UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2026/005
Order No.: 24 (NBI/2026)
Date: 23 January 2026
Original: English

**Before:** Duty Judge

**Registry:** Nairobi

**Registrar:** Wanda L. Carter

MUYINGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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**ORDER**

**ON THE APPLICANT'S MOTIONS FOR INTERIM MEASURES PENDING PROCEEDINGS AND REQUESTING A VILLAMORAN ORDER**

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**Counsel for Applicant:**
Manuel Calzada

**Counsel for Respondent:**
Nicole Wynn, AAS/ALD/OHR, UN Secretariat
Nisha Patel, AAS/ALD/OHR, UN Secretariat

## Introduction

1. On 15 January 2026, the Applicant, a staff member with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic ("MINUSCA"), filed an application contesting the decision to terminate her fixed-term appointment effective 12 January 2026 ("contested decision").

2. By motion, also filed on 15 January 2026, the Applicant "seeks interim measures preserving the *status quo* pending the Tribunal's determination of the merits of her [a]pplication." In her motion, the Applicant submits, without proof, that the termination decision is to be implemented on 16 January 2026.

3. On 16 January 2026, the Applicant filed a motion entitled "Applicant's request for urgent 'Villamoran Order'." In said motion the Applicant requests the issuance of a "Villamoran order" as an interim procedural safeguard pending determination of the merits of this case. Annexed to this motion was an email from MINUSCA Human Resources that the separation process must be completed by close of business on 16 January 2026.

## Facts

4. The Applicant held a fixed-term appointment as Chief of Service (D-1), Public Information at MINUSCA, based in Bangui.

5. On or about 15 October 2025, the Special Representative of the Secretary-General ("SRSG") informed MINUSCA staff, through a memorandum and subsequent town hall communications, citing the Organization's liquidity constraints, that the Mission would implement a contingency plan involving a reduction of approximately 15% of expenditures.

6. Accordingly, MINUSCA established a Staff Management Group ("SMG") to conduct a comparative review pursuant to ST/AI/2023/1 (Downsizing or restructuring resulting in termination of appointments). The Applicant's post was placed within the scope of the downsizing exercise.

7. On 12 December 2025, the Applicant was issued a notice of termination of her fixed-term appointment, effective 12 January 2026, on the grounds of abolition of post and reduction of staff.

8. On 24 December 2025, the Applicant requested management evaluation and suspension of action. A suspension of action was granted by the Management Advise and Evaluation Section ("MAES") pending the evaluation. By letter dated 9 January 2026 and delivered to the Applicant on 12 January 2026, MAES completed its evaluation and upheld the termination decision. MAES concluded that:

> Under the Secretary-General's instruction, MINUSCA established the SMG to conduct the Comparative Review Process, which decided to undertake the comparative review of staff members "per organigram unit, per position to be affected by the contingency plan, at the same functional title and level within the unit as applicable, and by duty station", in line with Section 4.1 of ST/AI/2023/1 and consistently with advice from DOS. This was further endorsed by the Head of Mission. In the present case, as the sole position of "D-1 Chief of Service, Communications, Strategic Communications and Public Information Service, Bangui" was identified to be vacated, the decision automatically served as a "dry cut" of the post you encumber, which resulted in your separation from service, by way of termination of your FTA. Consequently, the MAES found no material error in the decision to terminate your FTA.
>
> Finally, with regard to your contention that the contested decision is "the culmination of a long-standing pattern of harassment, abuse of authority and likely / alleged retaliation by SRSG", the MAES did not find such evidence, nor did you provide any, beyond the contention itself, to substantiate those claims.

**Considerations**

9. Article 10.2 of the UNDT Statute and art. 14.1 of the Rules of Procedure relate to the Tribunal's authority to grant interim measures once a judicial proceeding has begun with the filing of an application on the merits. Article 14.1, which largely mirrors art. 10.2, provides that:

> At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause

> irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, **except in cases of appointment, promotion, or termination**. (Emphasis added).

10. A plain reading of these provisions means that the Dispute Tribunal may order interim measures that provide temporary relief during the proceedings subject to the following conditions:

a. The motion for interim measures must have been filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings;

b. The administrative decision contested in the pending application on the merits appears *prima facie* to be unlawful;

c. The contested administrative decision relates to a case of particular urgency;

d. Implementation of the contested administrative decision would cause irreparable damage; and

e. The temporary relief provided is not a suspension of the contested administrative decision in cases of appointment, promotion, or termination.

11. In her Request for Urgent "Villamoran Order", the Applicant expressly requests "that the Tribunal order the Administration to refrain from taking any further steps to implement or give effect to the contested decision until the Tribunal has rendered its judgment on the merits, or until further order of the Tribunal." In other words, the Applicant seeks an order suspending implementation of the contested termination decision.

12. This is prohibited by art. 10.2 of the Dispute Tribunal Statute and art. 14.1 of its Rules of Procedure. Accordingly, the request must be denied.

13. In her Motion for Interim Measures Pending Proceedings, the Applicant "fully acknowledges that Article 10.2 of the Statute precludes the Tribunal from ordering suspension of the implementation of a termination decision". However,

she claims to seek "alternative interim relief within the Tribunal's powers, including placement on paid administrative leave and the continuation of salary, benefits, and entitlements, to prevent irreparable harm and to safeguard the effectiveness of the judicial process."

14. The Tribunal views this request to be for an order that the Applicant be granted all the benefits of the terminated position without her having to do any of the work. While the Administration has the power to place a staff member on administrative leave with full pay (staff rule 5.5(a)(iii)), that must be based on a finding that doing so would be in the Organization's interests. On its face, doing so in this case would be contrary to the Organization's interest in reducing expenditures.

15. Moreover, the request essentially seeks suspension of the termination decision, without expressly saying so. Indeed, in her motion the Applicant says she "seeks interim measures preserving the status quo pending the Tribunal's determination of the merits of her Application." At the time the motion was filed the status quo was that her termination had yet to be implemented. While perhaps creative, this argument lacks merit. The Tribunal is prohibited from suspending a termination decision, regardless of how that relief is described.

16. However, even if the Tribunal had the power to grant the Applicant's requested relief, she must still meet the requirements for an interim measure, to wit: *prima facie* unlawfulness, urgency, and irreparable harm. These will be addressed below.

Prima facie *unlawfulness*

17. The Applicant submits that the contested decision was unlawful because:

a. The comparative review defined the scope of review too narrowly.

b. There is no rational nexus between the asserted budgetary constraints and the abolition of the Applicant's specific post.

c. The Administration failed to meaningfully consider retention and mitigation as required by staff rule 9.6(c). The identification of a single alternative post followed by the Applicant's exclusion on rigid language grounds, without consideration of training or waiver, reflects a perfunctory approach inconsistent with the obligation of genuine consideration recognized by the Tribunal.

d. The decision is tainted by retaliation because at the material time, she had engaged in protected activity within the meaning of ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) and matters concerning managerial conduct were under Ethics Office consideration and OIOS scrutiny.

18. The comparative review process is governed by section 4.1 of ST/AI/2023/1 which stipulates that

> If the termination of appointments is anticipated as a result of downsizing or restructuring, notwithstanding the application of any mitigation measures, the Staff Management Group shall carry out a comparative review as set forth below. **The Staff Management Group will make recommendations on the scope of the comparative review to the head of entity, who may limit the scope based on one or more relevant criteria, including organizational units, job family, category, level or duty station in the case of locally recruited staff.** All staff on fixed-term, continuing or permanent appointments who encumber posts falling within the scope decided upon by the head of entity after his or her consideration of the recommendation of the Staff Management Group shall be included in the comparative review.

19. The AI places no restrictions or limitations on the scope of the comparative review. Additionally, the Applicant submits no evidence to support her allegation, specifically nothing to show how the head of entity "narrowly defined the scope of review". Absent such evidence, the Tribunal recalls that there exists a presumption of regularity in respect of administrative acts, with it falling to the employee to rebut that presumption. *See for example, Koura* 2024-UNAT-1486, para. 42. The

Applicant has failed to rebut that presumption in this case. Thus, the Applicant's first argument for unlawfulness fails.

20. As to the second argument, the Tribunal first notes the well-settled jurisprudence regarding restructuring.

> Both the Appeals Tribunal and the Administrative Tribunal of the International Labour Organization ("ILOAT") have held that it is well settled jurisprudence that "an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff". *Pacheco* 2013-UNAT-281, quoting *Gehr* 2012-UNAT-236, para. 25.

21. It is plainly obvious that the reason for the comparative review exercise was to address funding shortfalls by abolishing some posts. The Applicant does not dispute this but argues that the Administration has "failed to demonstrate a rational nexus between the asserted budgetary constraints and the abolition of the Applicant's specific post." She fails to cite to any such requirement. Indeed, the two cases she cites for this proposition do not support her claim.

22. The first, *Pacheco, supra.,* does involve termination (in the form of a non-renewal) of a post for budgetary reasons. However, Pacheco's appeal related to a procedural error of UNDT in not swearing witnesses and, upon realizing this, swearing them retroactively. The Appeals Tribunal dismissed the appeal and made no mention of any requirement for showing a nexus between the termination of a particular post and the asserted budgetary reason therefor.

23. In the second case*, Abdeljalil* 2019-UNAT-960), the Appeals Tribunal did address the substance of the termination reasons and its analysis is instructive.

> However, because the funding could not support all the posts then connected with the project, a number of posts had to be eliminated after 31 October 2017. The EYP leadership prepared a business case to get approval of the extension of the project after 31 October 2017 and the staffing for the period 1 November 2017 through 30 April 2018, the anticipated new project end date. The number of posts had to be reduced from 44 to 30 because that was all the funding could support. Finally, on 15 November 2017, the Officer-in-Charge, UNRWA Affairs/Syria approved the business case to extend the

> project to 30 April 2018 with reduced staffing. Ms. Abdeljalil's post was not included in the 30.
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> In these circumstances, the non-extension of Ms. Abdeljalil's LDC was a result of the elimination of her post due to a lack of funds, which constituted a valid reason proffered by the Administration for not renewing her appointment. Therefore, we reject Ms. Abdeljalil's assertions to the contrary as without merit. *Id*. paras. 30-31.

24. The Appeals Tribunal made no mention of an obligation to particularize a nexus between the insufficient funding and any particular post. Instead, the Organization was accorded discretion to adopt a "business case" to abolish some posts while retaining others. The same applies in the instant case, where the comparative analysis established the business case for abolishing the Applicant's post, amongst others, to address the funding shortfall. Thus, the second argument for unlawfulness is rejected.

25. The Applicant next argues that the Administration failed to meaningfully consider retention and mitigation, as required by staff rule 9.6(c), because she was denied the single alternative post "on rigid language grounds."

26. Staff rule 9.6(c) on "Termination for abolition of posts and reduction of staff" provides, in pertinent part,

> … if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:
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> (i) Staff members holding continuing appointments;
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> (ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;
>
> (iii) Staff members holding fixed-term appointments.

27. The case record shows that the sole potential opportunity for retaining the Applicant within the Mission was position number 30089648, Spokesperson (P-5) in Bangui. However, she was found unsuitable for this position because the

Applicant did not meet the language requirement of French at the United Nations Language Framework, level IV (Expert Language Competence). The Applicant does not dispute that she did not have the required competency but argues that the Organization should have considered "training or waiver" to address her incompetence.

28. As noted above, staff rule 9.6(c) requires the Administration to give due regard to competence. Thus, the decision is *prima facie* lawful. The idea that the Applicant's incompetence should be waived or addressed with training simply ignores the reality of the position. It is axiomatic that an official spokesperson must be sufficiently fluent in the official language of the duty station and the country in which it is located. Thus, the Tribunal finds no violation of staff rule 9.6(c).

29. Finally, the Applicant argues that the decision was tainted by retaliation for her reporting alleged misconduct. The record includes her request for protection against retaliation filed with the Ethics Office on 3 November 2025. It should be noted that this was before the contested decision but while the comparative review process, on which it was based, was ongoing. More importantly, the Applicant has not filed any evidence to support either that her misconduct reports had merit or that the comparative review and subsequent termination were in any way connected to her reports. As such, this argument is rejected.

30. In sum, the Applicant has failed to make a case that the contested decision is *prima facie* unlawful.

31. The requirements of art. 10.2 are cumulative, meaning that all three criteria must be satisfied. *Hepworth* UNDT/2009/003 para. 8. "Therefore every request has to be rejected if only one of the criteria is missing." *Id*. The Applicant's failure to establish that the contested decision is *prima facie* unlawful is fatal to her request.

**Conclusion**

32. In view of the foregoing, the Tribunal DECIDES that:

a. The Applicant's Request for Urgent "Villamoran Order" is denied;

b. The Applicant's Motion for Interim Measures Pending Proceedings is denied; and

c. The case shall proceed in due course.

*(Signed)*
Judge Sean Wallace (Duty Judge)
Dated this 23rd day of January 2026

Entered in the Register on this 23rd day of January 2026

*(Signed)*
Wanda L. Carter, Registrar, Nairobi