



## **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.



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. 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-

the report of the Secretary-General, no reference was made to the fact that these 80 LAs would be reengaged as ICs.

c. then proceeded to inform the Applicant of the non-renewal of his fixed-term appointment and separation after 30 June 2015. Shortly thereafter, the Applicant was then offered an IC contract.

d. The mere fact that MONUSCO decided to engage the LAs under agreements administered by UNOPS, a United Nations Common System entity, as opposed to directly engaging the individual contractors

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.



b. Pursuant to art. 2.1(a) of its Statute, the Dispute Tribunal lacks jurisdiction to review the matter of the abolition of the post the Applicant encumbered and the recommendation of the Secretary-General to the General Assembly that led to the abolition of the post. These claims are not receivable and should be rejected.

c. The only reviewable administrative decision before the Dispute





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.

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-  
was not entitled to be engaged under an individual contract with UNOPS.

q. If indeed the engagement of the Applicant under a UNOPS agreement contravened UNOPS contracting rules as the Applicant claims, the remedy is not monetary compensation for the Applicant, but rather the voiding of the said contract.

### **Considerations**

18. The Tribunal will now consider whether the challenge against the non-renewal decision  
other claims.

19. With regard to the issue of the receivability, the Tribunal agrees with the

of his post by

Case No.

Case No. UNDT/NBI/2015/138

Judgment No. UNDT/2016/146

*(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