



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

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Judgment No. 2025-UNAT-1539

**Desire Hatungimana  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

## **JUDGMENT**

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Before:	Judge Leslie F. Forbang, Presiding Judge Nassib G. Ziadé Judge Kanwaldeep Sandhu
Case No.:	2024-1926
Date of Decision:	21 March 2025
Date of Publication:	15 May 2025
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Ron Mponda
Counsel for Respondent:	Angélique Trouche

**JUDGE LESLIE F. FORBANG, PRESIDING.**

1. Mr. Desire Hatungimana (Mr. Hatungimana), a former staff member of the United Nations High Commissioner for Refugees (UNHCR) contested the decision of the Administration to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity, in accordance with Staff Rule 10.2(a)(viii), for harassment and sexual harassment (contested decision).
2. On 11 April 2024, by Judgment No. UNDT/2024/018 (impugned Judgment),<sup>1</sup> the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that it had been established by clear and convincing evidence that Mr. Hatungimana had committed sexual harassment and dismissed his application.
3. Mr. Hatungimana 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. In February 2015, Mr. Hatungimana joined UNHCR. In February 2020, he joined the Gbadolite Sub-Office, in the Democratic Republic of the Congo (DRC) as an Administrative/Finance Officer, at the P-3 level. In his role, he became acquainted with Ms. V., a Senior Human Resources Assistant whom he supervised from February to December 2020.<sup>2</sup>
6. Between July and December 2020, the Inspector General's Office (IGO) of UNHCR received several reports of possible misconduct involving Mr. Hatungimana, including allegations of fuel misappropriation, breach of procurement rules, harassment, and sexual harassment. Specifically, on 16 December 2020, the IGO received a report alleging that Mr. Hatungimana had harassed and/or sexually harassed Ms. V. in 2020 at the Gbadolite Sub-Office.<sup>3</sup>

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<sup>1</sup> *Hatungimana v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/018.

<sup>2</sup> Impugned Judgment, para. 24.

<sup>3</sup> Investigation Report, para. 5.

7. On 24 November 2020, the IGO opened an investigation. The IGO's investigators interviewed eight individuals, including Mr. Hatungimana, on 29 March 2021.<sup>4</sup>

8. On 15 February 2022, the IGO issued its Investigation Report, in which it concluded that only the allegations of harassment and sexual harassment against Ms. V. were supported by the available evidence. Specifically, the following statements made by Ms. V. were deemed substantiated and highlighted:<sup>5</sup>

... [Ms. V.] stated that Mr. Hatungimana had harassed her on more than one occasion by unfairly criticizing her work, saying things that were untrue and communicating his unjustified and unsupported concerns to the [Head of the Sub-Office].

... [Ms. V.] stated that Mr. Hatungimana had sexually harassed her on more than [one] occasion by saying that he did not have her in Gbadolite but he would have her (sexual connotation) in Kinshasa.

... [Ms. V.] stated that Mr. Hatungimana said to her that she was the kind of woman that suited him, that he was going to take good care of her, that he was going to find (rent) a house in Kinshasa where she could stay and be his wife (woman), that she was the type of woman with whom one does not have many children and that he could have a child with her. He added that each time he will go on or return from a mission he would see her.

9. In assessing the credibility of the individuals interviewed, the IGO found that Mr. Hatungimana, while denying the allegations, “was unable to provide any documentary evidence or witness testimony to corroborate his version of the events”. In contrast, the IGO found no reason why Ms. V. would make a false statement, noting that three other UNHCR staff members witnessed the sexual harassment events.<sup>6</sup>

10. On 2 March 2022, the Director, Division of Human Resources (DDHR) of UNHCR charged Mr. Hatungimana with misconduct based on the evidence and findings contained in the Investigation Report. The letter specifically stated that “during the year in which [he] supervised [Ms. V.] (approximately 11 months in 2020), [he] repeatedly made comments about her that had the effect of annoying, intimidating, belittling and humiliating her, and of creating a climate of intimidation and hostility in the workplace”. The letter further concluded that Mr. Hatungimana

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<sup>4</sup> *Ibid.*, paras. 9-10.

<sup>5</sup> *Ibid.*, paras. 143-145.

<sup>6</sup> *Ibid.*, paras. 149 and 152.

had made inappropriate sexual advances to Ms. V., further contributing to such a work environment. The DDHR also specified that, if established, Mr. Hatungimana's conduct would amount to harassment and sexual harassment.<sup>7</sup> Mr. Hatungimana was given one month to submit his written comments on the factual findings, which he did on 2 April 2022.<sup>8</sup>

11. On 26 October 2022, Mr. Hatungimana was informed by letter (Sanction Letter) from the DDHR that the High Commissioner had determined that it had been established by clear and convincing evidence that he sexually harassed Ms. V. in 2020. Specifically, it was established that:<sup>9</sup>

[Count 1] On 7 May 2020, you made a comment of a sexual nature to [Ms. V.] to the effect that, among other things, you would spend intimate moments with her when she is in Kinshasa.

[Count 2] On 14 or 15 December 2020, you made a comment of a sexual nature to [Ms. V.], once again suggesting that, when she is in Kinshasa, you would have sexual relations with her.

12. The Sanction Letter also stated that the High Commissioner concluded that the following allegations had been proven on the balance of probabilities:<sup>10</sup>

[Count 3] On several occasions, notably in May or June 2020, you denigrated [Ms. V.] and her work, telling her, for example, that she 'does nothing', 'represents nothing' and that her presence 'is useless', and you intimidated her by claiming that (...) the Head of the Sub-Office, was not satisfied with her work. You also threatened to 'cut' her post and accused her of speaking negatively about you to other colleagues.

[Count 4] On or around 14 or 15 December 2020, you once again accused [Ms. V.] of trying to derail your mandate and told her she was not doing her job properly.

[Count 5] On several occasions, including on 11 or 12 May and in October 2020, you threatened [Ms. V.] that you were going to do your utmost to ensure that she left the Sub-Office.

[Count 6] On at least one occasion, you unjustly accused [Ms. V.] of breaking the rules by changing colleagues' leaves in exchange for money.

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<sup>7</sup> Translated version of the letter of allegations of misconduct dated 2 March 2022 from the DDHR to Mr. Hatungimana.

<sup>8</sup> E-mail dated 2 April 2022 from Mr. Hatungimana to UNHCR.

<sup>9</sup> Translated version of the Sanction Letter dated 26 October 2022 from the DDHR to Mr. Hatungimana.

<sup>10</sup> *Ibid.*

[Count 7] On several occasions, you spoke against [Ms. V.] and her work to a colleague, [J.R.], accusing her, among other things, of misconduct.

[Count 8] In 2020, you made comments of a sexual nature to [J.R.] about a female colleague's buttocks.

13. The High Commissioner determined that Mr. Hatungimana's actions constituted misconduct under Staff Rules 1.2(f) and 10.1, Staff Regulations 1.2(a) and (b) as well as harassment and sexual harassment in contravention of paragraphs 4.2(a) and 4.3(a) and (b) of the UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4). As a result, the High Commissioner imposed on Mr. Hatungimana the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity in accordance with Staff Rule 10.2(a)(viii) and included his name in the ClearCheck database. In taking his decision, the High Commissioner considered as mitigating factors the fact that, at the time of the events, Mr. Hatungimana had served for five years and had no prior disciplinary measure. As aggravating factors, the High Commissioner took into account the repeated nature of the harassment and sexual harassment against Ms. V., as well as the fact that Mr. Hatungimana was Ms. V.'s direct supervisor.<sup>11</sup>

14. On 17 January 2023, Mr. Hatungimana filed an application with the Dispute Tribunal challenging the contested decision.

#### *Impugned Judgment*

15. Between 29 January and 1 February 2024, the UNDT held a hearing on the merits of the case during which it heard oral evidence from eight witnesses, including Ms. V. and Mr. Hatungimana.

16. On 11 April 2024, the Dispute Tribunal issued the impugned Judgment, concluding that it had been established by clear and convincing evidence that Mr. Hatungimana had sexually harassed Ms. V. and dismissing his application.

17. Relying on *Sanwidi*, the UNDT recalled that, in disciplinary cases, it does not conduct a merit-based review, but rather a judicial review, which is "more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's

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<sup>11</sup> *Ibid.*

decision”.<sup>12</sup> In the present case, noting that “the record [was] filled with allegations and counter-allegations regarding a wide range of alleged misconduct”, the UNDT found it “clear that some of the staff there had motives to lie about [Mr. Hatungimana]”. As many of those allegations were not substantiated, the UNDT limited the scope of review to Count 1 and Count 2, namely “whether the Organization was correct in terminating [Mr. Hatungimana] for sexually harassing Ms. V. on two occasions”.<sup>13</sup>

18. The UNDT noted that this case “boil[ed] down to the credibility of the witnesses to the May and December 2020 incidents”.<sup>14</sup> Relying on AAC,<sup>15</sup> the UNDT reviewed the testimonies of the witnesses who testified before it and assessed their respective credibility. The UNDT concluded that Ms. V.’s testimony was credible, noting that she had no motive to lie about the events, particularly since she did not even initiate the investigation and Mr. Hatungimana himself acknowledged that he had never had any problems with her. It further held that her testimony was consistent with her prior statements. In contrast, the UNDT found Mr. Hatungimana’s testimony not credible, noting that he had testified in a “forceful and angry” manner.<sup>16</sup> The UNDT also rejected “the gravamen of his defence”, namely that “the allegations [were] not possible because on each occasion he was not there”.<sup>17</sup> It further found that his argument that Ms. V. must have been paid to file these accusations was unsubstantiated.<sup>18</sup> Additionally, the UNDT observed that none of the three witnesses called by Mr. Hatungimana testified about the allegations of sexual harassment or were present in the Gbadolite Sub-Office in 2020.<sup>19</sup>

19. Specifically, regarding Count 1, the Dispute Tribunal accepted Ms. V.’s version of the events, which it summarized as follows:<sup>20</sup>

... Ms. V. testified that on 7 May 2020, she had taken a recruitment exam for a job in Kinshasa. As she was scanning the exam for submission, [Mr. Hatungimana] said to her that she had a beautiful body that should belong to someone like him. He also said that, if she got the job in Kinshasa that would be great because he could take good care of her and

<sup>12</sup> Impugned Judgment, para. 17 citing *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 42.

<sup>13</sup> Impugned Judgment, paras. 49-50.

<sup>14</sup> *Ibid.*, para. 48.

<sup>15</sup> *Ibid.*, para. 51 referring to *AAC v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1370.

<sup>16</sup> Impugned Judgment, paras. 51-53 and 57-58.

<sup>17</sup> *Ibid.*, paras. 21-22 and 42.

<sup>18</sup> *Ibid.*, paras. 45 and 64.

<sup>19</sup> *Ibid.*, paras. 36-37.

<sup>20</sup> *Ibid.*, para. 25.

that body. He said that women like her with such a beautiful body need to be taken care of by a man like him. If she went to Kinshasa, she would be his woman and he would take care of her.

20. The UNDT noted that, according to Ms. V.'s testimony, although she was "shocked, angered and hurt by [Mr. Hatungimana's] comment and his lack of respect", she did not react because he had previously threatened to "sack" her. The UNDT also relied on her testimony to conclude that, although she did not mention the incident to anyone, of fear of the consequences if her husband learned about it, the incident nevertheless occurred in the presence of J.R., an Information and Communications Technology Officer, who was there to supervise her test.<sup>21</sup>

21. The UNDT observed that Mr. Hatungimana's argument that he was not present at the event that occurred on 7 May 2020 was inconsistent with "his prior statements where he admitted being present in the office (by 12:30 p.m.) after Ms. V. took the test in May 2020".<sup>22</sup>

22. Regarding Count 2, the UNDT again accepted Ms. V.'s version of the events, which it described as follows:<sup>23</sup>

... Ultimately, Ms. V. got the job in Kinshasa and, in December 2020, was preparing to leave and take up her new post. According to her testimony, [Mr. Hatungimana] said that he was happy that she was going because Kinshasa was a large city where people could move about freely. He said that he would find a house in Kinshasa where she could live and he could visit when he was on leave. This way he 'could have [her]' there, as opposed to Gbadolite where everyone knew everyone else's business.

... Ms. V. testified that she realized that [Mr. Hatungimana's] comments were a sexual innuendo since [he] had previously talked about getting a house where they could meet and be together.

... Ms. V. felt humiliated by [Mr. Hatungimana's] comments, especially since this was the second time that he had made such comments. (...) [S]he told [Mr. Hatungimana] that if he came to Kinshasa and tried to do anything, she would call the police. [Mr. Hatungimana] responded that he would simply pay off the police with money.

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<sup>21</sup> *Ibid.*, paras. 26-27.

<sup>22</sup> *Ibid.*, para. 52.

<sup>23</sup> *Ibid.*, paras. 28-29 and 31-32.

... Ms. V. said that she did not mention this incident to anyone, except M.T., who was a confidant and would support her.

23. The UNDT noted that the incident of December 2020 had been corroborated by G.K., a Senior Administrative/Finance Assistant, and V.M., a Senior Supply Associate, although it found that V.M.'s testimony lacked credibility. The UNDT rejected Mr. Hatungimana's argument that G.K. lacked credibility, highlighting that he initially requested the investigators to interview G.K., as he would "tell the truth".<sup>24</sup> The UNDT also observed that it was "interesting" that Mr. Hatungimana continued to use his work computer after his separation from service to level accusations against V.M.<sup>25</sup>

24. Addressing Mr. Hatungimana's reliance on a Sworn Declaration of the Head of Unit of the IGO dated 13 April 2023 (the Sworn Declaration), the UNDT found that Mr. Hatungimana had made a "selective use of misleading quotations, [which] raise[d] other credibility issues about him".<sup>26</sup>

25. Therefore, the UNDT concluded that the facts relating to Count 1 and Count 2 had been established by clear and convincing evidence.

26. The UNDT held that it was "self-evident" that making sexual comments to colleagues amounted to misconduct. Therefore, it concluded that Mr. Hatungimana's acts constituted sexual harassment as defined in Staff Rule 1.2.<sup>27</sup> In this regard, the UNDT rejected Mr. Hatungimana's argument that even if the allegations were true, "those intentions never materialized", reiterating that sexual comments alone may constitute sexual harassment.<sup>28</sup>

27. Next, the UNDT rejected Mr. Hatungimana's contentions that the Administration had violated his due process rights during the investigation and the disciplinary process, and that it had failed to fulfil its duty of care toward him by not rescinding the contested decision as soon as the Sworn Declaration was produced. On the contrary, it held that the Administration had properly investigated all the allegations raised against him and found that most of them were not substantiated.<sup>29</sup>

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<sup>24</sup> *Ibid.*, paras. 30, 34-35, 46 and 54-56.

<sup>25</sup> *Ibid.*, para. 47.

<sup>26</sup> *Ibid.*, para. 61.

<sup>27</sup> *Ibid.*, para. 71.

<sup>28</sup> *Ibid.*, paras. 73-76.

<sup>29</sup> *Ibid.*, para. 90.



28. Last, the UNDT found that the sanction imposed on Mr. Hatungimana was a “model of proportionality”.<sup>30</sup> The UNDT observed that the sanction aligned with the Organization’s zero-tolerance policy for sexual harassment and was consistent with the past practices of the High Commissioner in similar cases. The UNDT further observed that the Administration had appropriately considered both aggravating and mitigating factors.<sup>31</sup>

*Procedure before the Appeals Tribunal*

29. On 27 May 2024, Mr. Hatungimana filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 29 July 2024.

**Submissions**

**Mr. Hatungimana’s Appeal**

30. Mr. Hatungimana requests that the Appeals Tribunal reverse the impugned Judgment and remand the case to the Dispute Tribunal for determination by a different Judge. He also requests the UNAT to order the production of the Investigation Note referred to in the Sworn Declaration “for an independent appraisal of the significance of that investigation and its impact on this case”.<sup>32</sup>

31. Mr. Hatungimana requests an oral hearing before the Appeals Tribunal to ensure that Counsels “are able to argue their respective cases *viva voce*”.<sup>33</sup>

32. Mr. Hatungimana submits that the UNDT, by limiting itself to a judicial review, rather than a merit-based review, misapplied Article 9(4) of the Dispute Tribunal Statute (UNDT Statute). He also contends that the UNDT failed to provide sufficient reasoning in its assessment of the witnesses’ credibility and misapplied the applicable jurisprudence in this regard.<sup>34</sup>

33. Mr. Hatungimana argues that the UNDT erroneously ignored several of his arguments. In this regard, he first contends that the UNDT failed to take into consideration the fact that the complaint filed against him was ill-motivated and arose in a context where staff members had motives to fabricate lies about him. Specifically, Mr. Hatungimana submits that the UNDT erred by ignoring “the fact the sexual harassment charges were in fact made by the same complainants

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<sup>30</sup> *Ibid.*, para. 97.

<sup>31</sup> *Ibid.*, paras. 96-98.

<sup>32</sup> Appeal form.

<sup>33</sup> *Ibid.*

<sup>34</sup> AAC Judgment, *op. cit.*

who made the unsubstantiated allegations”, rather than by Ms. V. herself. He further asserts that the UNDT “oversimplified” the facts of the present case, which included all “the charges as laid [including] (...) the discounted ones”. Second, Mr. Hatungimana argues that the UNDT ignored the lack of credibility of Ms. V., J.R., V.M., and G.K., which, he asserts, was successfully challenged during their cross-examination. He specifically questions the UNDT’s conclusion that Ms. V.’s testimony had been corroborated by V.M., despite the fact that the UNDT found V.M.’s testimony lacking in credibility. He also submits that the UNDT erred and violated his due process rights by relying on hearsay evidence, namely J.R.’s statement, as he did not testify before it.

34. Mr. Hatungimana contends that the UNDT erred in its assessment of his credibility. He submits that the UNDT erred by “faulting” him for suggesting that G.K. be interviewed and for believing he would “tell the truth”.<sup>35</sup>

35. Mr. Hatungimana argues that the UNDT’s assessment of his demeanour is unfounded. He further contends that the UNDT erred by drawing a negative inference from the fact that he still had access to his work computer after his separation from service.<sup>36</sup>

36. Mr. Hatungimana submits that the UNDT’s finding – that his statement regarding his alleged absence during the 7 May 2020 event is inconsistent with “his prior statements where he admitted being present in his office (by 12:30 p.m.) after Ms. V. took the test in May 2020” – is inaccurate.<sup>37</sup> He further reiterates that he was attending a meeting at that time.

37. Mr. Hatungimana asserts that the UNDT erroneously characterized his use of the Sworn Declaration as “misleading” and that its conclusions in this regard are unfounded.

38. Mr. Hatungimana submits that the UNDT misinterpreted his closing arguments when it held that he argued that the allegations of sexual harassment related to “his intentions ‘in the indeterminate future and at a specific location (Kinshasa)’”, but that those intentions never materialized”.<sup>38</sup> He argues that his actual argument was “the theory that if the sexist statements attributed to [him] were indeed true, then why would [he] not seize the opportunity when they were both in Kinshasa”.

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<sup>35</sup> Impugned Judgment, para. 56.

<sup>36</sup> *Ibid.*, para. 47.

<sup>37</sup> *Ibid.*, para. 52.

<sup>38</sup> *Ibid.*, para. 73.

39. Mr. Hatungimana submits several questions which, he contends, constitute “[e]videntiary indicators of probative value that independently question the truthfulness of the allegations of sexual harassment and harassment in the workplace”. He asserts that the UNDT should have addressed these “basic questions”, such as why he would systematically have committed sexual harassment in presence of witnesses.

40. Last, Mr. Hatungimana contends that the UNDT erred by repeating and accepting some of the Secretary-General’s arguments without assessing their “possible probability”.

### **The Secretary-General’s Answer**

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

42. The Secretary-General submits that an oral hearing before the Appeals Tribunal would not assist in the fair and expeditious disposal of the case, particularly in light of the extensive hearing already conducted by the UNDT.

43. The Secretary-General submits that the UNDT correctly determined that the contested decision was lawfully imposed and dismissed Mr. Hatungimana’s application.

44. The Secretary-General argues that Mr. Hatungimana has failed to demonstrate any error in the UNDT’s conclusions that would warrant a reversal of the impugned Judgment. On the contrary, the Secretary-General asserts that Mr. Hatungimana merely disagrees with the impugned Judgment and tries to reargue the case.

45. The Secretary-General contends that, in accordance with the explicit provisions of Article 9(4) of the UNDT Statute, the Dispute Tribunal correctly conducted a judicial review of the contested decision.

46. The Secretary-General asserts that Mr. Hatungimana’s claim regarding alleged errors by the UNDT in its application of AAC is “largely academic” and does not demonstrate any impact on the outcome of the case.<sup>39</sup>

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<sup>39</sup> AAC Judgment, *op. cit.*

47. With respect to the “basic questions” Mr. Hatungimana argues the UNDT should have addressed, the Secretary-General observes that it is not the role of the UNDT to speculate about Mr. Hatungimana’s mindset and that, in any event, such questions do not constitute grounds for appeal under the Appeals Tribunal Statute (Statute).

48. The Secretary-General contends that the UNDT thoroughly considered Mr. Hatungimana’s arguments, including his claim that the allegations were unfounded, based on the assertion that the protagonists were allegedly not present at the location of the events. Furthermore, relying on Appeals Tribunal jurisprudence, the Secretary-General recalls that the UNDT is not required to address each and every claim made by a litigant, particularly when such claim lacks merit.<sup>40</sup>

49. The Secretary-General submits that the UNDT properly assessed in detail the credibility of the witnesses who testified before it, and Mr. Hatungimana had ample opportunity to challenge their credibility. In this regard, the Secretary-General notes that the UNAT consistently held that some degree of deference must be given to the factual findings made by the UNDT, especially when oral evidence is heard.<sup>41</sup> Furthermore, the Secretary-General asserts that Mr. Hatungimana’s mere disagreement with the UNDT’s rejection of his arguments or with its finding that he was less credible than Ms. V. does not demonstrate any manifest error in the impugned Judgment. Therefore, since Mr. Hatungimana’s arguments did not undermine the UNDT’s conclusion that he sexually harassed Ms. V., the Secretary-General submits that the UNDT correctly concluded that the facts of the present case were established by clear and convincing evidence.

50. Similarly, the Secretary-General submits that Mr. Hatungimana has failed to demonstrate any error in the UNDT’s finding that he accessed his work computer after his separation from service.

51. Last, the Secretary-General argues that the UNDT correctly defined the scope of the case. In this regard, the Secretary-General contends that, contrary to Mr. Hatungimana’s contention, the UNDT did not fail to review the allegations that had been found unsubstantiated by the

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<sup>40</sup> *Gabriel Vincent Branglidor v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1234, para. 62; *Al-Ashi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-838, para. 26; *Negussie v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-700, para. 19.

<sup>41</sup> *Benedictine Desbois v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1318, para. 35; *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 36.

Administration. On the contrary, the Secretary-General asserts that the UNDT appropriately “found that the various allegations against [Mr. Hatungimana] had been properly investigated, leading to [Mr. Hatungimana] being cleared except concerning the allegations of harassment and sexual harassment, which were found substantiated”. Furthermore, the Secretary-General notes that, contrary to Mr. Hatungimana’s argument, the UNDT did not rely on V.M. and J.R.’s evidence, except to the extent of stating that V.M.’s testimony corroborated that of Ms. V.

### **Considerations**

#### *Preliminary issues*

52. As a preliminary matter, we address Mr. Hatungimana’s requests for an oral hearing before the Appeals Tribunal and for us to order the production of the full Investigation Note referred to in the Sworn Declaration of the Head of Unit of the IGO.

#### *Request for an oral hearing*

53. Mr. Hatungimana’s request for an oral hearing before the Appeals Tribunal pertains solely to counsels’ submissions. He argues that, due to the extensive and voluminous record of the case and the shortcomings in the appraisal of the available evidence before the Dispute Tribunal, it would be in the interest of justice for the parties’ respective counsel “to be able to argue their respective cases *viva voce* before [the] UNAT”.

54. Oral hearings are governed by Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). The Appeals Tribunal may grant an oral hearing if it would “assist in the expeditious and fair disposal of the case”.

55. In the instant case, counsel for both parties have filed their respective briefs, which clearly outline the factual and legal issues arising from the appeal. Therefore, we do not find that an oral hearing for counsels to argue their respective submissions *viva voce* would “assist in the expeditious and fair disposal of the case” as required by Article 18(1) of the Rules, particularly in light of the extensive oral hearing already conducted by the UNDT.

56. Accordingly, Mr. Hatungimana’s request for an oral hearing is denied.

*Request to order the production of the complete Investigation Note dated 19 January 2023*

57. Mr. Hatungimana requests that the UNAT order the production of the complete Investigation Note referred to in the Sworn Declaration “for an independent appraisal of the significance of that investigation and its impact on this case”.

58. The Investigation Note in question was issued by the IGO on 19 January 2023 and relates to an internal investigation opened against V.M., one of three corroborating witnesses of Ms. V.’s testimony. The Investigation Note summarizes new evidence received by the IGO and the findings of the investigation against V.M.

59. Paragraph 9 of the Sworn Declaration states that:

In this Investigation Note, the IGO further indicated that new evidence ‘cast serious doubt on the credibility of the Statement of Ms. V., [V.M., J.R. and G.K. – the three corroborating witnesses] in investigation INV/2020/116. The IGO indicated: ‘This new evidence does not prove the innocence of Mr. Hatungimana but these credibility issues are such that, had this information been available at the time the investigation INV-20-116 against Mr. Hatungimana was completed, it is not likely that the IGO would have substantiated the case’.

60. Mr. Hatungimana now requests that the Appeals Tribunal order the production of the Investigation Note, including the findings mentioned in paragraph 9 of the Sworn Declaration. We note that the Sworn Declaration was submitted to the UNDT and merely mentions the Investigation Note. However, the Investigation Note itself was not presented as evidence at the lower court, and its introduction at this stage would constitute new or additional evidence on appeal if produced.

61. In the same vein, an order by the UNAT to produce this documentary evidence, which was not submitted before the trial court at first instance, would effectively be an order for production of additional evidence on appeal.

62. Our jurisprudence has established that all evidence must be submitted to the Dispute Tribunal, and the Appeals Tribunal will not admit evidence which was known to a party and could have, with due diligence, been presented to the Dispute Tribunal.<sup>42</sup>

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<sup>42</sup> *Dube v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-674, para. 62; *Rüger v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-693, para. 15.

63. In accordance with Article 2(5) of the Statute, the Appeals Tribunal will only accept additional evidence in exceptional circumstances and when a party has sought proper leave to file such evidence. Furthermore, additional evidence will only be admitted before the UNAT if it would assist this Tribunal in reaching an “efficient and expeditious resolution” of the appeal, and that its admission is required in the “interest of justice”.<sup>43</sup> Lastly, it must be demonstrated that the evidence was not known to either party and could not have been presented at the first-instance level.

64. In the present case, we find that the criteria for admitting additional evidence on appeal have not been met.

65. Consequently, Mr. Hatungimana’s request for an order to produce the full Investigation Note is denied.

#### *Merits*

66. At the outset, Mr. Hatungimana contends that the UNDT misapplied Article 9(4) of the UNDT Statute in conducting a judicial review of the contested decision.

67. The Secretary-General points to the clear and unambiguous wording of Article 9(4) of the UNDT Statute, which requires the Dispute Tribunal to conduct a judicial review of the present case.

68. As a general principle, and as we clarified in *Sanwidi*,<sup>44</sup> the Dispute Tribunal conducts a judicial review to assess the fairness, legality, rationality and proportionality of an administrative decision under challenge. A judicial review is “more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision. This process may give an impression to a lay person that the Dispute Tribunal has acted as an appellate authority over the decision-maker’s administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General”.<sup>45</sup>

69. Therefore, the test to be applied by the UNDT in the judicial review of disciplinary cases under Article 2(1)(b) of the UNDT Statute is well-established. It requires consideration of the

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<sup>43</sup> *Symeonides v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-977, para. 26; *Charot v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-715, paras. 39-41.

<sup>44</sup> *Sanwidi* Judgment, *op. cit.*

<sup>45</sup> *Ibid.*

evidence adduced and the procedures utilized during the course of the investigation by the Administration.<sup>46</sup> The four-part test that the Dispute Tribunal must apply when evaluating the legality of a disciplinary sanction includes determining: i) whether the facts on which the sanction is based have been established (by a preponderance of the evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); ii) whether the established facts qualify as misconduct under the Staff Regulations and Rules; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected during the investigation and disciplinary process.<sup>47</sup>

70. In this regard, our task on appeal is not to re-decide the case that was before the UNDT. This is so because we cannot enjoy the same advantages experienced by the first instance judge, for example, seeing and hearing the witnesses give their *viva voce* testimonies. Rather, our task is to determine whether the UNDT did apply the correct test and whether it could reasonably have reached the decisions it did about what happened.<sup>48</sup>

71. Therefore, to determine whether the Dispute Tribunal erred in law, fact, or exceeded its jurisdiction when it found that by clear and convincing evidence, Mr. Hatungimana sexually harassed Ms. V., we must determine whether the UNDT adhered to the proper test for evaluating the legality of the contested decision. We now turn to these issues.

*Whether the UNDT erred in finding that the facts on which the sanction is based had been established*

72. We recall that the Appeals Tribunal has consistently held that a finding of sexual misconduct against a staff member of the Organization is a serious matter with grave implications for the staff member's reputation, standing, and future employment prospects. For this reason, the Dispute Tribunal must base its finding of sexual misconduct on sufficient, cogent, relevant, and admissible evidence that allows for appropriate factual inferences and a legal conclusion that all the elements of sexual misconduct have been established to the required standard. In other words, sexual misconduct must be shown by the evidence to be highly probable. This normally occurs

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<sup>46</sup> *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29.

<sup>47</sup> *Mihai-Tudor Stefan v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1375, para. 63.

<sup>48</sup> *Sisay Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033, paras. 48-49.



after an oral hearing involving the parties and witnesses, with an opportunity for cross-examination.<sup>49</sup>

73. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been imposed against a staff member occurred.<sup>50</sup> Moreover, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. In this regard, we stated in *Molari*, that “clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – it means that the truth of the facts asserted is highly probable”.<sup>51</sup>

74. In the present case, due to the factual disputes, particularly regarding the credibility of witnesses, the Dispute Tribunal conducted an oral hearing and heard evidence from Mr. Hatungimana, Ms. V., and other witnesses, both in-chief and under cross-examination. The UNDT noted that the existence of clear and convincing evidence of Mr. Hatungimana’s sexual harassment boiled down to the credibility of the witnesses for the May and December 2020 incidents, as the ultimate issue before the Dispute Tribunal was whether the Organization was correct in terminating Mr. Hatungimana’s employment for sexually harassing Ms. V. on those two occasions.<sup>52</sup>

75. Mr. Hatungimana argues that the UNDT erred in the assessment of his credibility and demeanour. He contends that the characterization of his demeanour as “rather forceful and angry during his testimony” is both harsh and unfounded.<sup>53</sup> He claims that the UNDT’s assessment of his demeanour was biased and flawed as it failed to critically evaluate his evidence in order to properly determine its reliability. In addition, Mr. Hatungimana challenges the UNDT’s assessment of the credibility of the corroborating witnesses of Ms. V.’s testimony, which he asserts, was successfully challenged during their cross-examination. He further argues that the UNDT failed to provide sufficient reasoning in its assessment of the witnesses’ credibility and misapplied the applicable jurisprudence in this regard. Mr. Hatungimana specifically questions the UNDT’s

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<sup>49</sup> *Gonzalo Ramos v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1256, para. 36; *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1210, paras. 37-38.

<sup>50</sup> *Maguy Bamba v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1259, para. 40; *Diabagate v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-403, para. 35.

<sup>51</sup> *Molari v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-134, para. 30.

<sup>52</sup> Impugned Judgment, paras. 48 and 50.

<sup>53</sup> *Ibid.*, para. 53.

conclusion that Ms. V.'s testimony had been corroborated by V.M., despite the fact that the UNDT found V.M.'s testimony lacking in credibility.

76. Conversely, the Secretary-General argues that the UNDT properly assessed in detail the credibility of the witnesses who testified before it, and Mr. Hatungimana had ample opportunity to challenge their credibility. In this regard, the Secretary-General notes that the UNAT consistently held that some degree of deference must be given to the factual findings made by the UNDT, especially when oral evidence is heard.

77. As we have held in prior cases, the assessment of the credibility and reliability of a witness will depend on a variety of factors including: i) the witness' candour and demeanour; ii) the witness' latent and blatant biases; iii) internal and external inconsistencies in the evidence; iv) the probability or improbability of particular aspects of the witness' version; v) the calibre and cogency of the witness' testimony when compared to that of other witnesses testifying in relation to the same incident; iv) the opportunities the witness had to experience or observe the events in question; and vii) the quality, integrity, and independence of the witness' recall of the events.<sup>54</sup>

78. To determine whether the facts on which the disciplinary measure is based have been established, we must consider whether the Dispute Tribunal considered the relevant factors affecting the truthfulness of the evidence, including the credibility of the witnesses, and the accuracy or reliability of their testimony.

79. In the instant case, we find that the Dispute Tribunal appropriately considered these factors. The UNDT found that it has been established that Mr. Hatungimana had sexually harassed Ms. V. by making the aforementioned statements in May and December 2020, largely based on the finding that Ms. V. was a credible witness.<sup>55</sup> The Dispute Tribunal properly analysed Ms. V.'s credibility. The UNDT found her testimony consistent with her prior statements, noted her calm demeanour, observed that her testimony was corroborated by V.M. and G.K. regarding the December 2020 incident,<sup>56</sup> and considered her explanation as to why she did not report the sexual harassment. Further, the UNDT specifically considered that Ms. V. had no motive to lie about Mr. Hatungimana's actions. She did not file the complaint, and according to Mr. Hatungimana's

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<sup>54</sup> *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 105 (internal footnote omitted).

<sup>55</sup> Impugned Judgment, para. 65.

<sup>56</sup> *Ibid.*, paras. 52-54.

testimony, Ms. V. never had any problems with him, as illustrated by her positive work performance evaluation by Mr. Hatungimana prior to the incident.

80. Moreover, it is a trite principle that the testimony of a single witness may be sufficient to support a finding of misconduct. In this context, Ms. V.'s testimony alone would have been sufficient to sustain the finding of misconduct against Mr. Hatungimana. In the same vein, we also agree with the Dispute Tribunal's reliance on *Hallal*, as affirmed by the Appeals Tribunal, where the UNDT stated that "in sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required".<sup>57</sup>

81. Further, the UNDT assessed the probative value of the three witnesses called by Mr. Hatungimana and correctly concluded that none of them testified about the allegations giving rise to the contested decision.

82. Regarding V.M.'s testimony, the UNDT duly noted that there was evidence in the record calling into question his credibility. However, the Dispute Tribunal referred to the Sworn Declaration which re-echoed the IGO's stance that although V.M. may have harboured some animosity against Mr. Hatungimana and had intended to make him leave the Organization, that did not preclude Mr. Hatungimana's guilt. Moreover, V.M. did not invent a false accusation of sexual harassment but rather "took advantage of witnessing Mr. Hatungimana engaging in sexual harassment" to report the incident to the IGO and to make him leave the Organization.<sup>58</sup>

83. Therefore, we find that the UNDT's reference to the Sworn Declaration is proper, and we equally agree with its conclusion that V.M. may have exploited an opportunity to make Mr. Hatungimana leave the Organization, but Mr. Hatungimana afforded him the chance to do so through his actions. Moreover, V.M. cannot be faulted for reporting the misconduct to the responsible official, even if he may have used the situation to achieve a hidden objective. In this regard, we note that Staff Rule 1.2(c) imposes a duty on staff members "to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action".

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<sup>57</sup> *Hallal v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/046, para. 55 affirmed in *Hallal v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-207.

<sup>58</sup> Sworn Declaration of Head of Unit of the IGO dated 13 April 2022, para. 13.

84. As mentioned previously, it is well-established that the Appeals Tribunal recognizes the unique position of the Dispute Tribunal to see and hear the witnesses give *viva voce* testimonies, which are tested and verified through cross-examination during the hearing. Therefore, the Dispute Tribunal's credibility findings deserve particular deference on appeal, which we affirm here.

85. In these circumstances, we conclude that the Dispute Tribunal appropriately assessed the credibility of the witnesses and evidence before it and correctly relied on the credible testimony of Ms. V. to find that it had been established by clear and convincing evidence that Mr. Hatungimana had sexually harassed her in May and December 2020.

86. Mr. Hatungimana also submits a series of questions which, he argues, an informed and impartial judicial inquiry or review would or should have asked to establish the truthfulness of the sexual harassment allegations and harassment in the workplace. We recall that the appeals procedure is corrective in nature and is not an opportunity for a dissatisfied party to reargue his or her case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.<sup>59</sup> In the present case, we find that the questions raised by Mr. Hatungimana do not reveal any specific error made by the UNDT, nor do they demonstrate how the alleged errors affected the decision of the case.

87. In light of the foregoing, we conclude that the UNDT did not err in finding that the facts on which the sanction is based had been established.

*Whether the UNDT erred in finding that the established facts qualify as misconduct*

88. Paragraph 5.3 of UNHCR/HCP/2014/4 defines sexual harassment as:

[A]ny unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another. Sexual harassment

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<sup>59</sup> *Abdulhamid Al Fararjeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1136, para. 37.

is particularly serious when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive environment. Sexual harassment may be unintentional and may occur outside the workplace and/or outside working hours. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between or amongst persons of the opposite or same sex.

89. Staff Rule 1.2(f) prohibits “[a]ny form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work”.

90. Further, paragraphs 4.2(a) and 4.3(a) and (b) of UNHCR/HCP/2014/4 state:

4.2 Duties of UNHCR Personnel

UNHCR Personnel, including Staff Members and Affiliate Workforce, are expected to:

a) maintain a harmonious working environment for other colleagues by behaving in a manner which is free of disrespect, intimidation, hostility, offence and any form of discrimination, harassment, sexual harassment or abuse of authority;

...

4.3 Additional Duties of Managers and Supervisors

Managers and supervisors are also expected to:

a) act as role models by upholding the highest standards of conduct in order to achieve an environment free from discrimination, harassment, sexual harassment and abuse of authority, in which hurtful and destructive behaviour have no place;

b) facilitate, inspire and help to create a harmonious working environment free of disrespect, intimidation, hostility, offence and any form of discrimination, harassment, sexual harassment and abuse of authority;

91. From the definitions above, it is clear that any unwelcome conduct of a sexual nature, including statements that might reasonably be expected or perceived to cause offence or humiliation, would qualify as sexual harassment within the meaning of the above rules, regulations and policies.

92. In accordance with these statutory provisions, we stated in *Appellant* that:<sup>60</sup>

... (...) A finding of sexual harassment therefore requires the following elements: (i) the conduct in question occurred; (ii) it falls within the legal understanding of sexual

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<sup>60</sup> *Appellant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1137, para. 56.

harassment and is of a sexual nature; (iii) the conduct was unwelcome and reasonably expected or perceived to cause offence or humiliation, and (iv) it interfered with work or created an intimidating, hostile, or offensive work environment. The conduct does not have to be intentional to be of a sexual nature.

93. Turning to the matter at hand, regarding the May and December 2020 alleged incidents, the UNDT noted that sexual comments directed at a female co-worker constitute misconduct, and Mr. Hatungimana’s comments fell within the definition of sexual harassment. We agree with the Dispute Tribunal that these statements amount to sexual harassment, as they were threats, which are inherently offensive, regardless of whether or not they were carried out. In addition, the evidence on record shows that these statements were made in the presence of other colleagues, and as the UNDT correctly pointed out, they were expected to offend and humiliate Ms. V.

94. Therefore, we hold that the UNDT did not err in finding that Mr. Hatungimana’s actions qualified as misconduct.

*Whether the UNDT erred in finding the sanction proportionate to the offence*

95. The Administration has “wide discretion in applying sanctions for misconduct but at all relevant times it must adhere to the principle of proportionality”.<sup>61</sup> The most important factors to be taken into account in assessing the proportionality of a sanction include, among other things, the seriousness of the offence, the length of service, and the disciplinary record of the employee.<sup>62</sup>

96. With regard to the seriousness of the offence in this case, the United Nations has repeatedly made it clear that any form of sexual misconduct is unacceptable. Resolutions from both the Security Council and General Assembly have consistently supported a zero-tolerance policy and urged the Secretary-General to take various actions in this respect, separation from service being one of the forms of disciplinary measures open to him under Staff Rule 10.2.

97. In line with the above, we emphasized in *Mbaigolmem* that:<sup>63</sup>

... Sexual harassment is a scourge in the workplace which undermines the morale and well-being of staff members subjected to it. As such, it impacts negatively upon the efficiency of the Organization and impedes its capacity to ensure a safe, healthy and productive work environment. The Organization is entitled and obliged to pursue a severe

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<sup>61</sup> *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-280, para. 120.

<sup>62</sup> *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 48.

<sup>63</sup> *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-819, para. 33.

approach to sexual harassment. The message therefore needs to be sent out clearly that staff members who sexually harass their colleagues should expect to lose their employment.

98. Turning now to the instant matter, having established that the allegations made against Mr. Hatungimana amount to misconduct – an offence for which the Organization has a zero-tolerance policy – and recognizing the deference shown to the findings of the UNDT, we find that the UNDT did not err in finding that the sanction imposed was proportionate.

99. We agree with the UNDT that the Appeals Tribunal will only overturn a measure as disproportionate if it finds it to be excessive or unreasonable, or in cases of obvious absurdity and flagrant arbitrariness. We do not find such circumstances present in this case.

100. Accordingly, the UNDT did not err in finding the sanction to be proportionate.

*Whether Mr. Hatungimana's due process rights were respected*

101. Mr. Hatungimana contends that the UNDT's reliance on J.R.'s complaint violated his due process rights. He argues that the evidence was hearsay, since J.R. did not testify before the UNDT. We find that although this evidence is hearsay, it is nonetheless admissible, as it was not intended to establish the veracity of the allegations and relates to a first report made within a reasonable time of the incident.

102. Hearsay refers to a statement made by a witness who is not called to testify. This presupposes that the witness, J.R., must testify to facts within his personal knowledge. However, if the evidence aims to prove the existence of the occurrence of a fact, not its truthfulness, it will be admissible. J.R.'s complaint was a denunciation of an alleged misconduct and did not aim to demonstrate its truthfulness. Investigation into those allegations led to the contested decision. Such evidence cannot be termed inadmissible hearsay.

103. The evidence on record indicates that the IGO and UNHCR relied on the procedure set out in Administrative Instruction UNHCR/AI/2019/15 (Conducting investigations in UNHCR) to investigate all the allegations against Mr. Hatungimana and to subsequently reach the contested decision.

104. Mr. Hatungimana refutes the process by which the allegations against him were established. We note, however, that there were at least four allegations made against him. All were investigated during the same process, and he was cleared of two of these allegations, while the

investigation established that the allegation of sexual harassment was substantiated. Mr. Hatungimana was given the opportunity in the process to address and respond to the allegations and to advance his own evidence to contradict the allegations. As such, there was no procedural unfairness.

105. Consequently, we agree with the UNDT that Mr. Hatungimana's due process rights were respected during the investigation and the disciplinary process.



**Judgment**

106. Mr. Hatungimana's appeal is dismissed, and Judgment No. UNDT/2024/018 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21<sup>st</sup> day of March 2025 in Nairobi, Kenya.

*(Signed)*

Judge Forbang, Presiding

*(Signed)*

Judge Ziadé

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 15<sup>th</sup> day of May 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar