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## **Introduction**

1. On 28 November 2017, the Applicant, a

initiated. Travel date is 1 Dec 2017. Travel to UNMIL will be initiated by UNMIL on 1 January 2018 to take up the temporary vacancy . The Respondent informed the that no travel was raised for UNMIL at this time .

6. On 29 November 2017, the Respondent filed his reply at 4:56 p.m. and







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**Parties' submissions**

17. The Applicant states in his application and supporting documentation that his fixed-term appointment would unlawfully not be renewed if the contested decision is not suspended, and he will lose the benefits associated with his fixed-term appointment, including his leave may be summarized as follows:

a. The Applicant has been serving in the United Nation since March 1995 on a fixed-term appointment;

b. Given the unfair treatment with regard to the selection of the post that the Applicant was performing from October 2014 till 30 November 2017, the Applicant requested that he be able to continue his next short-term assignment with UNMIL under a fixed-term appointment without separating from the organization and being reappointed on a temporary appointment;

c. suffered during the last 3 years due to the uncertainty of his contractual status, and not knowing whether he will continue the work that he has been doing for the last 23 years.

18. The Respondent states that the application has no merit as the contested decision was lawful and the implementation of the contested decision will not cause the Applicant irreparable harm.







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- f. The case is of particular urgency.

*Whether application concerns an administrative decision that may properly be suspended by the Tribunal*

24. The Tribunal notes that it is uncontested that the contested decision in the present case, namely the decision not to renew the Applicant's -term appointment with MINUSTAH and to separate him from the Organization, is an administrative decision subject to review by the Tribunal, including its implementation being suspended pending management evaluation.

*Whether the Applicant requested management evaluation of the contested decision and whether the evaluation is ongoing*

25. The Tribunal notes that it is uncontested that the Applicant filed a management evaluation request of the contested decision on 28 November 2017, within 60 days from the day of notification, and that the evaluation is currently pending.

*Whether the contested decision has not yet been implemented*

26. The Tribunal notes that pursuant to Order No. 260 (NY/2017) dated 29 November 2017, the Tribunal suspended the implementation of the decision not to renew the Applicant's -term appointment until the Tribunal rendered its decision on the application for suspension of action, or until further order.

27. Consequently, the first three cumulative and mandatory conditions presented above have been fulfilled.

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irregularities/inconsistences related to the contested decision. First, the Respondent contends that the Applicant is required to separate from the Organization and be appointed to the temporary job opening at UNMIL after a break in service pursuant to sec. 5.2 of ST/AI/2010/4.Rev.1 (Administration of temporary appointments) issued on 26 October 2011 which states as follows (emphasis added in sec. 5.2):

## **Section 5**

### **Eligibility**

*Eligibility of a staff member who has held or is holding a fixed-term, continuing or permanent appointment*

5.1 A current staff member who holds a fixed-term, permanent or continuing appointment may apply for temporary positions no more than one level above his or her current grade. However, a current staff member who holds an appointment at the G-6 or G-7 level may also apply to temporary positions in the Professional category up to and including the P-3 level, subject to meeting all eligibility and other requirements for the position as set out in section 3.4 above.

5.2 *Upon separation from service, including, but not limited to, expiration or termination of, or resignation from, a fixed-term, continuing or permanent appointment, a former staff member will be ineligible for re-employment on the basis of a temporary appointment for a period of 31 days following the separation. In the case of separation from service on retirement, a former staff member will be ineligible for re-*

### Section 3

#### Appointment and re-employment

3.10 Upon *separation from service following resignation* from a fixed-term appointment, a former staff member will be ineligible for re-employment for a period of 31 days following the separation.

33. The Tribunal considers that in accordance with the rules of interpretation of law, which requires that the newest legal provision take precedent over older provisions, ST/AI/2013/1 supersedes ST/AI/2010/4.Rev.1. It results from sec. 3.10 of ST/AI/2013/1 above that a former staff member will only be ineligible for re-employment for a period of 31 days following the separation if they have resigned from their fixed-term appointment and therefore the area of application of sec. 5.2 of ST/AI/2010/4.Rev.1 was limited to the separation from service of staff members under fixed-term appointments only if the separation results from a resignation by the staff member.

34. As results from sec. 3.11 of ST/AI/2013/1, a break in service up to seven days before being re-employed is required exclusively in case of a staff member in the General Service category, which is not applicable to the Applicant who is a staff member in the Professional Service category.

35. [redacted] -term appointment was due to expire on 30 November 2017, and the Applicant did not resign from the Organization. Moreover, his new assignment was to start on 24 November 2017, when he was to officially travel to UNMIL, without any break in service. [redacted] is required to separate from the Organization and be appointed to the temporary job opening at UNMIL after a break in service pursuant to sec. 5.2 of ST/AI/2010/4.Rev.1 appears to be incorrect.

36. Secondly, the Tribunal notes that although the Respondent contends that the Applicant cannot be laterally reassigned by the USG/DFS as his appointment is limited in service to MINUSTAH and that he is required to undertake a 31 day break

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been serving at a hardship duty station for several years on a temporary position but serving under a fixed-term contract.

39. The Tribunal also notes that

annual leave that according with the mandatory provisions of Regulation 5.1, and these provisions are superior to Staff rule 9.9 regarding the commutation of accrued annual leave.

40. The Tribunal is therefore satisfied that the condition of *prima facie* unlawfulness is fulfilled.

*Is there an urgency?*

41. The Tribunal considers that c

IT IS ORDERED THAT:

44. The application for suspension of action is granted in relation to the decision  
-term appointment and to separate him from the  
Organization, and the implementation of this decision is