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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/158

Judgment No.: UNDT/2016/165

Date: 23 September 2016

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MACARA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
Nicole Washienko, OSLA

**Counsel for the Respondent:**  
Stephen Dietrich, ALS/OHRM  
Nicole Wynn, ALS/OHRM



8. Following the Secretary-General's budget proposal to the General Assembly, MONUSCO issued Information Circulars to its entire staff on 6 and 9 March 2015, 14 April 2015, and 20 April 2015, with regard to the proposed budget, the establishment of a Comparative Review Panel (CRP), and the review criteria.

9. Under the proposed new structure for the Mission, which was approved by

8a )BT1 0 0 1 99.384168644447) by (the interim) to (the interim) 09.3297482381433(34.47) 21(20)5(4) p150(16)

15. Shortly thereafter, the Applicant was offered an Individual Contractor (IC) contract by the United Nations Office for Project Services (UNOPS) for the position of LA within MONUSCO. This IC contract was for a period of one-month effective 1 July 2015 but was subsequently extended.

**Applicant's case**

16. The Applicant's case may be summarized as follows:

*The recommendation of the Secretary-General to the General Assembly that led to the abolition of the Applicant's post was in violation of the United Nations statutory framework.*

a. The Secretary-General's report of 26 February 2015 to the General Assembly regarding the proposed financing arrangements for MONUSCO for the period from 1 July 2015 to 30 June 2016 recommended the abolition of 80 LA posts in MONUSCO for the 2015/2016 budget cycle. The said report did not make any reference to reengaging these LAs as ICs.

b. That report was in turn considered by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) which then issued a report to the General Assembly on 1 May 2015 approving the Secretary-General's recommendation for the abolishment of 80 LA posts. As with the report of the Secretary-General, no reference was made to the fact that these 80 LAs would be reengaged as ICs.

c. On the basis of the General Assembly's ra ` ?

themselves does not alter the Organization's obligations under paragraph 3.7 of ST/AI/2013/4.

e. Moreover, the decision to essentially convert the Applicant's fixed-term appointment to an IC contract, administered by UNOPS, was taken while the Applicant was still a staff member of the United Nations Secretariat and thus ST/AI/2013/4 applies to the Applicant.

*The non-renewal of the Applicant's fixed-term appointment and his attendant separation were unlawful because no comparative review was conducted.*

f. MONUSCO's approved budget for the period of 1 July 2015 to 30 June 2016 was that 80 LAs in MONUSCO's Field Administrative Offices be abolished and the remaining 92 LA posts be reassigned to different offices within the Mission.

g. Although the CCPO's memorandum of 22 May 2015 to the Applicant stated that he had been the subject of a comparative review process in which he was not successful, no CRP was actually undertaken with respect to him. It was never communicated to the Applicant how the purported comparative review with regard to the 172 LA posts was conducted, or where he ranked in the exercise. The Applicant was never asked to provide the Mission with his PHP and recent e-PASes before the purported comparative review process took place.

h. This apparent lack of a comparative review process further renders the decision not to renew the Applicant's contract and to separate him from service unlawful, as he ought to have been given the opportunity to undergo a comparative review process in order to be considered for the remaining LA posts in the Field Administrative Offices of MONUSCO.





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representatives had an opportunity to respond by engaging in discussions with the National Staff Union representatives under the UNOPS contractual modality.

*The Respondent did not violate any provisions of ST/AI/2013/4.*

n. The Applicant's claim that the Organization violated section 3.7(b) of ST/AI/2013/4 is inapposite. Section 1.1 of that Administrative Instruction sets out the scope and procedure under which the United Nations Secretariat may directly engage individual consultants and individual contractors for temporary assistance in order to respond quickly, flexibly and effectively to organizational priorities.

o. MONUSCO did not engage LAs under the framework of ST/AI/2013/4. Rather, the Mission decided to engage individual contractors under agreements administered by UNOPS which are governed by the UNOPS Financial Regulations and Rules.

p. Insofar as the Applicant claims that the award of individual contracts by UNOPS violated any rules, such a violation would not render the non-

of his post by a decision of the General Assembly which by itself is akin to a  
country's constitution, the higher nor d the supreme org



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*(Signed)*

Judge Nkemdilim Izuako

Dated this 23<sup>rd</sup> day of September 2016

Entered in the Register on this 23<sup>rd</sup> day of September 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi