



## **Introduction**

1. The Applicant is a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He served at the GS-3 level.

2. On 11 November 2015, he filed an Application contesting the decision not to renew his fixed-term appointment and to separate him from service on the grounds of abolition of his post.

3. The Respondent filed a Reply to the Application on 14 December 2015.

4. The Tribunal, with the consent of the Parties decided, in accordance with  
an oral hearing is not required

submissions.

## **Facts**

5. The Applicant had served in Bukavu within MONUSCO as a Language

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8. Following the Secretary-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 the General Assembly, the military force in Bukavu was to be reduced by one battalion and Kinshasa would no longer be an operational base. As a result, LA posts in Kinshasa and Bukavu were abolished. This meant that a budgetary reduction of 80 LA posts in the 2015/2016 budget cycle for MONUSCO was done.
10. The Applicant, who was an LA in Bukavu, was affected by the abolition. A memorandum from the MONUSCO Director of Mission Support (DMS) informed him of this development. He was also informed through a memorandum from the Chief Civilian Personnel Officer (CCPO), Ms. Xaba-Motsa.
11. As at 16 June 2015, the Applicant, along with the other LAs at the Mission whose posts were at the time proposed for abolishment sent a letter to the Special Representative of the Secretary-General (SRSG) for MONUSCO contesting the non-renewal of their fixed-term appointments by reason of abolition of post.
12. On 8 June 2015, Mr. Eric Blanchard Jibikila, who was a member of the Executive Committee of the National Staff Union, sent a request for management evaluation to the Management Evaluation Unit (MEU) in respect of the then
13. MEU replied to the designated focal point for the affected LAs on 2 July 2015 and promised to send its decision by 13 August 2015.
14. Meanwhile, on 24 June 2015, the Applicant received a memorandum from -term appointment would not be renewed beyond 30 June 2015 and that accordingly, his separation from the Organization would take effect at the close of business on that same date.

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

*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-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.

t paragraph  
3.7 of ST/AI/2013/4.

e. -  
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. M

be abolished and the remaining 92 LA posts be reassigned to different offices within the Mission.

g. ndum 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 comparative review 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 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.





improper purposes. The Applicant bears the burden of proving that the discretion not to renew his or her appointment was not validly exercised.

*A comparative review was not required and the outsourcing of the LA functions was proper in the circumstances.*

h. There was no requirement for the Mission to subject the Applicant and others similarly placed to a comparative review process. The Department of Field Support Downsizing Guidelines provide that locally recruited staff must be comparatively reviewed by duty station. Since all LA posts in the Bukavu and Kinshasa duty stations were abolished, a comparative review was unnecessary.

i. Due to the need for LAs to be more mobile and to effectively interact and liaise with the local population by providing linguistic support during their engagement, it was agreed to engage LAs through individual contractor agreements to be administered by UNOPS.

j. As a result, it was no longer viable to use national General Service posts to provide for LA positions to a force that is highly mobile, that deploys at short notice, and sometimes requires a surge in its numbers for a limited duration. Additionally, there is no suitable allowance for the travel of national staff.

k. MONUSCO decided to outsource the provision of LA functions in response to the recommendation of the Civilian Staffing Review (CSR) report.

l. MONUSCO already outsources a number of services and considers current requirements. Information Circular ST/IC/2005/30 (Outsourcing and impact on staff) issued on 15 June 2005, sets out guidance for programme managers when considering outsourcing.

m. In accordance with that guidance, MONUSCO informed staff representatives that language services would be outsourced and the staff



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 provish*

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26. The Applicant in supplementary pleadings raised the issue of about five other LAs in Bukavu and Kinshasa who continued to enjoy fixed-term contracts after all LA posts in these two duty stations were said to have been abolished. He also raised the issue of another former LA who was laterally transferred to an Administrative Assistant post. His argument was that he did not receive equal treatment with these staff members following the abolition of his post.

27. The Respondent in reply explained that the five LAs in question had encumbered borrowed posts from other sections at the time of the abolition of the 80 LA posts in Bukavu and Kinshasa and were therefore not affected by the abolitions. One of them although identified as an LA was actually serving as a Supply Assistant. Their fixed-term contracts were later extended to 30 June 2016.

28. With regard to the one other LA who was laterally transferred to a vacant post of Administrative Assistant at the Mission at the time of the abolitions, there is evidence that the Mission had published an Information Circular dated 18 May 2015. In that Inf  
to be affected by the abolitions were invited to apply to other vacant posts at the Mission that matched their profiles. The said LA successfully applied and was laterally transferred to the post of Administrative Assistant.

29. These explanations by the Respondent were not challenged. The Tribunal in these circumstances does not find that unequal treatment occurred in the  
f 80 LA

## **Conclusions**

30. regarding the non-renewal of his fixed-term appointment is not receivable. Further, his claims regarding his recruitment under an IC contract by UNOPS and lack of equal treatment have no merit. The Application is accordingly refused.

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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