



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/053

Order No.: 97 (GVA/2025)

Date: 13 August 2025

Original: English

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**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** Liliana López Bello

SAMARASINHA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON MOTION FOR INTERIM  
MEASURES**

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**Counsel for Applicant:**

Robbie Leighton, OSLA

**Counsel for Respondent:**

Elizabeth Gall, UNDP

## **Introduction**

1. On 6 August 2025, the Applicant, a staff member of the United Nations Development Fund (“UNDP”), filed a motion for interim measures by which he seeks suspension of the 19 May 2025 decision to extend his Administrative Leave Without Pay (“ALWOP”) until 24 August 2025 during the current judicial proceedings.

2. For the reasons set out below, the Applicant’s request for interim measures is denied.

## **Facts**

3. The Applicant joined UNDP on 6 March 2001. From 1 January 2019, UNDP seconded the Applicant to the UN Secretariat to serve as Resident Coordinator to Fiji, Solomon Islands, Tonga, Tuvalu and Vanuatu at the D-1 level.

4. From 11 May 2023 to 24 November 2023, the Applicant was placed on administrative leave with pay (“ALWP”) pending an investigation into allegations of sexual harassment, harassment and abuse of authority against him.

5. On 24 November 2023, the Applicant’s secondment with the UN Secretariat ended, and he returned to UNDP.

6. By letter dated 1 December 2023, the Assistant Secretary-General, Assistant Administrator and Director, Bureau for Management Services (“ASG/BMS”), informed the Applicant of the decision to place him on ALWP from 1 December 2023 through 24 February 2024. The reason given was said to be the same as in the 24 November 2023 letter placing the Applicant on ALWP and in addition that:

OIOS [Office of Internal Oversight Services] has confirmed that there is preponderance of evidence that you engaged in the alleged conduct and the alleged misconduct is of such gravity that it would, if established, warrant separation or dismissal under Staff Rule 10.2 (a) (viii) or (ix).

7. The Applicant's placement on ALWOP has been extended for three months at a time by letters of 20 February 2024, 23 May 2024, 20 August 2024, 19 November 2024, and 19 February 2025. The Applicant has challenged most of the decisions extending his ALWOP before this Tribunal.

8. By letter dated 15 May 2025, notified to the Applicant on 19 May 2025, the Applicant was informed of the decision to extend his ALWOP until 24 August 2025.

9. On 5 August 2025, the Applicant filed an application on the merits challenging the 19 May 2025 decision extending his placement on ALWOP. The Tribunal registered it under Case No. UNDT/GVA/2025/053.

10. A day later, the Applicant filed in the instant case the motion for interim measures referred to in para. 1 above.

11. On 7 August 2025, the Registry acknowledged receipt of the Applicant's motion for interim measures and served it on the Respondent, instructing him to file a response by 11 August 2025, which he did.

## **Consideration**

### *Suspension of action during proceedings – Interim measures*

12. Interim measures during the proceedings are governed by art. 10.2 of the Tribunal's Statute and art. 14.1 of its RoP. The latter, which replicates almost completely the former, 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.

13. For the Tribunal to order interim measures, several cumulative conditions set forth in the above-mentioned provisions must be met (see *Nadeau* Order No. 116 (NY/2015), *Awomeyi* Order No. 165 (GVA/2015), *Kazagic*

Order No. 20 (GVA/2015), *Auda* Order No. 156 (GVA/2016) and *Harvey* Order No. 10 (GVA/2020):

- 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 application on the merits appears *prima facie* to be unlawful, relates to a case of particular urgency, and its implementation would cause irreparable damage; and
- c. The requested temporary relief must not concern appointment, promotion or termination.

14. The Applicant filed his motion for interim measures in a pending application (Case No. UNDT/GVA/2025/053). The cumulative condition referred to in para. 13.a above is met.

15. The condition referred to in para. 13.b above, requires that the decision contested in the pending application on the merits meet three other cumulative conditions, namely *prima facie* unlawfulness, urgency, and causing irreparable damage.

*Prima facie unlawfulness*

16. The Tribunal recalls that a finding of *prima facie* unlawfulness does not require more than serious and reasonable doubts about the lawfulness of the contested decision (*Hepworth* UNDT/2009/003, para. 10; *Corcoran* UNDT/2009/071, para. 45; *Corna* Order No. 90 (GVA/2010); *Loose* Order No. 259 (GVA/2017)).

17. In previous cases filed by the Applicant regarding the same ALWOP, namely Cases Nos. UNDT/GVA/2024/003, UNDT/GVA/2024/015, UNDT/GVA/2024/041, UNDT/GVA/2025/036 and UNDT/GVA/2025/037, this Tribunal held that the contested administrative decisions regarding placing the Applicant on ALWOP or extending his ALWOP were not *prima facie* unlawful (see

Order Nos. 9 (GVA/2024), Order No. 115 (GVA/2024), Order No. 134 (GVA/2024), Order No. 76 (GVA/2025) and Order No. 77 (GVA/2025)).

18. In his motion, the Applicant argues that “the UNDP rule is inconsistent with the staff rule. This is because the threshold described is inconsistent with the requirement for exceptional circumstances”. He asserts that he has a “right to a presumption of innocence” and that “the UNDP rule removes this right by requiring the ultimate decision maker in the disciplinary case to pre-judge the outcome before any formal allegations of misconduct have been laid and before any response to such”.

19. The Tribunal notes that the Applicant’s argument has already been addressed in Order No. 9 (GVA/2024) at paras. 19 to 23. The Tribunal recalls its finding that “the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct is not inconsistent with staff rule 10.4”.

20. Furthermore, the Appeals Tribunal has recognized that a staff member may be placed on administrative leave under staff rule 10.4 when there is a preponderance of evidence that the staff member has committed alleged misconduct, which, if established in a disciplinary process, may warrant separation from service (see *Loto* 2022-UNAT-1292, paras. 82-85).

21. The Appeals Tribunal has also held in *Muteeganda* 2018-UNAT-869, para. 41 that:

[...] The rule recognises that ALWOP is an extraordinary administrative measure designed to be of short duration. Though seemingly harsh, a decision to impose ALWOP in sexual misconduct cases is not disproportionate. It seeks to balance competing adverse and beneficial effects of the policy in order to achieve the desired end of behavior change in cases of sexual misconduct. It legitimately and justifiably puts sexual predators at greater financial risk, with adequate safeguards in place for those subsequently found to be innocent. Any limitation on the right to be presumed innocent is accordingly reasonable in light of all the relevant factors.

22. Consequently, the Applicant’s argument is rejected.

23. In his motion, the Applicant also refers to *Samarasinha* UNDT/2025/047 and argues that after considering all the evidence, the Tribunal reached the conclusion, on a preponderance of evidence, that the decision to place him on ALWOP was unlawful. He claims that since the judgment was in his favour on the same issues, it seems difficult to argue that there are no serious and reasonable doubts as to the lawfulness of the decision.

24. While the Tribunal acknowledges the findings in *Samarasinha*, the Tribunal notes that the time limit to appeal said judgment is still running, and the Respondent has confirmed his intention to file an appeal in this respect. It thus follows that a judgment, subject to appeal, carries no authority to automatically prove *prima facie* unlawfulness. The Applicant's argument is thus denied.

25. The Applicant further claims that due to deficiencies in the original investigation, the Applicant's ALWOP has been extended and that the delay in this case has now become sufficient to vitiate the decision.

26. In this respect, the Tribunal notes that staff rule 10.4 does not set a limit on the total duration of placement on ALWOP. The evidence shows that the investigation addressed multiple allegations of serious misconduct, including sexual assault, sexual harassment, abuse of authority, and interference with the OIOS investigation implicating the Applicant, who was the UN's highest-level official and the Secretary-General's representative in Fiji. Furthermore, the allegations involved facts that occurred in three duty stations (Kosovo, Belarus and Fiji) over two decades.

27. Following the investigation, the disciplinary process started on 4 February 2025. Since then, the Applicant has been granted four extensions of time to provide his comments on the Charge Letter. With his comments filed between 4 and 30 April 2025, he included new evidence that required further investigation from OIOS.

28. As provided by the Respondent, the disciplinary process is at an advanced stage, with the Applicant having provided final comments recently on 30 July 2025.

29. The foregoing demonstrates that the disciplinary process is ongoing, and that the alleged delay in the issuance of a decision is not unjustified.

30. In this context, the apparent delay in this case is not sufficient to vitiate the contested decision. The Applicant was placed on ALWOP on 1 December 2023, which would appear to have left him without pay for a total of 20 months. However, the Tribunal does not, on a *prima facie* basis, find that the contested decision is unlawful in this respect as the disciplinary process is progressing. Nevertheless, the Tribunal strongly encourages the Respondent to finalize the disciplinary process as soon as possible, also to avoid further litigation.

31. Accordingly, the Tribunal finds that the Applicant has failed to substantiate that the contested decision is *prima facie* unlawful. Given the cumulative nature of the conditions required to be met for the granting of interim measures, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage.

### **Conclusion**

32. In view of the foregoing, it is ORDERED THAT the Applicant's motion for interim measures is denied.

*(Signed)*

Judge Sun Xiangzhuang

Dated this 13<sup>th</sup> day of August 2025

Entered in the Register on this 13<sup>th</sup> day of August 2025

*(Signed)*

Liliana López Bello, Registrar, Geneva