UNAT-524