



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1546

**Emma Reilly
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2024-1889
Date of Decision:	21 March 2025
Date of Publication:	23 June 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Robbie Leighton
Counsel for Respondent:	Rupa Mitra and Noam Wiener

JUDGE GRAEME COLGAN, PRESIDING.

1. Ms. Emma Reilly, a former staff member of the United Nations Office of the High Commissioner for Human Rights (OHCHR or Office) has filed an appeal of Judgment No. UNDT/2023/120 (impugned Judgment) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).¹
2. In the impugned Judgment, the UNDT rejected Ms. Reilly's application that challenged the manner in which her complaints of harassment and abuse of authority against two officials of OHCHR were dealt with by the Administration and the decision to close the investigation of those complaints without further action.
3. On appeal, Ms. Reilly seeks the reversal of the impugned Judgment; rescission of the decision to close her complaints without action; remand to an independent external investigative body; and compensation for breach of due process rights and for the health and reputational impacts of the Administration's failure to take appropriate action on her complaints since 2017.
4. For the reasons that follow, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. At the time of the events giving rise to this case, Ms. Reilly was working with OHCHR at the P-3 level, in the Human Rights Council and Treaty Mechanism Division (HRCTMD), Human Rights Council Branch (HRCB).
6. On 20 July 2016, Ms. Reilly lodged a complaint of harassment and abuse of authority against her Second Reporting Officer (SRO), the Chief, Development and Economic and Social Rights Branch (DESIB), and her First Reporting Officer (FRO), the Chief, Millenium Development Goals Section (MDGS), DESIB, following her report of irregularities in a recruitment process.
7. On 30 December 2016, on the basis of the findings of an investigation report by a fact-finding panel, the former High Commissioner of OHCHR (former HC) decided to close Ms. Reilly's complaint of harassment and abuse of authority but with managerial action.

¹ *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/120 (7 November 2023).

8. On 1 February 2017, the Inner City Press published a confidential memorandum from the Ethics Office referencing allegations raised by Ms. Reilly that OHCHR was providing names of Chinese human rights defenders attending meetings of the Human Rights Council (HRC) to the Chinese Government (the Practice). The article also mentioned that Ms. Reilly had suffered from retaliation by OHCHR.²

9. On 2 February 2017, OHCHR issued a press release (the Press Release) responding to serious allegations, aired in the public domain, that, among other things, OHCHR endangered certain human rights defenders from the People's Republic of China who attended HRC meetings, and was linked to the detention and death of a further defender from that State. In the Press Release, OHCHR also responded to allegations that a staff member had suffered reprisals for being a whistleblower, and asserted that she had never faced reprisals.³

10. On 20 February 2017, Ms. Reilly wrote to the former HC taking issue with the content of the Press Release. She expressed the view that it misrepresented OHCHR's policies regarding the sharing of information about NGO participants in OHCHR meetings with the Chinese Government. She took issue with the public discussion of confidential complaints that she had made; with the assertion that she had not been retaliated against whilst the request for protection from retaliation was still pending with the Ethics Office; and with the assertion that her claims had been found unsubstantiated when some of the facts alleged in her complaint of harassment had been corroborated but found by the former HC not to represent harassment. She requested a retraction and correction of the Press Release.⁴

11. On 13 March 2017, Ms. Reilly filed a complaint against the former HC alleging that the issuance of the Press Release constituted an abuse of authority (the Complaint against the former HC).⁵

12. On 14 March 2017, the former HC informed Ms. Reilly that he would not retract or correct the Press Release. He recalled that all her allegations in her letter of 20 February 2017 had been reviewed and/or investigated by internal mechanisms of the Organization, including OIOS, the Ethics Office, and an independent fact-finding panel established pursuant to Secretary-General's

² Impugned Judgment, para. 3.

³ *Ibid.*, para. 4.

⁴ *Ibid.*, para. 5.

⁵ *Ibid.*, para. 6.

Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority).⁶

13. On 17 July 2017, Ms. Reilly filed an application with the UNDT, contesting the decision to conclude her 20 July 2016 complaint of harassment against her FRO and SRO with only managerial action, and for “defamation” and “violation of her privacy rights” resulting from the publication of the Press Release (Press Release Case).⁷

14. By letter of 11 January 2018, the Assistant Secretary-General for Human Resources Management informed Ms. Reilly that the Secretary-General had decided not to make a final decision on her Complaint against the former HC until the proceedings before the UNDT about the Press Release had been completed.⁸

15. By application filed on 16 March 2018, Ms. Reilly contested the (implied) decision not to process her Complaint against the former HC.⁹

16. On 24 May 2019, the UNDT issued Judgment No. UNDT/2019/094 finding that the Administration’s inaction regarding Ms. Reilly’s complaint during the nine months that preceded her request for management evaluation constituted a violation of the provisions of ST/SGB/2008/5.¹⁰

17. On 30 September 2019, Ms. Reilly filed a complaint against the then-Chief, HRCB alleging that he unlawfully provided names of human rights defenders to the Chinese Government, and drafted the Press Release, which Ms. Reilly claimed defamed her. She further alleged that the then-Chief, HRCB, created a hostile work environment and unlawfully interfered in her career progression (the Complaint against the former Chief of the HRCB).¹¹

18. On 8 November 2019, Ms. Reilly was informed that an investigative panel (Panel) would be convened to investigate her Complaint against the former Chief of the HRCB.

⁶ *Ibid.*, para. 7.

⁷ *Ibid.*, para. 8.

⁸ *Ibid.*, para. 9.

⁹ *Ibid.*, para. 10.

¹⁰ *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2019/094, para. 47.

¹¹ Impugned Judgment, para. 13.

19. On 21 November 2019, Ms. Reilly was informed that the Panel would investigate both the Complaint against the former HC and the Complaint against the former Chief of the HRCB.¹² She was further informed of the identities of the Panel members.

20. By e-mail of 25 November 2019 to the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC), Ms. Reilly objected, among other things, to having a single investigation panel investigating her two Complaints.

21. Having interviewed Ms. Reilly and other relevant witnesses, the Panel concluded its investigation and finalised its investigation report on 23 May 2020.¹³

22. On 10 June 2020, the USG/DMSPC informed Ms. Reilly that, based on her (the USG's) review of the Panel's investigation report, including the information collected, there was insufficient evidence to support the Complaints, and consequently, no further action would be taken on them (the contested Decision).¹⁴

23. On 10 August 2020, Ms. Reilly requested a management evaluation of the contested Decision.

24. On 22 December 2020, Ms. Reilly filed an application with the UNDT challenging the contested Decision.

25. On 20 July 2021, in adjudication of the Press Release Case, the UNDT issued Judgment No. UNDT/2021/093. The UNDT found no illegality with respect to the Press Release but that there was a breach of her due process rights with respect to the investigation of her complaints against her FRO and SRO.¹⁵

26. On 30 December 2022, the UNAT issued Judgment No. 2022-UNAT-1309 on Ms. Reilly's appeal of Judgment No. UNDT/2021/093. The UNAT reversed the latter UNDT Judgment in part.¹⁶ The UNAT held that the main part of the Press Release, which addressed the communications between OHCHR and the Chinese Government, did not identify Ms. Reilly and was not related to the terms of her employment; the last paragraph of the Press Release did not

¹² *Ibid.*, para. 15.

¹³ *Ibid.*, para. 18.

¹⁴ *Ibid.*, para. 19.

¹⁵ *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/093, paras. 67-71, and 140.

¹⁶ *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1309, para. 128.

breach the confidentiality of any investigations related to Ms. Reilly, did not defame her, and was a reasonable and hence lawful exercise of the Administration's relevant discretion.¹⁷

27. With regard to Ms. Reilly's Complaints against the former HC and the former Chief, HRCB, the UNDT issued the impugned Judgment on 7 November 2023. In this Judgment, the UNDT reviewed a host of challenges to the contested Decision, both procedural and substantive, that had been raised by Ms. Reilly. Not all of those issues are now before us on the appeal. The key findings relevant to this appeal are as follows.

28. The UNDT first considered and rejected Ms. Reilly's argument that the Administration's delay in processing her Complaint against the former HC was indicative of an institutional bias against her. The UNDT found that the issue of the delayed investigation was adjudicated and remedied in Judgment No. UNDT/2019/094 and Ms. Reilly's arguments were an improper attempt at re-litigation.¹⁸

29. The UNDT likewise found no merit to Ms. Reilly's allegation that it was procedural error for the Panel to consider the Complaint against the former HC and her Complaint against the former Chief of the HRCB together. The UNDT found no legal bar to joint consideration of these Complaints.¹⁹

30. The UNDT was equally unpersuaded by Ms. Reilly's argument that the Panel's disposal of the digital recordings of some witness interviews proved that the outcome of the investigation was "preordained". The UNDT observed that the Panel was not legally required to make recordings; at most, Section 6.7 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) provides that such recordings "may" be made. The Panel sufficiently explained that the evidence from the investigation was being preserved by means of signed written statements from each interview.²⁰

31. The UNDT also rejected Ms. Reilly's argument that, in accordance with the Guidelines,²¹ she should have been re-interviewed in the course of the investigation when new facts or

¹⁷ *Ibid.*, para. 90. However, the UNAT held that the UNDT failed to adequately address all of Ms. Reilly's allegations regarding the investigation into the conduct of her FRO and SRO and remanded these issues to the UNDT. *Ibid.*, paras. 115-116.

¹⁸ Impugned Judgment, paras. 51-54.

¹⁹ *Ibid.*, para. 83.

²⁰ *Ibid.*, paras. 86-92.

²¹ The Guidelines, para. 48 ("Making further inquiries").

allegations came to light. The UNDT noted that Ms. Reilly did not specify what new facts or allegations she sought to be re-interviewed about, and the nature of the evidence she sought to adduce. The responsible official has discretion to make further enquiries, but it is not required.²²

32. The UNDT next considered Ms. Reilly's claim that she was misled about the Panel's terms of reference (ToR) and that the Panel had investigated the Practice, when that was not part of their ToR. The Dispute Tribunal concluded that the Panel's investigation report showed that the Panel did not investigate the Practice. Rather, the Panel gathered information in order to determine whether: "(i) the Press Release was responsive to the allegations made in the press articles, providing a fair defense of OHCHR and its practices at the time, before the HRC sessions; and/or (ii) the Press Release defamed Ms. Reilly (...) and/or otherwise contained false statements connected to [her], resulting in unjust harm to Ms. Reilly's reputation".²³ The Panel was not investigating the Practice *per se*: it was contextualizing the practice of confirming names before HRC sessions and seeking the Organization's and Ms. Reilly's views on this.²⁴

33. The UNDT also rejected Ms. Reilly's contentions that the Panel's questions about her contacts with Member States and the press was an attempt to gather and channel information to the USG/DMSPC and the Deputy HC to intimidate her from making such communications. The UNDT was persuaded by the Administration's explanation that the Panel was merely trying to ascertain to what extent the information concerning her case may have been communicated by sources external to OHCHR, including by Ms. Reilly herself. Moreover, any use of information in the Panel's investigation report would be adjudicated in a separate case.²⁵

34. Finally, as pertains to the present appeal, the UNDT found no merit to Ms. Reilly's contention that the USG/DMSPC failed to disclose "vital evidence" to the Panel, namely, the former HC's comments on her Complaint. The UNDT noted that the Panel drew adverse inferences from the fact that the former HC did not cooperate with the investigation. Moreover, the Panel was able to investigate the Complaint against him through other documentary and testimonial evidence. The UNDT concluded that the omission of the comments from the former HC was minor and had no impact on the quality of the investigation or its outcome.²⁶

²² Impugned Judgment, paras. 93-97.

²³ *Ibid.*, para. 105.

²⁴ *Ibid.*, para. 106.

²⁵ *Ibid.*, paras. 111-112.

²⁶ *Ibid.*, para. 137.

35. On 8 January 2024, Ms. Reilly filed the present appeal before the Appeals Tribunal. On 11 March 2024, the Secretary-General filed his answer.

Submissions

Ms. Reilly's Appeal

36. Ms. Reilly alleges that the UNDT erred in law and in fact in rejecting her allegation that the Administration's delay in processing her complaint against the former HC as well as the provision of faulty justifications for such delay permitted an inference of bias by the Administration against her. She also claims that the UNDT erred in finding that the issue of delay had already been adjudicated in Judgment No. UNDT/2019/094 and that the matter could not be relitigated. She says that two delays impacted the Complaint, the first being the nine months following her management evaluation request (partially addressed in Judgment No. UNDT/2019/094) and the second being the seven months from Judgment No. UNDT/2019/094 until Ms. Reilly's interview.

37. Further, Ms. Reilly submits that the UNDT erred in law by finding that the adjudication of her previous case rendered the facts underlying it irrelevant. If a staff member is laterally transferred, then terminated, litigating both decisions would not mean they could not reference the facts of transfer as relevant when litigating termination. It took the Administration three weeks to send Ms. Reilly's complete complaint to the HC but it took two years and nine months before they interviewed her. An inference could plainly be drawn from such delay and provision of faulty justifications for such.

38. Ms. Reilly alleges that the UNDT erred in law in finding no requirement for digital recording in circumstances where a report will be forwarded for possible disciplinary action. Section 6.7 of ST/AI/2017/1 indicates written record of interviews "shall be prepared of digitally recorded interviews and transmitted with the investigation report" in such circumstances. Use of the word "shall" indicates this is mandatory if the matter proceeds. The UNDT erred in law by interpreting the provision exclusively by reference to the use of "may" earlier in the provision. By indicating to witnesses that recordings could be destroyed if they wished, the Panel was indicating the matter would not be referred for disciplinary action. The UNDT failed to consider that the matter at issue was not whether investigators were required to record interviews but whether, having done so, it was lawful to destroy them. From a purposive approach, the only benefit from voluntarily destroying evidence would be to obscure rather than reveal what had occurred. This is

the opposite of the purpose of an investigation and demonstrates bias on the part of the Panel. The UNDT chose to treat this example in isolation rather than considering it with other clear evidence of bias.

39. Furthermore, Ms. Reilly maintains that the UNDT erred in law in finding the failure to re-interview her could not be considered as it was the prerogative of the responsible official. The Guidelines indicate that a re-interview should take place if new material has come to light which plainly it had. Failure to put this information to Ms. Reilly represented a failure to consider relevant material and demonstrates the Panel's determination not to find in favor of the Appellant.

40. Ms. Reilly contends that the UNDT erred in fact and law by failing to consider that the Panel misdirected Ms. Reilly regarding the investigation of the Practice. The Panel's ToR and the investigation report show that the Panel investigated the facts of the Practice with a view to establishing the accuracy or otherwise of the Press Release but did not consider the correctness or otherwise of that action. The difference between investigating the facts of the Practice and the correctness of the Practice is a fine distinction which, in the circumstances, Ms. Reilly could not have appreciated. Ms. Reilly stresses that the same individual presiding over this investigation presided over the investigation of Ms. Reilly for contact with media and Member States which resulted in her separation. The Panel's focus on this irrelevant matter was further evidence of bias. The UNDT erred in fact and law in failing to identify it as such.

41. Ms. Reilly submits that the UNDT erred in finding that issues relating to the Press Release and its contents had been finally determined by the Appeals Tribunal in Judgment No. 2022-UNAT-1309 and that Ms. Reilly's numerous claims relating to the Press Release and its contents were moot.

42. Ms. Reilly submits that the UNDT erred in fact and law and failed to exercise jurisdiction by not considering that instructions to and failure to provide relevant evidence to the Panel had the effect of vitiating the decision.

43. Ms. Reilly contends that she has always described the Practice as it occurred and as contemporaneous documents prove. The Permanent Mission of the People's Republic of China (Mission or PM) provided a list of 12 or 13 names, and the HRC Secretariat told the Mission who from the list was coming to an event. The Mission wrote a *note verbale* claiming those individuals were a security risk. Security at the United Nations Office in Geneva (UNOG) reviewed the claims,

and the HRC Secretariat confirmed to the Mission that no security risk was found. By contrast, the former Chief of the HRCB denied names were provided to the Chinese Government. Since the documentary record shows Ms. Reilly's account has always been accurate, it follows that the former Chief of the HRCB lied. The Panel failed to consider that several interviews demonstrated that the former Chief of the HRCB continued to lie both internally and externally about the Practice. He openly admitted to the Panel that he wished to keep his interview record confidential because he had lied to representatives of Member States, falsely telling them that he could not provide names to the Chinese delegation because he did not have access to the accreditation database. He informed the Panel that he in fact did have such access.

44. Ms. Reilly notes that the First Reporting Officer of the former Chief of the HRCB at the time of the interviews references this false account as settling the matter and as proof that Ms. Reilly was lying. This demonstrates how these falsehoods are unquestioningly adopted by OHCHR as their official account just as with the Press Release description of the Practice. The false account has also been repeated by the delegations of the United States, Germany, the European Union and others as the justification for taking no action on Ms. Reilly's accurate reports. From the outset, the ToR for the Panel characterised the different accounts as a difference of opinion. It established legitimacy for the position of the former Chief of the HRCB by attributing it to OHCHR management. The UNDT erred in fact and law by determining this action was to delineate the scope of the Panel's investigation.

45. Ms. Reilly contends that the UNDT erred in finding that the Panel did not need to rely on the former HC's comments on the Complaint against him. The UNDT allegedly erred in finding that Ms. Reilly was embarking on a "fishing expedition" in seeking to have the former HC's comments submitted to the Panel. She states that the evidence that the former HC may have been misled by the former Chief of the HRCB would be material to the investigation. Ms. Reilly also claims that the UNDT erred in finding that the Panel drew an adverse inference against the former HC because he did not participate in the investigation.

The Secretary-General's Answer

46. At the outset, the Secretary-General submits that Ms. Reilly largely omits, throughout her appeal, to cite the passages in the impugned Judgment and in the record to which she purports to refer. In this regard alone, she is said to have failed to make out her case on appeal. This is because, without such references, her allegations essentially amount to assertions without support. It is

well-established that appellants bear the burden of making their case on appeal and demonstrating error on the part of the UNDT warranting the reversal of the UNDT's judgment. In the present case, Ms. Reilly has not met that burden.

47. The Secretary-General avers that Ms. Reilly improperly attempts to relitigate matters already adjudicated and which have accordingly become *res judicata*. In particular, she makes claims that the Administration delayed in addressing her Complaint against the former HC and also continues to assert that she was defamed by the Press Release.

48. The Secretary-General submits that the UNDT correctly dismissed Ms. Reilly's allegation that the Administration's delay in processing her Complaint against the former HC permitted any inference of bias by the Administration against Ms. Reilly. The UNDT found Ms. Reilly's allegation unpersuasive. The UNDT based its finding on the fact that the issue of the Administration's delay in processing Ms. Reilly's Complaint against the former HC had already been adjudicated in Judgment No. UNDT/2019/094 in which the UNDT found that the Administration's delay was unlawful but made no finding of bias and further found that the delay did not warrant an award of moral damages to Ms. Reilly.

49. The Secretary-General recalls that the Press Release is relevant to the instant case, but only to a limited extent. That is, only insofar as Ms. Reilly argued in her request for management evaluation and in her application to the UNDT, that the issuance of the Press Release constituted an abuse of authority on the part of the former HC and the former Chief of the HRCB. Ms. Reilly contests the decision not to take further action against the former HC and the former Chief of the HRCB following an investigation into her Complaints against them. The UNAT's ruling in Judgment No. 2022-UNAT-1309 renders moot Ms. Reilly's claims in the present case regarding the Press Release. In that Judgment, the UNAT *inter alia* found that the main part of the Press Release was "not about [Ms. Reilly] but about OHCHR's good name", and that the last part of the Press Release was lawful. A lawful and reasonable exercise of the Administration's discretion cannot, by definition, constitute harassment or abuse of authority. Thus, the UNAT's findings render moot Ms. Reilly's arguments regarding harm she claimed to have suffered from the Press Release and its contents.

50. The Secretary-General asserts that Ms. Reilly's claim that the Panel did not make accurate findings about the communication between OHCHR and the Chinese Government is also moot. That is so no matter what particular conclusion the Panel may have reached as to the nature of

these communications and how they were reflected in the Press Release. The UNAT has already held that the part of the Press Release related to these communications was not addressed to Ms. Reilly and was not related to her terms of appointment. In addition, Ms. Reilly's claim that the UNDT erred by not giving sufficient weight to the evidence provided by two witnesses that the intent of the Press Release was to demonstrate that Ms. Reilly was unreliable is also moot. The UNAT explicitly found that the Press Release did not intend to harm Ms. Reilly when it held that OHCHR had maintained confidentiality to the maximum extent possible.

51. The Secretary-General contends that Ms. Reilly's allegations concerning the Panel's ToR, specifically the characterisation of the varying accounts of Ms. Reilly and the former Chief of the HRCB as being a "difference of opinion," are also moot in view of the UNAT's prior findings. In any event, the UNDT also found no misrepresentation in the Panel's ToR and that, even if there had been an error, the Panel had access to Ms. Reilly's complaints. Furthermore, Ms. Reilly's arguments that the Administration should have submitted the comments of the former HC to the Panel, that the Panel should have requested them, and that the UNDT wrongly found that the Panel drew an adverse inference from the absence of those comments, are all moot. That is because whatever the role of the former HC in preparing and issuing the Press Release may have been, the UNAT has found that Ms. Reilly suffered no harm from the Press Release.

52. Likewise, Ms. Reilly's arguments that the UNDT erred by refraining from considering the former Chief of the HRCB's involvement in the issuance of the Press Release, are moot. Even if the former Chief of the HRCB had drafted the Press Release, the issue would be moot because the issuance of the Press Release was reasonable, lawful, and neither harmed Ms. Reilly's confidentiality interests nor was defamatory of her. Thus, the UNDT correctly found that Ms. Reilly's claims relating to the Press Release were moot as the Press Release had already been adjudged to be a lawful exercise of the Administration's discretion. Ms. Reilly has failed to demonstrate that the UNDT committed an error warranting the reversal of the impugned Judgment.

53. The Secretary-General submits that the UNDT correctly found no procedural error in the Panel's composition, ToR and investigation process. The UNDT considered Ms. Reilly's "litany of challenges", considered each of these claims, and found no legal or substantive basis to uphold them. In particular, the UNDT correctly rejected Ms. Reilly's claim that the outcome of the investigation was preordained based on the Panel's use of digital audio recordings. The UNDT correctly held that the Panel was not required to re-interview Ms. Reilly, and that it properly

communicated its ToR to her. The UNDT correctly found that the Panel made no error in seeking to establish how information about Ms. Reilly went into the public domain. The UNDT correctly found that the Panel did not need to rely on the former HC's comments on the Complaint against him.

54. The Secretary-General requests the UNAT to dismiss the entire appeal.

Considerations

55. Some of Ms. Reilly's numerous submissions are properly made and significant; others do, as the Secretary-General submits, seek to relitigate claims that were unsuccessful before the UNDT and are not receivable or permissible under principles of *res judicata*; still others are really sub-sets of broader submissions and can be addressed accordingly. Moreover, it is not always necessary to address each and every argument advanced on an appeal; especially those grounds of marginal or no merit.²⁷

56. We address first the Secretary-General's "catch-all" submission that Ms. Reilly's appeal should be wholly dismissed because she cannot make her case on appeal when she has failed to cite the impugned passages in the UNDT's Judgment and/or to the evidence in the record on which she intends to rely. Without such references, the Secretary-General contends, her allegations essentially amount to assertions without support.

57. It is well-established in our jurisprudence that appellants bear the burden of making their case on appeal and demonstrating error on the part of the UNDT warranting the reversal of the UNDT's judgment.²⁸ This includes identifying errors said to have been made in the judgment appealed from and/or by reference to exhibits or other documents in the record on appeal. We would add that this is a particularly important requirement where, as here, the appeal is complex and is a part of an equally complex history of litigation between the parties.

58. This principle has been re-stated in many cases that counsel experienced in this UNAT jurisdiction would be expected to know and follow. The UNAT's Rules of Procedure address

²⁷ *Djekosse Miantoloum v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1491, paras. 85-86.

²⁸ See, e.g., *Mohammad Yahya Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 2022-UNAT-1196, para. 103; *Cherneva v. Secretary-General of the United Nations*, 2018-UNAT-870, para. 30; *Ilich v. Secretary-General of the United Nations*, 2010-UNAT-051, para. 29; *Kenoly et al v. Secretary-General of the United Nations*, 2023-UNAT-1321, para. 44.

expressly the issue at Article 8(2)(a): “The appeal form shall be accompanied by: (a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon.” Some of Ms. Reilly’s grounds of appeal do suffer from that defect identified by the Secretary-General and are simply impossible to verify by reference to documented material. In one instance at least, that was also a deficiency before the UNDT which has not been cured on appeal.²⁹ In such circumstances, Ms. Reilly cannot establish error and therefore cannot expect to succeed on appeal.

59. If an appellant’s grounds of appeal allege that the Dispute Tribunal failed to address relevant issues in its judgment, we would not dismiss the appeal simply on the ground that the appellant had failed to identify detail in the record supporting a particular argument. A ground of appeal based on an omission cannot require identification of a specific passage in the judgment appealed: omission connotes absence of record. However, we do re-emphasise the requirement of appellants to clearly identify in their pleadings the precise errors in the first instance judgment and their supporting evidence. Not only is this a requirement, but failing to do so complicates and lengthens the time required to examine carefully that complex history and to reach a decision and prepare a judgment such as this.

60. We turn now to the legislative framework governing the case. The applicable rules governing the complaints of harassment and abuse of authority made by Ms. Reilly are addressed principally under Secretary-General’s Bulletin ST/SGB/2019/9 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) (the Bulletin).³⁰

61. Under Section 5.18 of the Bulletin, the “responsible official” who received the Panel’s report was required to take one of a number of courses of action based on the conclusions in that report. If no prohibited conduct was disclosed, the responsible official was to close the case and inform the parties of that conclusion. Here, the Panel’s conclusions were that Ms. Reilly’s Complaints against both the former HC and the former Chief of the HRCB had not been substantiated by evidence.

²⁹ Impugned Judgment, para. 94 (Ms. Reilly’s failure to identify the new facts or evidence that she sought to be re-interviewed about).

³⁰ When Ms. Reilly first filed her Complaint against the former HC in March 2017, the relevant Secretary-General’s Bulletin was ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

62. The USG/DMSPC confirmed the Panel’s conclusions and decided to take no further action on Ms. Reilly’s Complaints and they were consequently closed. Those closure decisions are challenged by Ms. Reilly.

63. Also governing the investigative process in this case was Section 6.7 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), which addresses digital recordings of interviews and written transcripts prepared from them. Specifically, it provides that the “investigator(s) *may* digitally record an interview”³¹ and that for investigative reports, these are to be transmitted to the Assistant Secretary-General for Human Resources for possible disciplinary action:

[A] written record, such as transcripts of the interviews of the subject(s) of the investigation and key witnesses and synopses of the interviews of the other interviewees, shall be prepared of digitally recorded interviews and transmitted with the investigation report.

64. Next by way of general consideration, the Secretary-General invokes the doctrines of mootness and *res judicata*. They are different concepts and principles of law. Mootness occurs when there is no longer a live issue between the parties warranting a decision. *Res judicata* is the legal principle that the issue has already been decided by a court or tribunal of competent jurisdiction and to re-argue and re-decide it would be to mount an impermissible collateral attack on the original and final decision. Mootness and *res judicata* nevertheless share the same outcome: they preclude a consideration of the merits of that decision on appeal. As will be seen herein, these principles bar certain aspects of Ms. Reilly’s appeal, particularly concerning the Press Release.

65. Moving from general observations about the appeal to Ms. Reilly’s specific grounds, we have identified eight separate grounds of appeal as follows.

- (i) Did the UNDT err in dismissing Ms. Reilly’s argument that the Administration’s delay in processing her Complaint against the former HC permitted an inference of bias against Ms. Reilly?
- (ii) Did the UNDT err in finding that Ms. Reilly’s claims relating to the Press Release were moot as the Press Release had already been adjudicated as having been a lawful exercise of the Administration’s discretion?

³¹ Emphasis added.

- (iii) Did the UNDT err in finding no procedural error in the Panel's composition, terms of reference and investigation process?
- (iv) Did the UNDT err in rejecting Ms. Reilly's claim that the outcome of the investigation was preordained (biased) based on the Panel's disposal of the digital recordings?
- (v) Did the UNDT err in holding that the Panel was not required to re-interview Ms. Reilly?
- (vi) Did the UNDT err in holding that the Panel properly communicated its ToR to Ms. Reilly?
- (vii) Did the UNDT err in finding that the Panel made no error in seeking to establish how information about Ms. Reilly came to be in the public domain?
- (viii) Did the UNDT err in finding that the Panel did not need to rely on the former HC's comments on the Complaint against him?

66. First, we address (i) whether the UNDT erred in dismissing Ms. Reilly's argument that the Administration's delay in processing her Complaint against the former HC permitted an inference of bias against her. We conclude that the UNDT did not so err. There were two periods said to have involved undue delay. The first delay (of nine months following her request for management evaluation) was addressed by a previous Judgment³² and so is *res judicata*. As to the second period of alleged undue delay (the seven months following the Dispute Tribunal's issuance of Judgment No. UNDT/2019/094 until her interview), we are satisfied that the UNDT did not err in its assessment that this delay was not conclusive of bias against Ms. Reilly. Ms. Reilly's case is one of bias evidenced by delay rather than one in which she alleges that the delay alone tainted the process. Delay, even undue delay as this may have been, in addressing a complaint by a staff member, does not alone, lead to a conclusion of bias by the decision-maker against the complainant. Although we do not need to reach any conclusions about the reasons for this second period of delay, general explanations for delay can justifiably include the complexity and sensitivity of the matter for decision. Indeed, delay in deciding a complex and very significant series of complaints may well indicate that care was taken in making those decisions. There may be other explanations for a delay which are equally non-indicative of bias. An allegation as serious as one of conflict of interest or bias must be supported by evidence, direct and/or properly inferential, and

³² *Reilly v. Secretary-General of the United Nations*, Judgment No. UNDT/2019/094, para. 47.

Ms. Reilly has not shown that the UNDT was wrong to have rejected this contention of bias based simply on a delay.

67. There is, nevertheless, another argument related to delay that Ms. Reilly advances on which she is correct. At paragraph 53 of the impugned Judgment, the UNDT concludes that any reference to or reliance on the first period of delay which was addressed in Judgment No. UNDT/2019/094 was irrelevant to the second period of delay. The UNDT reasoned that Ms. Reilly was improperly attempting to re-litigate that earlier conclusion. It is no longer possible to reach a different conclusion about the circumstances of the first delay and whether it was undue and unlawful. However, those facts found by the UNDT and its conclusions were available to Ms. Reilly to argue that they applied to the second period of delay which had not been the subject of previous judicial determination. So, they were not, as the UNDT concluded, irrelevant to its decision of that question in the second proceedings before it.

68. While Ms. Reilly is correct that the UNDT erred in law in this regard, it does not advance the underlying theme of her case that the delay is probative of bias against her. Just as the UNDT concluded that the first period of delay did not support a finding of bias against Ms. Reilly, nor has she established that same argument in respect of the second delay, even taking into account the facts and adjudicated reasons for the first delay.

69. In summary, Ms. Reilly's arguments that issues of delay establishing bias were erroneously determined by the UNDT must fail.

70. We now address (ii) whether the UNDT erred in finding that Ms. Reilly's claims relating to the Press Release were moot as the Press Release had already been adjudicated as a lawful exercise of the Administration's discretion. We conclude that issues of, and arising from, the content of the Press Release are *res judicata* and cannot be re-litigated. Although events that were the subject of previous judicial decision can, in appropriate cases, be admissible evidence in a subsequent proceeding between the same parties, they cannot be re-decided. The previous judicial determination must be respected. Ms. Reilly goes further than merely stating the previous judgments' findings about those events as background or context. She seeks to revisit their disputed nature in breach of the principle of *res judicata*. While the UNDT described this as mootness and such description may or may not have been correct, the outcome is the same: as they affected Ms. Reilly, they were not open to the UNDT to reconsider and re-decide.

71. We turn now to (iii) whether the UNDT erred in finding no procedural error in the Panel's composition, terms of reference and investigation process. We conclude that the UNDT correctly confirmed that the establishment of the Panel, its process of fact-finding and reporting, and its interactions with Ms. Reilly as complainant have not been shown to have been in breach of the Bulletin's requirements for appointment of the panel, its ToR or its fact-finding process. It was open to the Administration to appoint the same Panel to investigate both Complaints made by Ms. Reilly and to set out its conclusions about each Complaint in the same report, albeit addressing these separately as was appropriate. Ms. Reilly has not established error by the Dispute Tribunal in this regard.

72. The next issue is (iv) whether the UNDT erred in rejecting Ms. Reilly's claim that the outcome of the investigation was biased (predetermined) based on the Panel's disposal of digital recordings. We conclude that the UNDT interpreted correctly the relevant procedural direction about the creation and use of digital audio recordings of interviews. Apart from Section 6.7 of ST/AI/2017/1 permitting the use of digital recordings in interviews for the purpose of preparing written transcripts of interviews, there is no requirement for their retention and preservation (as there is for written transcripts). Nor is there any express prohibition of their subsequent destruction.

73. Nevertheless, it seems to us that it is good investigative practice not to destroy any records created by the investigative process (including digital audio recordings) at least until there is no possibility of appeal from, or other challenge to, the outcome of the investigation. This ensures that evidence relating to such potentially controversial issues as the accuracy of a written transcript or synopsis of an interview, or establishing such intangibles as tones of voice, pauses and the like, is retained and available. We do not understand why an otherwise thorough and detailed investigation process, the outcomes of which may be very significant for any or all involved, would allow for the destruction of its prime records after these had been transcribed to writing. However, while we commend a reconsideration of the practice by the Administration, it is not for us to interpret the Administrative Instruction beyond what its plain text apparently allows. What is mandated for Panels is the creation of written records of what was digitally recorded and while those written records so created must be retained, there is no similar requirement to preserve the digital records.

74. Compliance with ST/AI/2017/1 in relation to record-keeping having been established, Ms. Reilly's claim that non-compliance (even in combination with her other assertions of implicit

bias by predetermination against her) must fail. On this ground of appeal also, Ms. Reilly fails to establish a probative link between the acts or omissions relating to the digital records of interviews and her contention of bias having been perpetrated against her by the Panel and/or the Administration.

75. Nor do we accept Ms. Reilly's argument for a conclusion of bias that by indicating to witnesses that the digital recordings of their interviews might be destroyed if they wished, this was necessarily evidence of a predetermination of Ms. Reilly's Complaints. Witnesses or others interviewed during investigations into serious allegations can be reluctant participants or wary of the possible consequences of participation. Attempting to reassure them by stating what the relevant process rules allow, namely, the non-preservation of digital audio recordings once transcribed into written format, does not itself imply predetermination of the outcome of the investigation, or bias, against Ms. Reilly.

76. The UNDT thus did not err in relation to the digital interview recordings and/or bias in their use or disposal.

77. Next is (v) whether the UNDT erred in holding that the Panel was not required to re-interview Ms. Reilly. We conclude, although not on one of the same grounds as did the UNDT, that the Dispute Tribunal was correct to find that the failure to re-interview Ms. Reilly was not an error. While we agree with Ms. Reilly's submission that, contrary to the UNDT's Judgment, this was not an exercise by the responsible official of a discretion whether to re-interview, there is another applicable consideration affecting the lawfulness of not re-interviewing Ms. Reilly. Not every piece of new information obtained by the investigation after Ms. Reilly had been interviewed required her to be re-interviewed. New information that could have been adverse to her would, as a matter of natural justice, have required the investigators to make her aware of this and invited her response. Other information not having these consequences did not necessarily require a further interview of Ms. Reilly.

78. The UNDT noted that Ms. Reilly did not specify what new evidence emerged of which the Panel should have advised her and allowed her to respond to, nor what she may have said in response to it. Neither has Ms. Reilly identified in her submissions on appeal what evidence was obtained and from whom after she was interviewed, nor whether and why such evidence was sufficiently significant to require, as a matter of natural justice, that she be made aware of it and have an opportunity to answer it. The Appellant bears that onus, especially where she failed also

to support that argument before the UNDT.³³ In these circumstances, we cannot conclude that the UNDT erred in this regard.

79. We next determine (vi) whether the UNDT erred in holding that the Panel properly communicated its terms of reference to Ms. Reilly. Ms. Reilly argues that although the Panel told her that its task was not to investigate and make decisions about the correctness of the Practice, it did nevertheless consider the circumstances surrounding the Press Release. The Appellant says that the distinction drawn in the investigation report between examining the circumstances surrounding the Press Release (the ToR given to the Panel) and examination of the truth of the allegations she had made about the Practice, was “too fine” as it was conveyed to and appreciated by her and was therefore unfair. As we understand the submission, while Ms. Reilly was told of its ToR by the Panel, she misunderstood its task and so failed to provide an account as she could have and now wishes she had.

80. On 2 December 2019, a Panel member advised Ms. Reilly in writing that in relation to the Practice:³⁴

[T]he current fact-finding investigation ...will not deal with your allegation, initially made in February 2013... concerning the provision of confidential information to the Chinese delegation. It was...included in our terms of reference that our investigation should have a more limited scope and cover your complaints about harassment and abuse of authority, even with the understanding that the allegations relate to two individuals and were made in two separate complaints... As part of our review with a more limited scope, we will be looking at the events and actions surrounding the press release ...and the alleged consequent reprisals.

81. In its investigation report of 23 May 2020, the Panel referred briefly to the different accounts of the Practice but drew no conclusions as to the accuracy of any of those, including Ms. Reilly’s. The Panel discussed and reached certain factual conclusions about Ms. Reilly’s complaints against the two officials of harassment of her and abuse of authority. We agree with the UNDT that what the Panel told her of its task could not reasonably have misled her, at least to such an extent that she was unable to provide her account of events.

82. The Panel’s ToR was clear that it was not to determine whether OHCHR was justified in disclosing the identities of Chinese human rights defenders to the Chinese Government before

³³ Impugned Judgment, para. 94.

³⁴ Appeal, annex 12.

meetings of the HRC. Rather, the Panel was to investigate the circumstances surrounding the issue of the Press Release in response to the previously published articles. It was also to report on whether the Press Release defamed Ms. Reilly resulting in reputational harm. The Panel was to investigate the facts of the HRC's failure to authorise Ms. Reilly to speak to the press, and to take the remedial actions requested by her if she had been harmed reputationally by unjustified actions.

83. We do not accept that the UNDT erred by concluding that any exchanges between Ms. Reilly and others (media and other Member States) after the Press Release were relevant to her allegation that she had been defamed. Defamation consists not only of untrue and defamatory statements but encompasses the extent of publication of these to others, including, potentially, communications by the person defamed. Reputational damage, included in the ToR, is also determined by a broad consideration of evidence including the extent of publication of the defamation and ability to mitigate that. Without making any assessments of the merits of Ms. Reilly's claims in this respect, we conclude that the UNDT did not err in its relevant conclusions about the Panel's conduct.

84. We do not agree with Ms. Reilly that the investigation was biased against her because one of the persons who was on the Panel later investigated allegations against her relating to these matters which brought about her separation from service. While we make no comment on the propriety of that in relation to the subsequent events, the earlier participation in the Panel by that person alone cannot have constituted bias against her in the earlier events with which we are concerned.

85. We turn to the issue (vii) whether the UNDT erred in finding that the Panel made no error in seeking to establish how information about Ms. Reilly came to be in the public. We consider that issues about Ms. Reilly, the publicity given to her concerns and, in particular the Press Release made by OHCHR and its association with Ms. Reilly, are questions that were addressed in previous Judgments.³⁵ This issue is therefore *res judicata* and cannot be considered on its merits.

86. In relation to (viii) whether the UNDT erred in finding that the Panel did not need to receive and review the former HC's comments on the Complaint against him we conclude that there was no error. The UNDT concluded that it was a minor omission and not of a magnitude or significance that should set aside the Administration's relevant decision. We agree that there was ample

³⁵ See *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1309, para. 90.

evidence for the Panel to consider without receiving the comments from the former HC, and their absence from the record did not impair the investigation. Ms. Reilly has not established error by the UNDT in this regard.

87. Ms. Reilly also challenges the UNDT's conclusion that the USG/DMPSC was entitled to delineate the scope of the Panel's investigation, and in particular to instruct the Panel not to investigate whether the Practice was justified on the basis that this was "a policy matter". The ToR for the investigation was for the Administration to determine but had to relate to the Complaints the Panel was to investigate. Those Complaints were about the conduct of two staff members. Although connected to the Practice in that Ms. Reilly ascribed the alleged misconduct as a response to her actions in relation to the Practice, the UNDT did not err in its conclusions in this regard and as recorded at paragraphs 126 and 127 of its Judgment.

88. Ms. Reilly has made a number of other points in her brief which we should address, albeit globally. A number of submissions challenge the processes and decisions of the Panel. However, they do not make the necessary link to decisions by the UNDT about alleged identified errors which is what we must determine. To argue that the Administration erred cannot provide a ground of appeal unless the UNDT erroneously upheld such an act or omission by the Administration.

89. Ms. Reilly claims that on several occasions the UNDT described her allegations otherwise than as she wished and that these misdescriptions softened the significance of her allegations and deflected responsibility for them away from those complained against by her. One example is that the former Chief of the HRCB allegedly used his position or influence, power and authority in an effort to influence her performance evaluation, prospects of promotion and contract renewal. Ms. Reilly criticises the UNDT's description of this allegation set out above as simply "playing a role". While no reference to this in the Judgment has been provided so that the words can be read and evaluated in context, it seems to us that this is a strained and insubstantial criticism of the UNDT and not such as establishes an error of law or fact that would upset its Judgment.

90. We have assessed all of the numerous points taken by Ms. Reilly on this appeal in addition to the foregoing eight main arguments focused principally on seeking to establish bias against her. In accordance with our focus on these principal points, we have not addressed expressly and in detail all of the Appellant's numerous but less meritorious grounds of appeal. We are not satisfied

that the UNDT erred in law, or in fact to such an extent that its Judgment is manifestly wrong. The appeal must be and is dismissed.

Judgment

91. Ms. Reilly's appeal is dismissed, and Judgment No. UNDT/2023/120 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 23rd day of June 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar