

Case No.: UNDT/NBI/2020/033  
Order No.: 094 (NBI/2020)  
Date: 18 May 2020

## **Background**

1. On 8 May 2020, the Applicant filed an application on the merits contesting his dismissal from the service of the United Nations Population Fund (“UNFPA”) as a disciplinary measure pursuant to staff regulation 10.1(a) and staff rules 10.1(a) and 10.2(a) (ix) (“the contested decision”).
2. On 11 May 2020, he filed a motion for interim measures<sup>1</sup> seeking suspension of action of the contested decision pursuant to arts. 10.2 of the UNDT Statute and 14 of the UNDT Rules of procedure pending the UNDT proceedings in his substantive application.
3. The Respondent filed a reply on 13 May 2020 in which it is argued, inter alia, that the application for suspension of action is not receivable *rationae materiae*.
4. On 13 May 2020, the Applicant sought leave, pursuant to art. 36.1 of the UNDT Rules of Procedure, to file a response to the reply. The response was attached to his motion seeking leave.

## **Relevant facts**

5. On 13 April 2017, the Office of Audit and Investigation Services (“OAIS”) received a complaint of an alleged misconduct implicating the Applicant.
6. OAIS issued its Investigation Report on 23 October 2017.<sup>2</sup> On 25 October 2017, OAIS informed the Applicant that the investigation into the alleged misconduct levelled against him had been closed.
7. On 31 January 2019, UNFPA’s Chief, Legal Unit, requested OAIS to reopen the investigation by securing additional evidence.<sup>3</sup>

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<sup>1</sup> The Applicant filed a corrigendum to the motion on the same day.

<sup>2</sup> Application, annex 1.

<sup>3</sup> Application, annex 2.





maker acted as a judge in its own cause and there exists a strong likelihood of bias.



be irregular to base a decision to grant interim relief based on them at this stage, even if the Tribunal was legally positioned and amenable to granting the reliefs.

25. The Tribunal finds that the Applicant was separated from service on the basis of staff rule 10.2(a)(viii), meaning that his permanent appointment was terminated. The contested decision falls into the category of “cases of appointment, promotion or termination” which constitute exceptions to the UNDT authority to grant suspension of action as an interim measure.

26. Consequently, the Tribunal cannot order suspension of implementation of the contested decision in this case because of the limitation imposed by arts. 10.2 of the UNDT Statute, and 14 of the UNDT Rules of Procedure. In light of the foregoing, it is not necessary for the Tribunal to examine whether the three statutory requirements of