



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1538

Corinne Delphine N'Daw
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2024-1919
Date of Decision:	21 March 2025
Date of Publication:	13 May 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Kalaycia Clarke, OSLA
Counsel for Respondent:	Angélique Trouche

JUDGE GAO XIAOLI, PRESIDING.

1. Ms. Corinne Delphine N'Daw (Ms. N'Daw), a former staff member of the United Nations Population Fund (UNFPA), contested the decision of the Administration to terminate her appointment based on facts anterior to her appointment, which were discovered after her appointment and considered relevant to her suitability for the position, in accordance with Staff Regulation 9.3(a)(v) and Staff Rule 9.6(c)(v) (contested decision).¹
2. On 14 March 2024, by Judgment No. UNDT/2024/014 (impugned Judgment),² the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that the contested decision was lawful and dismissed Ms. N'Daw's application.
3. Ms. N'Daw lodged an appeal against the impugned Judgment 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 Judgment.

Facts and Procedure

5. On 8 December 2020, while she was the Country Director for Oxfam, Democratic Republic of the Congo (DRC), Ms. N'Daw applied for the position of UNFPA Representative, Guinea Country Office, at the P-5 Level, in Conakry (the position). In her application form, she answered "no" to the following question:

Have you ever been, whether as an employee, (international) civil servant, individual independent contractor or otherwise, subject to any disciplinary measure, contract termination, contract non-renewal or non-extension, or have you resigned while under investigation or during disciplinary proceedings, for or in connection with (allegations of) fraudulent, collusive, coercive, obstructive or unethical practices, misconduct, harassment, sexual harassment, abuse of authority, sexual exploitation or sexual abuse, retaliation, or poor or inadequate performance?

6. Subsequently, Ms. N'Daw passed a written test, and, on 29 January 2021, she was interviewed for the position.

¹Secretary-General's Bulletin ST/SGB/2018/1/Rev.1 (Staff Regulations and Rules of the United Nations).

² *N'Daw v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/014.

7. In March 2021, Ms. N'Daw was suspended by Oxfam while she was under investigation for allegations of misconduct.

8. On 16 April 2021, Ms. N'Daw was notified by letter from the Administration that she had been selected for the position of UNFPA Country Representative.³

9. On 21 April 2021, Ms. N'Daw confirmed her interest in the position.

10. On 12 July 2021, UNFPA notified Ms. N'Daw with an offer of appointment. On the same day, she accepted the offer, which explicitly stated that:⁴

This offer is based on the information provided by you in your Personal History Form (P-11) and other relevant documents provided in the course of the selection process. Please note that you are responsible for supplying any required relevant information both during the application process and on subsequent employment. Staff members are held personally accountable for the accuracy and completeness of the information they provide.

11. In August 2021, while the investigation was still ongoing, Ms. N'Daw resigned from Oxfam.⁵

12. On 28 August 2021, Ms. N'Daw began her position under a one-year fixed-term appointment (FTA).

13. On 15 September 2021, The New Humanitarian (TNH), an online news publication, contacted UNFPA by e-mail seeking information about Ms. N'Daw's appointment, despite her being under investigation by Oxfam for allegations that "included sexual abuse and exploitation, bullying and fraud". The e-mail referenced articles from TNH and The Times – a British daily newspaper based in London – published in June 2021, which discussed the allegations made against Ms. N'Daw, although it noted that only The Times article disclosed her name.⁶

14. On 16 September 2021, the Chief, Media, Communications of UNFPA responded to TNH by e-mail, stating that UNFPA has a "zero tolerance for all forms of wrongdoing". She also outlined the steps taken by the Administration in the selection process of Ms. N'Daw, which "uncovered

³ Letter from the Administration to Ms. N'Daw dated 16 April 2021.

⁴ Offer of FTA from the Administration to Ms. N'Daw dated 12 July 2021.

⁵ Impugned Judgment, para. 16.

⁶ E-mail from TNH to UNFPA dated 15 September 2021.

nothing unusual”. She highlighted that the Administration had received “three strong references” in favour of Ms. N’Daw’s candidature, including one from Oxfam.⁷

15. On 17 September 2021, TNH shared additional confidential information with UNFPA regarding the allegations of misconduct raised against Ms. N’Daw.

16. On 24 September 2021, TNH published an article titled “The curious case of a former Oxfam director who went to work for UNFPA in Guinea”, questioning how Ms. N’Daw was selected for the position while under investigation by Oxfam.⁸

17. Following this, UNFPA conducted a Google search and discovered another article published by The Times on 19 April 2021 and which, while not naming Ms. N’Daw, reported that “two senior Oxfam staff in the Kinshasa office had been suspended amid complaints of sexual exploitation, harassment, bullying, and fraud in an independent investigation that began in November [2020]”.

18. On 7 October 2021, the Director of the Division of Human Resources (DDHR) of UNFPA contacted Ms. N’Daw by phone to request additional details regarding the allegations raised against her, the investigation conducted by Oxfam, and her suspension. During the conversation, Ms. N’Daw admitted, *inter alia*, that she was under investigation by Oxfam, that she had been placed on suspension sometime in March 2021, and that she remained suspended until her resignation in August 2021 “just prior to joining UNFPA”.⁹

19. On 26 November 2021, the DDHR followed up with Ms. N’Daw by e-mail to confirm the details of their conversation. The e-mail also included the following questions: i) the date or dates she was placed under investigation by Oxfam; ii) the date she was placed on suspension by Oxfam pending the investigation; and iii) whether, as of 28 August 2021, she remained under investigation and on suspension with Oxfam.¹⁰

20. On 29 November 2021, Ms. N’Daw replied by e-mail that she was “not in a position to provide details of the investigation” because it was still ongoing and was “considered private and

⁷ E-mail from UNFPA to TNH dated 16 September 2021.

⁸ E-mail from TNH to UNFPA dated 24 September 2021.

⁹ Annex to the termination letter from the Executive Director of UNFPA to Ms. N’Daw dated 7 January 2022.

¹⁰ E-mail from the DDHR to Ms. N’Daw dated 26 November 2021.

confidential at this moment”. She also provided the contact details of her counsel and requested that the Administration reach out to him directly.¹¹

21. On 7 January 2022, the Executive Director of UNFPA informed Ms. N’Daw by letter that her appointment was terminated “after facts anterior to [her] appointment with UNFPA and relevant to [her] suitability [had] come to light, which, if they had been known at the time of [her] appointment, should have precluded [her] appointment with UNFPA under the standards established in the United Nations Charter (United Nations Staff Regulation 9.3(a)(v) and [Staff] Rule 9.6(c)(v))”. The letter further stated that:¹²

... The legal provisions cited above allow the Administration to terminate a staff member’s appointment if facts anterior to his or her appointment and relevant to his or her suitability come to light that, if they had been known at the time of the appointment, should have precluded it under the standards set in the United Nations Charter. These standards include the highest standards of efficiency, competence, and integrity.

... UNFPA regrets to note that the facts anterior to your appointment that have come to light are as follows: you were the subject of serious allegations of improper conduct at Oxfam; you were the subject of an investigation by Oxfam into those allegations; you were suspended by Oxfam in connection with those allegations and the investigation; and you deliberately failed to disclose these circumstances to UNFPA at any time during the hiring process or before your date of appointment with UNFPA even though you had full knowledge of these circumstances.

... Indeed, your brief employment with Oxfam ended amidst serious allegations of bullying, intimidation, undermining Oxfam’s policies, and an ongoing investigation and suspension. While UNFPA makes no determination regarding the merits of the allegations raised against you and under investigation by Oxfam, the facts anterior to your appointment and your failure to disclose those facts draw an adverse inference. While speaking with [the DDHR], you admitted that you were aware of the allegations and ongoing investigation by the time you were placed on suspension in March 2021, well before the offer of appointment and the effective date of your appointment.

... The facts summarized above occurred anterior to your appointment with UNFPA and have become known to UNFPA only recently, i.e. after the effective date of your appointment with UNFPA. These facts are relevant for your suitability as a UNFPA staff member and United Nations official. Had these facts been known at the time of your appointment with UNFPA, such facts should have precluded your appointment with

¹¹ E-mail from Ms. N’Daw to the DDHR dated 29 November 2021.

¹² Annex to the termination letter from the Executive Director of UNFPA to Ms. N’Daw dated 7 January 2022.

UNFPA under the standards of the Charter, given that UNFPA would not have had any reasonable level of assurance that you met the standards of the Charter for United Nations appointments. Moreover, those facts would have put in question that you possessed the requisite high levels of efficiency, competence and integrity as required by the Charter. Had these facts been known, you would not have received an appointment for service with UNFPA.

22. On 2 March 2022, Ms. N'Daw requested management evaluation of the contested decision.¹³

23. On 14 April 2022, the Executive Director of UNFPA informed Ms. N'Daw by letter of her decision to uphold the contested decision.¹⁴

24. On 2 June 2022, Ms. N'Daw filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

25. On 14 March 2024, the Dispute Tribunal issued the impugned Judgment, dismissing Ms. N'Daw's application. The UNDT first noted that the scope of review did not concern the merits of the allegations raised against Ms. N'Daw during her period of employment at Oxfam or the outcome of the Oxfam investigation. Rather, it concerned the specific facts anterior outlined in the termination letter dated 7 January 2022, namely that Ms. N'Daw was "being 'investigated by Oxfam amid a flurry of allegations' while she served as Representative of Oxfam's [DRC] country office and that the Oxfam investigation was still underway".¹⁵

26. Relying on Dispute Tribunal jurisprudence, the UNDT recalled that, in cases of termination for facts anterior, three cumulative conditions must be met for the Administration's decision to be considered reasonable: "(a) whether the applicant was afforded due process; (b) whether there was sufficient evidence to support a factual finding that the applicant had engaged in the alleged conduct, and (c) whether these facts were directly relevant to an assessment of the applicant's suitability under the standards established in the Charter of the United Nations and whether it was

¹³ Management evaluation request dated 2 March 2022.

¹⁴ Management evaluation response dated 14 April 2022.

¹⁵ Impugned Judgment, para. 32.

reasonable to conclude that, had these facts been known at the time of the appointment, they should have precluded the appointment”.¹⁶

27. In examining each of these three conditions, the UNDT first found that “UNFPA should have formally put [Ms. N’Daw] on notice that the alleged conduct could lead to the termination of her appointment, and it should have warned her of the consequences of failing to provide the information requested in the DDHR’s email of 26 November 2021”.¹⁷ Nevertheless, relying on the “no difference principle”, the UNDT concluded that the breach of integrity committed by Ms. N’Daw was so serious that any violation of her due process rights would have had no impact on the contested decision.¹⁸ The UNDT further concluded that Ms. N’Daw was afforded due process, as the Administration provided her with two opportunities to comment on the case (i.e., through the DDHR’s telephone call and e-mail communication), which she declined. In this regard, the UNDT also held that it was Ms. N’Daw’s responsibility to instruct her counsel to provide UNFPA with the relevant information concerning her case, not the other way around.¹⁹

28. Second, the UNDT noted that it was undisputed that Ms. N’Daw “was the subject of serious allegations of improper conduct at Oxfam; that she was the subject of an investigation by Oxfam into those allegations; that she was suspended by Oxfam in connection with those allegations and the investigation; and that she failed to disclose these circumstances to UNFPA at any time during the hiring process or before her date of appointment as UNFPA Country Representative in Guinea”.²⁰ Therefore, it concluded that there was clear and convincing evidence to support the facts anterior outlined in the termination letter, namely that she failed to fulfill her obligation under Staff Rule 1.5(e) to provide relevant information concerning facts prior to her appointment.

29. Third, the UNDT determined that the facts anterior in the present case were directly relevant to an assessment of Ms. N’Daw’s suitability for the position and would have precluded her appointment had they been known to UNFPA during the hiring process or prior to her appointment. In this regard, the UNDT emphasized the importance of integrity as a fundamental criterion in the United Nations’ recruitment process. It held that had UNFPA been aware of these

¹⁶ *Ibid.*, para. 33 referring to *Songa Kilauri v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/107; *Kamugisha v. Secretary-General of the United Nations*, Judgment No. UNDT/2017/021.

¹⁷ Impugned Judgment, para. 42.

¹⁸ *Ibid.*, paras. 43-45 referring to *Michaud v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-761, para. 60.

¹⁹ Impugned Judgment, para. 44.

²⁰ *Ibid.*, para. 52.

facts anterior at the time of Ms. N'Daw's appointment, it could not have been assured that Ms. N'Daw met the standards of efficiency, competence and integrity required of a staff member.²¹ The UNDT further found that, given the high visibility of the position and the reputational risk inherent to any investigation, it was Ms. N'Daw's responsibility to notify UNFPA of the allegations, suspension and investigation by Oxfam. The UNDT further held that Ms. N'Daw also had an ongoing obligation to inform the Administration of any change in her status once she became a staff member. It finally noted that, without addressing the merits of the allegations, suspension and investigation at Oxfam, "it [was] worth noting that the circumstances were sufficiently serious to warrant measures taken by Oxfam".²²

30. Last, the Dispute Tribunal rejected Ms. N'Daw's request for compensation for moral damages, as she failed to provide evidence of harm. On the contrary, the Dispute Tribunal observed that the medical report she submitted was dated from after she filed her application before the UNDT.²³

Procedure before the Appeals Tribunal

31. On 13 May 2024, Ms. N'Daw filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 11 July 2024.

Submissions

Ms. N'Daw's Appeal

32. Ms. N'Daw requests the Appeals Tribunal to rescind the contested decision or, alternatively, award her, "at a minimum, two years' net base salary in compensation plus moral damages".²⁴

33. Ms. N'Daw submits that termination for facts anterior must be established by clear and convincing evidence and argues that this evidentiary standard has not been met in the present case.

34. Ms. N'Daw contends that the UNDT exceeded its jurisdiction and erred in fact and in law when it concluded that her termination was lawful, despite failing to determine whether she had

²¹ *Ibid.*, paras. 59-62. The UNDT relied specifically on Article 101(3) of the United Nations Charter and Staff Regulation 1.2(b).

²² *Ibid.*, para. 62.

²³ *Ibid.*, para. 64.

²⁴ Appeal form.

an obligation, under Staff Rule 1.5(b) and (e), to proactively disclose during the selection process and prior to her employment that she was under an investigation and had been suspended by Oxfam.

35. In this regard, she points out that, contrary to the terms of her termination letter, she did not “deliberately fail to disclose” facts anterior related to her employment at Oxfam. She further asserts that the UNDT improperly relied on Staff Rule 1.5(b) and (e) to conclude that she had a duty to provide this information to UNFPA during the selection process, even though Staff Rule 1.5(b) does not apply to the disclosure of facts anterior, which is expressly governed by Staff Rule 1.5(e). Relying on the French and Spanish texts of Staff Rule 1.5(b), Ms. N’Daw asserts that the obligation for a staff member to notify the Secretary-General of “any subsequent changes affecting their status under the Staff Regulations or Staff Rules” pertains to the “staff member’s status in the sense of a marriage, birth of a child or other similar occurrence”, and not to the staff member’s conduct.

36. Additionally, Ms. N’Daw argues that the obligation to disclose under Staff Rule 1.5(e) is reactive, not proactive, and arises only when the Secretary-General requests such information, which was not the case here. Ms. N’Daw also contends that the UNDT failed to consider the principle of *contra proferentem* in its reasoning, according to which the application form should be construed against the party drafting it. In this regard, she notes that the application form for the position specifically asked her whether she had ever resigned while under investigation or had ever been subject to a disciplinary measure. She observes that her negative response to this question was and remains accurate. Indeed, she highlights that the offer of appointment dated 12 July 2021 only required her to provide “any required relevant information”, and no such request had been made to her by the Administration before the phone conversation on 7 October 2021.

37. Ms. N’Daw contends that the UNDT exceeded its jurisdiction and erred in fact and in law by applying the “no difference principle” in the absence of any exceptional circumstances. In doing so, she asserts that the UNDT erroneously applied this principle, as it lacked authority to substitute its decision for that of the decision-maker. As such, it was not in a position to assess whether, had Ms. N’Daw been given the opportunity to respond and demonstrate that she did not deliberately fail to disclose facts anterior, it would not have made any difference.

38. Ms. N’Daw argues that her due process rights were violated, as she has never been afforded the opportunity to challenge the Administration’s finding that she deliberately failed to disclose

facts anterior. Consequently, she has not been able to contest the findings underlying the contested decision. She submits that the UNDT erred in concluding otherwise. Specifically, she asserts that the UNDT erred in characterizing her action of directing UNFPA to her counsel due to the ongoing Oxfam investigation as a breach of integrity. On the contrary, she observes that the applicable legal framework does not stipulate that a staff member cannot direct their counsel to respond on their behalf. She further argues that referring UNFPA to her counsel was not a refusal to answer questions but a reasonable action, given her confidentiality obligations. In this regard, she further submits that if UNFPA did not wish to contact her counsel, it should have informed her of this decision and its potential consequences, namely the possible termination of her appointment. In particular, she asserts that the Administration should have issued a formal letter “setting out the facts anterior being alleged and giving her the opportunity to provide a written response and warning her of the consequences of failing to give a response and warning that her appointment could be terminated based on the response”.

39. Ms. N’Daw argues that it is “unfortunate” that the UNDT, by stating that “[w]ithout going into the merits of the allegations, suspension and investigation at Oxfam, it is worth noting that the circumstances were sufficiently serious to warrant the measures taken by Oxfam”, effectively “prejudged” the Oxfam case, although it did not have the investigation report or the details of the case before it.²⁵

40. Ms. N’Daw contends that the UNDT erred in fact by suggesting that, when she submitted her application for the position on 8 December 2020, she was under investigation or that the question on the application form –namely whether she had ever resigned while under investigation or had ever been subject to a disciplinary measure –should have put her on notice that these were important considerations for the Organization.²⁶

41. Last, Ms. N’Daw submits that the UNDT erred in fact by denying her compensation for moral damages, despite the established link between the contested decision and her moral harm.

The Secretary-General’s Answer

42. The Secretary-General requests the Appeals Tribunal to affirm the impugned Judgment and dismiss the appeal.

²⁵ Impugned Judgment, para. 62.

²⁶ *Ibid.*, para. 60.

43. The Secretary-General submits that there is no basis to Ms. N'Daw's contention that termination for facts anterior must be established by clear and convincing evidence. He notes that, pursuant to Section 9.1 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), such an evidentiary standard is required in disciplinary cases where separation or dismissal is the imposed disciplinary measure. In any event, the Secretary-General points out that the facts anterior are not disputed in the present case and that the UNDT found that this evidentiary standard had been met.

44. The Secretary-General argues that Ms. N'Daw failed to demonstrate any error in the UNDT's conclusions that would warrant a reversal of the impugned Judgment. In particular, the Secretary-General contends that Ms. N'Daw has not established any error that would warrant a reversal of the UNDT's conclusion that UNFPA lawfully terminated her appointment based on facts anterior. He contends that the UNDT properly found that Ms. N'Daw had an obligation to disclose information about her suspension and the Oxfam investigation. This obligation stemmed from her general obligation to act with integrity, as set out in Article 101(3) of the United Nations Charter, as well as from the offer of appointment dated 12 July 2021, which explicitly required her to provide "required relevant information".

45. Turning to the UNDT's reference to Staff Rule 1.5, the Secretary-General observes that the termination letter did not refer to Staff Rule 1.5 as the basis for the termination of Ms. N'Daw's appointment. Consequently, he asserts that it is unnecessary to address Ms. N'Daw's arguments regarding the interpretation of this Staff Rule.

46. The Secretary-General notes that neither the Administration, nor the UNDT relied on Ms. N'Daw's responses in her application form to reach their conclusions. On the contrary, the Secretary-General argues that the UNDT's finding that Ms. N'Daw failed to disclose allegations of misconduct was based on the chronology of events, particularly the fact that she was suspended in March 2021, pending the completion of an investigation by Oxfam, and at no point informed UNFPA of these facts, even when she was notified of her selection on 16 April 2021 or when she was notified of her offer of appointment on 12 July 2021.

47. The Secretary-General submits that Ms. N'Daw's argument that the UNDT misapplied the "no difference principle" lacks merit. He contends that Ms. N'Daw erroneously stated that the "no-difference principle" requires exceptional circumstances to apply. Relying on *Michaud*,²⁷ the

²⁷ *Michaud* Judgment, *op. cit.*

Secretary-General clarifies that “the ‘exceptional’ nature of the no-difference principle relates to cases which have an ‘irrefutable foregone conclusion’, for instance where facts have been admitted”, as in the present case.

48. The Secretary-General argues that Ms. N’Daw failed to demonstrate any error in the UNDT’s finding that she was afforded due process.²⁸ In this regard, the Secretary-General observes that, according to Dispute Tribunal jurisprudence, in cases of termination of appointment for facts anterior, while the Administration is not required to conduct a formal fact-finding process, the staff member must be given an opportunity to provide their version of the facts and any relevant exculpatory evidence.²⁹ In the present case, the Secretary-General submits that UNFPA met these requirements, as Ms. N’Daw was afforded two opportunities to provide her version of events, namely through the DDHR’s telephone and e-mail communications. Additionally, she had an obligation to provide the required information pursuant to Staff Rule 1.5(e). The Secretary-General further asserts that there is no legal basis for Ms. N’Daw to claim that she should have received a formal letter from UNFPA, especially since she could not have ignored the risk of termination of her appointment for facts anterior, as ignorance of the law is not an excuse. Furthermore, the Secretary-General contends that Ms. N’Daw’s argument that the UNDT lacked authority to assess whether, had she been given the opportunity to respond, it would not have made any difference in the contested decision, also lacks merit.

49. The Secretary-General submits that Ms. N’Daw failed to demonstrate an error of fact resulting in a manifestly unreasonable decision in the UNDT’s *obiter dictum* which stated that “[w]ithout going into the merits of the allegations, suspension and investigation at Oxfam, it is worth noting that the circumstances were sufficiently serious to warrant the measures taken by Oxfam” and that “[i]t is not clear from the record before the Tribunal whether [Ms. N’Daw] was already under investigation by Oxfam on 8 December 2020”.³⁰ On the contrary, the Secretary-General argues that these “side remarks” had no impact on the outcome of the case and they did not pertain to the content of the termination letter.

50. Last, the Secretary-General submits that, in the absence of illegality, Ms. N’Daw’s claim for compensation must be rejected. In this regard, he also contends that Ms. N’Daw failed to

²⁸ The Secretary-General relies on *Ray Steven Millan v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1330, para. 86.

²⁹ *Songa Kilauri* Judgment, *op. cit.*, paras. 25-27; *Kamugisha* Judgment, *op. cit.*, paras. 30 and 36.

³⁰ *Impugned Judgment*, paras. 60 and 62.

demonstrate any error in the UNDT's finding that she did not produce "any valid evidence of harm".³¹

Considerations

51. We agree with the UNDT's preliminary remark that "this case does not concern disciplinary action, but termination under [S]taff [R]egulation 9.3 and [S]taff [R]ule 9.6 regarding facts anterior to an appointment".³²

52. The issues for consideration in the present case are: i) whether the UNDT erred in finding that UNFPA lawfully terminated Ms. N'Daw's appointment based on facts anterior to her appointment; and ii) whether the UNDT erred in finding that Ms. N'Daw was afforded due process.

Did the UNDT err in finding that UNFPA lawfully terminated Ms. N'Daw's appointment based on facts anterior to her appointment?

53. UNFPA terminated Ms. N'Daw's FTA in accordance with Staff Regulation 9.3(a)(v) and Staff Rule 9.6(c)(v) in force at the relevant time of events.

54. Staff Regulation 9.3 states:

(a) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

...

(v) If facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment, should, under the standards established in the Charter, have precluded his or her appointment;

55. Staff Rule 9.6 provides:

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

...

(v) If facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment,

³¹ *Ibid.*, para. 64.

³² *Ibid.*, para. 30.

should, under the standards established in the Charter of the United Nations, have precluded his or her appointment;

56. From these provisions, it is clear that before the Administration decides to terminate a staff member's FTA under Staff Regulation 9.3(a)(v) and Staff Rule 9.6(c)(v), three conditions must be met cumulatively: i) a fact anterior to the appointment of the staff member comes to light; ii) the fact was unknown to the Administration at the time of the staff member's appointment; and iii) the fact was directly relevant to the staff member's suitability for the position, and should have precluded their appointment under the standards established in the Charter of the United Nations had it been known at the time of the staff member's appointment.

57. Based on the chronological facts, we find that Ms. N'Daw resigned from Oxfam while under investigation in August 2021, prior to the effective date of her appointment with UNFPA on 28 August 2021. Furthermore, it is uncontested that this fact was unknown to the Administration at the time of her appointment.

58. When Ms. N'Daw applied for the position at UNFPA on 8 December 2020, one of the questions listed in the application form was whether she "resigned while under investigation". While Ms. N'Daw did not make a misrepresentation on her application form at that time, she was aware of the Organization's core values based on the information required. Furthermore, on 12 July 2021, UNFPA notified Ms. N'Daw of the offer of appointment, which explicitly stated that:³³

This offer is based on the information provided by you in your Personal History Form (P-11) and other relevant documents provided in the course of the selection process. Please note that you are responsible for supplying any required relevant information *both during the application process and on subsequent employment*. Staff members are held personally accountable for the accuracy and completeness of the information they provide.

59. Therefore, when Ms. N'Daw subsequently resigned from Oxfam while under investigation, she had the responsibility to share that information with UNFPA as soon as possible. However, she did not report this information to the Organization. Had UNFPA been aware of this fact anterior at the time of Ms. N'Daw's appointment, it would have had serious doubts as to whether she met the standards of efficiency, competence, and integrity required of a staff member.

60. Furthermore, when Ms. N'Daw was contacted by the DDHR on 26 November 2021 by e-mail, she replied that she was "not in a position to provide details of the investigation". Although

³³ Offer of FTA from the Administration to Ms. N'Daw dated 12 July 2021 (emphasis added).

she provided the contact details of her counsel, Ms. N'Daw did not assume the responsibility of supplying the relevant information to the Organization.

61. There is no doubt that integrity is one of the core values upheld by the Organization. Staff Regulation 1.2(b) provides that “[t]he concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting [the staff members’] work and status”. Ms. N'Daw applied for a P-5 senior position of Country Representative in the Organization. She should have been a model of high moral character, but her behavior reflected the opposite. Ms. N'Daw's failure to report the relevant information to the Organization in a timely manner raised serious doubts about her integrity. UNFPA considered Ms. N'Daw's suitability for the position under the standards established in the Charter of the United Nations, which include “the highest standards of efficiency, competence, and integrity”.³⁴ In this regard, in the contested decision, UNFPA explicitly referred to paragraph 5 of the Standards of Conduct for the International Civil Service (2013), which provides that “[t]he concept of integrity enshrined in the Charter of the United Nations embraces all aspects of an international civil servant's behaviour, including such qualities as honesty, truthfulness, impartiality and incorruptibility. These qualities are as basic as those of competence and efficiency, also enshrined in the Charter”.³⁵

62. We consider that both the fact that Ms. N'Daw resigned from Oxfam while under investigation and her failure to report this information to the Organization in a timely manner are relevant to her suitability for the position under the standards established in the Charter of the United Nations and, had they been known at the time of her appointment, would have precluded her appointment.

63. Therefore, we conclude that the aforementioned three conditions have been met cumulatively. Consequently, we are convinced that the UNDT correctly found that, regardless of whether the allegations of misconduct at Oxfam were established, once facts anterior that should have precluded Ms. N'Daw's appointment came to light, UNFPA had the authority, as set out in Staff Regulation 9.3 and Staff Rule 9.6, to terminate her appointment.

³⁴ Annex to the termination letter from the Executive Director of UNFPA to Ms. N'Daw dated 7 January 2022, para. 23.

³⁵ *Ibid.*, para. 19.

Did the UNDT err in finding that Ms. N'Daw was afforded due process?

64. As we held in *Michaud*, “[p]rocedural fairness is a highly variable concept and is context specific. The essential question is whether the staff member is adequately apprised of any allegations and had a reasonable opportunity to make representations before action was taken against him”.³⁶ Furthermore, the “due process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against her/him”.³⁷

65. In this case, before UNFPA sent Ms. N'Daw the termination letter on 7 January 2022, she was not afforded such an opportunity. She was only contacted by the DDHR twice: once by phone on 7 October 2021, and again by e-mail on 26 November 2021. However, both instances did not address the possible termination of her appointment, but rather focused on details regarding the allegations of misconduct at Oxfam, as well as its investigation and her suspension. We do not believe that these two actions by UNFPA met the due process requirements.

66. As the UNDT correctly stated, “UNFPA should have been more forthright and direct in its request for information from [Ms. N'Daw] regarding the Oxfam allegations, suspension and investigation” and “should have formally put [Ms. N'Daw] on notice that the alleged conduct could lead to the termination of her appointment, and it should have warned her of the consequences of failing to provide the information requested in the DDHR’s email of 26 November 2021”.³⁸ By failing to do so, UNFPA violated Ms. N'Daw’s due process rights.

67. However, despite the foregoing, we find that the UNDT did not err in applying the “no difference principle” in this case.

68. According to the so-called “no difference principle”, “[a] lack or a deficiency in due process will be no bar to a fair or reasonable administrative decision or disciplinary action should it appear at a later stage that fuller or better due process would have made no difference. The principle applies exceptionally where the ultimate outcome is an irrefutable foregone conclusion, for instance where a gross assault is widely witnessed, a theft is admitted or an employee spurns an opportunity to explain proven misconduct”.³⁹

³⁶ *Michaud* Judgment, *op. cit.*, para. 56.

³⁷ *Josef Reiterer v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1341, para. 93.

³⁸ *Impugned Judgment*, para. 42.

³⁹ *Michaud* Judgment, *op. cit.*, para. 60.

69. In this case, even if Ms. N'Daw had been given the opportunity to respond and demonstrate that she did not deliberately fail to disclose facts anterior, it would not have made any difference. We consider that the outcome was an “irrefutable foregone conclusion”. Therefore, albeit the obvious deficiencies in due process, we find that the UNDT did not err when it found that the “no difference principle” applied in the present case.

70. For these reasons, the appeal must be dismissed.

Judgment

71. Ms. N'Daw's appeal is dismissed, and Judgment No. UNDT/2024/014 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 13th day of May 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar