

Introduction

1.

Until explicitly authorized by me, you are instructed not to engage with member states, UN agencies, the Steering Committee and the wider membership of GWOPA, media, other governments, or other partners on any topic, and if asked, simply inform inquiring parties that a management review has started with a view to strengthening GWOPA, and that you are awaiting further instructions from me or the Executive Director.

5. These memoranda followed discussions initiated in September 2016 whereby UN-Habitat senior managers informed the Applicant that GWOPA's hosting agreement with the Spanish Government may not be extended beyond its expiry in 2017, that part of the funding earmarked for the 2017 budget of GWOPA's Secretariat Office in Barcelona may be reallocated to UN-Habitat's core funding, and that GWOPA would transition to "a new business model".
6. From 12 January 2017, the Applicant expressed his reservations with the developments concerning the financial status of GWOPA. By letter of 2 February 2017, the Steering Committee of GWOPA also

unlawful”, this Tribunal declines to enter that debate since the concept of a prima facie case is well known and it is unhelpful to attempt to define it.

13. Moreover, under the scheme of internal justice, which places an emphasis on dispute resolution, the stage of management evaluation affords the Administration the opportunity to review and reconsider the decision and, in doing so, it may well be of assistance to the Administration to consider whether the Tribunal has expressed an opinion, not a decision, as to the possible legality of the impugned decision.

14. At this stage, the Tribunal will decide on the application for suspension of action on the basis of the material presented by the Applicant. Whilst the Tribunal is required to transmit the application to the Respondent pursuant to art. 13.2 of its Rules of Procedure, it is not required to request a response or to seek any additional information, particulars or argument. The application for suspension of action stands or falls on the basis of the application itself and the documents attached to it.

15. Based on the information contained in the application and the attached documents, the Tribunal finds that the contested decisions appear to be prima facie unlawful.

16. Whilst the Tribunal has not been fully appraised at this preliminary stage of the full breath of the Applicant’s functions, notably by being provided his job description, it appears that important leadership and managerial responsibilities have been taken away from the Applicant through the memoranda dated 16 February 2017. Significantly, the Applicant is no longer entitled to communicate with any internal or external stakeholder, including GWOPA Steering Committee. This appears prima facia to have a significant impact on the Applicant’s work, as the GWOPA Steering Committee provides “the overall strategic direction of GWOPA” bntaseriPA S

without the explicit authorisation of the Director, Programme Division, UN-Habitat, nor to sign any agreement or legal instrument on behalf of UN-Habitat.

17. The Tribunal is not aware of the remaining functions that the Applicant may still be able to exercise besides continuing his supervisory role of the few staff members of the GWOPA Secretariat. However, it finds the evidence sufficient at this stage to conclude that important functions attached to the Applicant's role as Programme Manager of GWOPA have been removed from his portfolio and that his authority has been significantly curtailed, for an indefinite period.

18. It appears from the documents submitted by the Applicant that no explicit reasons were given to him to remove the above-mentioned functions besides the fact that GWOPA was undergoing a restructuring process. It is unclear why a forthcoming restructuring of GWOPA would require a formal removal of core functions from the head of its Secretariat. This may be a matter for further examination should the Applicant file a substantive claim on the merits.

19. The sequence of events displayed by the documents may tend to suggest that the contested decisions were motivated not by

21. At this stage, it would appear that the sudden unilateral withdrawal of core functions and authority from a senior staff member without proper justification does not appear to be a lawful exercise of managerial discretion. As the Tribunal previously held in Applicant UNDT/2011/187, the Applicant not only has a duty to perform his work, but this is also a right. The withdrawal of the Applicant's core functions, without a legitimate reason, may constitute a breach of his contract of employment. That having been said, the Tribunal is merely expressing a view on the available material. If and/or when the matter is fully examined and the Respondent is accorded the right to be heard, the Tribunal could then make the appropriate findings of fact and law.

Urgency

22. The test of particular urgency is satisfied given the fact that with every day that passes, the position of the Applicant as the Programme Manager for GWOPA becomes increasingly untenable, and also carries with it the serious risk of reputational damage as more amply discussed below.

Irreparable damage

23. It would appear that the sudden and apparently inexplicable withdrawal of delegated authority to sign agreements and legal instruments on behalf of UN-Habitat, and preventing the Applicant from engaging with a wide range of stakeholders are of such a fundamental nature that they not only deprive him from carrying out his duties but impinge directly on the Applicant's standing amongst those individuals and entities with whom he has been interacting professionally, leaving ample room for speculation as to the reason why he has suddenly been deprived of significant duties and responsibilities. This open-ended situation risks undermining the Applicant's professional relationship with the various stakeholders involved with GWOPA as well as his reputation. Such damage cannot be compensated by money. The Tribunal finds that this condition is satisfied.

Conclusion

24. The Tribunal is satisfied that the contested decisions are prima facie unlawful and that there is a particular urgency in this case to avoid irreparable damage to the Applicant.

25. It is ORDERED that:

- a. The application for suspension of action is granted; and**
- b. The decisions to withdraw the Applicant's delegation of authority as well as the decision to withdraw the functions stipulated in the memorandum of 16 February 2017 from the Director, Programme Division, UN-Habitat be suspended pending the outcome of management evaluation.**

(Signed)

Judge Goolam Meeran

Dated this 28th day of February 2017

Entered in the Register on this 28th day of February 2017

(Signed)

René M. Vargas M., Registrar, Geneva