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100 (14/11/2019)

▪ TRIBUNAL

Date:

20 August 2019

## **Introduction**

1. The Applicant is a staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves on a on fixed-term appointments (FTA) as Heavy Vehicle Operators at the GL-3/10 level in Entebbe, Uganda,

2. On 29 May 2019, the MONUSCO Chief Human Resources Officer (CHRO) informed the Applicant that his post had been proposed by the Secretary-General for abolition and thus, his FTA would not be renewed beyond 30 June 2019 because his post was being subjected to a “dry cut”.

3. The Applicant wrote to the Management Evaluation Unit (MEU) requesting suspension of action and management evaluation of the non-renewal decision on 14 June 2019. On 19 June, MEU informed the Applicant that his request for suspension of action pending management evaluation was under

7. The Applicant received a response to his request for management evaluation from the Under-Secretary-General for Management Strategy, Policy and Compliance on 9 August 2019. The Under-Secretary-General informed him that the decision not to renew his FTA would be upheld.

8. On 15 August 2019, the Applicant filed an application under art. 2.1 of the UNDT Statute challenging the decision by MONUSCO not to renew his FTA due to the abolition of his post. At section IX of the application, the Applicant requests “suspension of the implementation of the contested decision not to renew [his] Fixed Term Appointment” as a remedy.

9. The Registry transmitted the application to the Respondent on 19 August 2019. Since there is no requirement, either under art. 10.2 of the UNDT Statute or art. 14 of the Rules of Procedure for the Tribunal to await the Respondent’s response before the applicant’s request for suspension of action is considered, the Tribunal has decided to determine the current request for suspension of action solely on the application and supporting documentation presented by the Applicant.

### **Considerations**

10. The application is made under art. 10.2 of the UNDT Statute and art. 14 of the UNDT Rules of Procedure, which allow the Tribunal to suspend the implementation of the impugned decision pending proceedings where the decision appears *prima facie* to be unlawful, where it is a case of particular urgency and where the implementation would cause irreparable damage. The Tribunal, however, is not competent to suspend implementation of the contested administrative decision in cases of appointment, promotion or termination.

11. The United Nations Appeals Tribunal (UNAT/the Appeals Tribunal) has consistently held that cases of separation following non-renewal constitute a case of appointment and fall under the exclusionary clause of art. 10.2 of the UNDT Statute.<sup>1</sup> The Appeals Tribunal has found that in these cases, “the reversal of the underlying contested decision results in the issuance of a new appointment

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<sup>1</sup> S/IRI/2016/609, para 33; Benchebba/2012-UNAT-256, paras. 12 and 34.

