**Before:** Judge Sean Wallace

**Registry:** Nairobi

**Registrar:** Wanda L. Carter

VELJI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

# ORDER ON AN APPLICATION FOR SUSPENSION OF ACTION PENDING MANAGEMENT EVALUATION

**Counsel for Applicant:**
Self-represented

**Counsel for Respondent:**
Wambui Kahama-Bernard, UNEP

## Introduction

1. The Applicant is a Senior Administrative Assistant in the United Nations Environment Programme ("UNEP"), Industry and Economy Division ("IED"), based in Nairobi. The Applicant holds a permanent appointment.

2. On 12 October 2025, she filed an application contesting the following decisions:

a. A 25 September 2025 decision that abolished her post under the UNEP functional review/downsizing;

b. The subsequent decision to move her post from the Environment Fund ("EF") to extrabudgetary ("XB") resources for one year, without formal rescission of abolition of the post;

c. A 9 October 2025 decision that excludes her from a Comparative Review Process ("CRP") that UNEP is currently implementing, depriving her of CRP retention rights;

d. Implementation of an irregular CRP from 13 to 24 October 2025; and

e. Any resulting action that could lead to termination or loss of retention/priority placement rights.

3. On 14 October 2025, the Tribunal issued Order No. 188 (NBI/2025) suspending the implementation of the CRP, to the extent that it excludes the Applicant, until 22 October 2025.

4. The Respondent filed a reply to the suspension of action application on 16 October 2025.

5. The Applicant filed a rejoinder to the reply on 17 October 2025.

**Facts**

6. The Applicant joined the United Nations on 19 September 2005 and currently serves with UNEP/IED as a Senior Administrative Assistant at the G-7 level on a continuing appointment.

7. On 21 February 2025, the Executive Director, UNEP ("ED/UNEP") informed UNEP's Senior Management Team ("SMT") that UNEP was "proactively implementing temporary measures to address uncertainties in the global financial landscape and their potential impact on [UNEP's] budget." These measures entailed:

> a. All job openings for positions of one year or longer (excluding RB positions) will be advertised as FTA-limited. Please be reminded that UN Secretariat staff members (including UNEP) holding permanent, continuing, or fixed-term appointments applying to positions subject to FTA-limited retain their contractual status while on the positions subject to FTA-limited. The Human Resources Section, Corporate Services Division will promptly provide comprehensive and succinct guidance on the FTA-limited modality and will host hybrid fora to engage with staff and address any questions.
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> b. All fixed-term appointments, with and without limitation will be renewed for a maximum of one year based on satisfactory performance, subject to further extensions, as we navigate 2025. This approach applies universally, irrespective of staff category, grade, level, or funding source.
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> c. All new hiring under Regular Budget (RB) posts will be under temporary restrictions, to be reviewed by the Budget Steering Committee with final approval by the Executive Director.
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> d. Additional information on how to manage specific cases, such as pending job openings that are already in progress and contract extensions, will be communicated shortly.
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> e. The above temporary measures will be regularly monitored by the Budget Steering Committee, in consultation with the Senior Management Team, to ensure that the organization remains agile and continues to adapt to changing conditions. We will periodically review these temporary measures, assessing their need based on our budgetary forecasts for both current and future years.
>
> f. Further streamlining efforts focused on business process simplification and maximising our substantive and support capabilities will be announced soon.

8. In a memorandum dated 2 April 2025, the ED/UNEP, recognized the SMT's continued efforts to ensure impactful delivery while adhering to prudent measures, as detailed in her memorandum dated 21 February 2025, but noted that the "rapidly changing global financial landscape and the prospect of reduced donor contributions necessitate a fundamental shift in [UNEP's] institutional set-up with a more deliberate budget planning, allocation and expenditure management for both staff and non-staff resources." This meant a shift to a revised budget envelope and the new management modality entailed the following:

> 8. … (a) Self-review and planning by Division/Offices (Functional Review Phase I): Divisions/Offices to undertake an internal review (cost and operational efficiency) by referencing UNEP's Functional Review guidance (Phase I) (Annex III), and submit a new cost plan (including (i) staff costs, (ii) operational costs and (iii) core mandates and programme activities costs), along with the requested deliverables as outlined in Annex III.
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> (b) Budget Steering Committee (BSC) to review Division/Office submissions from an organization-wide perspective and make recommendations to the Executive Director (Functional Review Phase II);
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> (c) Package submitted for Executive Director review and approval;
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> (d) CSD budget team to reflect the Executive Director's decisions in Umoja;
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> (e) Divisions/Offices to implement the approved new budget envelope and action plan, with Directors fully accountable for any irregularities or overspending; and
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> (f) BSC to monitor and review budget implementation performance.
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> 9. The above will feed into a more in-depth and UNEP-wide review to be carried out with the help of an external consultancy (Functional Review Phase III).
>
> 10. …**(f) Align funding source of each position with its function, e.g., EF position should serve UNEP functions rather than be dedicated to specific XB project,** PSC/OTA funded positions should have a demonstratable relationship to the XB activities which generated the PSC revenue. (Emphasis added).

9. On 18 August 2025, the ED/UNEP informed the SMT of the outcomes of Phases 1 and 2 of the UNEP Functional Review and endorsed the way forward on implementation of the post actions which the UNEP Budget Steering Committee ("BSC') recommended, notably:

a. The ED/UNEP approved all proposals on post reassignment, reclassification and redeployment as included in a post action table that the BSC individually confirmed with Divisions/Offices;

b. Conversion of post funding sources from EF to either Overhead Trust Account ("OTA", funded through Programme Support Costs) or to extrabudgetary resources ("XB");

c. A call for agreed terminations as a managerial decision, subject to availability of funds as a first step to address anticipated position abolitions and to serve as an important mitigation measure; and

d. Anticipation of the need to formally activate the downsizing policy in accordance with section 2 of ST/AI/2023/1 (Downsizing or restructuring resulting in termination of appointments).

10. On 20 August 2025, UNEP introduced a Voluntary Agreed Separation Package for eligible staff to run concurrently with an Early Separation Programme launched by the Department of Management Strategy, Policy and Compliance ("DMSPC") on 8 August 2025.

11. On 9 September 2025, the ED/UNEP formally established the Staff Management Group ("SMG") in line with ST/AI/2023/1.

12. On 19 September 2025, the ED/UNEP extended the call for agreed separations from 19 September to 25 September 2025. The ED noted that UNEP's budget constraints are primarily within EF and OTA core funding. Consequently, this final call for agreed separation is open only to staff in all categories (GS, NPO, and P+) with Permanent, Continuing, or Fixed-Term Appointments (without limitation), whose positions are funded by EF or OTA. The ED also noted that "if the number of approved voluntary separations remains insufficient to close the funding gap, further steps will be required, including the formal activation of the downsizing policy in line with ST/AI/2023/1."

13. On 25 September 2025, the Director/IED informed the Applicant:

> We wanted you to be aware that in order to reduce fragmentation and increase efficiencies in the face of cuts to the Environment Fund, the functions of the Science Policy Business Forum are being mainstreamed into select high impact sectors under the management of the Industry and Economy Division. In line with UN80 and the UNEP functional review, the post that you are sitting on may need to be abolished as the SPBF unit would then cease to exist as a separate unit.

14. On 30 September 2025, the ED/UNEP informed staff that UNEP has activated the downsizing policy as governed by ST/AI/2023/1. The SMG's mandate is to advise on the scope of the review and to conduct the comparative review of affected staff in accordance with the criteria set out in ST/AI/2023/1 between 13 and 24 October and provide formal recommendations on staff retention. Only staff members on fixed-term, continuing, or permanent appointments are eligible for this review. Staff members were also informed that:

> Based on the recommendation by the SMG, the scope of the Comparative Review Process (CRP) will be limited to positions performing interchangeable functions within the same Division or Office, at the same grade/level, under the same funding source, and, for locally recruited staff, located at the same duty station. This approach is intended to ensure that staff are reviewed fairly alongside peers with similar functions, supporting duty of care and transparency, while enabling consistent, equitable, and efficient decision-making in accordance with policy and organizational requirements.

15. In a 7 October 2025 email to the Director/IED, the Applicant asked whether the CRP will apply to her. In response, she was told:

> As earlier noted, the science policy business work is being mainstreamed into high impact sectors, and will not exist as a stand alone unit. This would have meant that the post on which you are paid for might have had to be abolished, but I am pleased to state that we have identified other funding sources that we will use to fund you towards work that allows such strategic alignment. When we meet this week, we would like to discuss with you how this might work and to hear your views.

16. In a follow-up email to the Director/IED on 8 October 2025, the Applicant sought clarification on the status of her post.

> As you informed me on 25 September 2025, my post has been slated by you for abolition. Subsequently, I was notified that funding has been identified to maintain my position. I appreciate the effort to secure resources to retain my services.
>
> To help me prepare for our discussion, could you kindly clarify a few points:
>
> 1. Status of Post Abolition: Is the decision to abolish my post now rescinded, or is the post still officially abolished with this alternate funding being a temporary measure?
>
> In other words, am I being retained in spite of the abolition as a special arrangement, and if so, for how long?
>
> 2. Funding Details: What is the source of the funding that has been identified and what is the duration it can cover my position?

17. In response, on 9 October 2025, the Director/IED informed the Applicant that:

> As noted in subsequent communication, we were pleased to inform you that we were able to identify applicable extrabudgetary funds to cover your salary costs and to move the post off from Environment Fund funding for 2026. With the post no longer being abolished, you were not included in the comparative review process as this is only for staff affected by positions that were identified for abolishment due to the budget cuts.
>
> Notwithstanding the above actions undertaken, and as with all extrabudgetary funding, the funding has to be mobilized from donors on a repeated basis with income arriving in different tranches. We have now secured funding for a year, and like all of the Division's extrabudgetary funded work, we continue our efforts to regularly mobilize such funding.

18. The Applicant requested management evaluation on 12 October 2025.

**Parties' submissions**

19. The Applicant's principal contentions are:

a. The EF to XB re-funding was executed after the abolition of her post solely to remove the post from CRP scope, contrary to sections 5 to 7 of

ST/AI/2023/1 and staff rule 9.6(e). She was not consulted prior to changing her funding line.

b. She submitted a report to senior management and to the Ethics Office exposing instances of corporate interference in UNEP partnerships following which she faces a pattern of retaliation.

c. She has also submitted Notes to File and Reports as part of an ongoing investigation by the Board of Auditors or the Office of Internal Oversight Services ("OIOS").

d. The ED/UNEP's memorandum of 30 September 2025 was misapplied because it exempts posts already XB-funded before the review but does not authorize re-funding to evade review.

e. The SMG and the Environment Management Group ("EMG") are both impacted by conflict of interest and policy capture risks. The SMG composition breaches impartiality requirements. Members with pending conduct allegations and staff representatives with undisclosed familial links to UNEP personnel were not recused, contrary to staff regulation 1.2(m).

f. The EMG which was expected to ensure coordination and accountability, has itself been undermined by the same conflicted actors.

g. The CRP scope (para. 6 of the ED/UNEP's 30 September memorandum) was interpreted so narrowly that experienced cross-divisional staff like her were excluded from comparison, a clear circumvention of the principle of duty of care and transparency.

h. The application is urgent because the CRP is scheduled from 13 to 24 October 2025, with separation notifications by 31 October 2025 and implementation by 31 January 2026. Exclusion from the CRP will irrevocably forfeit her retention rights within days unless implementation is stayed.

i. Loss of retention/placement rights and break in service for a continuing appointment holder cannot be adequately remedied by compensation.

j. The one-year XB stopgap creates structural job insecurity and opportunities for abuse, demonstrated bad faith, leading to anticipated termination once funds lapse.

k. Reputational and psychological damage to a 20-year long, top-performing staff member constitutes serious non-pecuniary harm.

20. The Respondent's submissions on receivability are:

a. The change in the funding source of the post does not give rise to any direct legal consequence for the Applicant. The measure pertains solely to the internal budgetary management of the post and does not affect the Applicant's functions, title, level, type of appointment, or any other fundamental term of employment. There has been no alteration of the Applicant's contractual status or acquired rights.

b. Accordingly, the measure does not have a substantive impact on the Applicant's employment conditions and therefore does not constitute an administrative decision subject to judicial review within the meaning of art. 2 of the UNDT Statute.

c. The Applicant's exclusion from the CRP does not constitute a final administrative decision.

d. The Applicant has already been formally informed that she will be retained, and therefore, no administrative decision capable of judicial review has arisen.

21. On the merits, the Respondent submits:

a. The Applicant's claim regarding the abolition of her G-7 post is unfounded. The communication dated 25 September 2025 from the Director of IED did not constitute a formal administrative decision to abolish the post, but rather a precautionary notification issued in line with UNEP's duty of care obligations intended solely to inform staff of the potential implications of the functional review.

b. At no time has any formal communication been issued to the Applicant indicating that her post has been abolished. This was a courtesy notification issued in line with UNEP's duty of care, intended to inform and engage the staff member in a consultative process, not to abolish her post.

c. EF is itself an extra-budgetary source, financed through voluntary contributions from Member States. It does not form part of the United Nations Regular Budget and is governed by the same financial and administrative principles as other extra-budgetary resources, including the OTA and XB funding.

d. EF, OTA, and XB all fall under the umbrella of voluntary contributions and are subject to the same internal governance and delegation of authority. The UNEP delegation of authority framework permits Division Directors to realign funding sources within this category, provided such changes remain within approved staffing tables and budget envelopes.

e. The change in the funding source of the Applicant's post was a lawful and reasonable mitigation measure implemented to preserve the post and avoid termination.

f. Pursuant to paragraph 6 of the ED/UNEPs memorandum of 2 April 2025, Divisions were authorized to conduct internal reviews and develop cost plans to optimize staffing structures, including the reallocation of posts from EF/OTA to XB funding.

g. Paragraph 10(f) of the same memorandum further directed Divisions to align funding sources with functional roles and identify XB-funded efficiencies as part of UNEP's broader strategy to address reduced funding.

h. In accordance with section 3 of ST/AI/2023/1, UNEP was required to consider alternatives to termination, such as reassignment and funding realignment. The memorandum of 9 September 2025 evidences UNEP's implementation of such mitigation measures, including voluntary separation initiatives and internal budgetary adjustments, all designed to reduce the number of posts potentially subject to abolition.

i. In the Applicant's case, the Division successfully secured XB funding in September 2025, thereby preserving her post and excluding it from the scope of the CRP.

j. Had the Applicant remained under EF funding, she would have been subject to comparative review, which may have resulted in reassignment to an XB-funded post or separation depending on retention outcomes. Should the Applicant wish to be included in the CRP, the Organization is prepared to accommodate such a request, subject to the applicable review criteria and outcomes, and with the understanding that no particular outcome can be guaranteed.

k. The Applicant's claims that the CRP is being implemented irregularly, citing procedural flaws in the composition of the SMG, lack of transparency, and absence of conflict-of-interest protocols are unfounded and unsupported by any evidence. The SMG's membership was disclosed on 9 September 2025, and no concerns were raised at that time.

l. The Tribunal's jurisprudence has established that urgency cannot be based merely on speculation, apprehension about future consequences, or disagreement with the Administration's staffing decisions. The Applicant remains employed on a continuing appointment and has received confirmation from the Administration that funding has been secured despite the reduced funding context of the Environment Fund, thereby eliminating any immediate threat to her employment status. The non-inclusion of the Applicant in the CRP process, which in any event is a prospective and discretionary exercise with an uncertain outcome, cannot be construed as creating urgency within the meaning of art. 2.2.

m. The Applicant has therefore failed to demonstrate any factual, contractual, or legal basis establishing that implementation of the contested decisions would cause her injury that is both irreparable and imminent. Her concerns remain speculative and unsupported by evidence.

**Considerations**

*Receivability*

22. The Respondent challenges the receivability of the application on the grounds that: the change in funding source of the post does not give rise to any direct legal consequence for the Applicant; there has been no alteration of the Applicant's contractual status or acquired rights; and that accordingly, the measure does not have a substantive impact on the Applicant's employment conditions and, therefore, does not constitute an administrative decision subject to judicial review within the meaning of art. 2 of the UNDT Statute.

23. The burden of identifying the contested decision lies primarily with an applicant, who must: (i) identify the administrative decision he or she wishes to contest; and (ii) demonstrate that the contested decision is in non-compliance with the terms of his or her appointment. The Tribunal, however, has an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment. *Polino Malish Abbas* 2024- UNAT -1479, paras. 44 and 45.

24. The Applicant contests various administrative decisions which flow from the decision to move her post from EF funding to XB funding for one year. This decision has in turn resulted in her exclusion from the CRP which she would have been subjected to if her post was abolished or if she remained on EF funding. This is the receivable part of the Applicant's claim. The Tribunal is competent to adjudicate on whether this decision is unlawful or non-compliant with the terms of her appointment.

25. The Applicant's claims regarding the abolition of her post, the implementation of the "irregular" CRP and any resulting action that could lead to termination or loss of retention/priority placement rights are not receivable. There

has been no official or veiled abolition of her post. As she is currently not subject to the CRP, the Applicant lacks *locus standi* in relation to her claims regarding the SMG composition.

26. The claim regarding any future or speculative action that could lead to termination or loss of retention/priority placement rights is not founded. Being subjected to the CRP does not automatically guarantee a retention outcome as set out in ST/AI/2023/1.

*Merits*

27. Under art. 2.2 of the Tribunal's Statute and art. 13.1 of the Rules of Procedure, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These requirements are cumulative, and the Dispute Tribunal can suspend the implementation of the contested decision only if all three have been met.

28. The key issue in this case is whether the decision to move the Applicant's post from EF funding to XB funding for one year and any attendant consequence(s) is lawful.

29. The Respondent bases its decision on an unspecified UNEP delegation of authority framework, the ED/UNEP's memorandum of 2 April 2025 and section 3 of ST/AI/2023/1. The Respondent also submits that "EF, OTA, and XB all fall under the umbrella of voluntary contributions and are subject to the same internal governance and delegation of authority". Again, no supporting documentation is provided for this submission.

30. Paragraph 10(f) of the ED/UNEP's memorandum of 2 April 2015 states,

> the parameters for further delegation to Divisions/Offices for advertisement of EF and OTA positions up to P4 level include but are not limited to the following: … Align funding source of each

> position with its function, e.g., EF position should serve UNEP functions rather than be dedicated to specific XB project, PSC/OTA funded positions should have a demonstratable relationship to the XB activities which generated the PSC revenue.

31. The 9 October 2025 email from the Director/IED to the Applicant only mentions that "we were able to identify applicable extrabudgetary funds [XB] to cover your salary costs and to move the post off from Environment Fund funding for 2026." Contrary to para. 10(f), no justification, such as whether her now XB funded post will serve UNEP functions or be dedicated to specific XB projects, is provided.

32. Section 3.1 of ST/AI/2023/1 provides that the SMG "may make recommendations to the head of entity regarding the application of mitigation measures. These mitigation measures may be in addition to or in lieu of those that may have already been taken by management at the time of the assessment of the situation to create opportunities for staff members to be assigned to available positions within the entity." Section 3.4 provides that "[t]he head of entity shall make final decisions on any mitigation measures recommended by the [SMG]".

33. There is no evidence in the case record to show how the decision or "mitigation measure" to change the funding source for the Applicant's post to XB sources was justified under the applicable legal provisions. Indeed, although in a different context, the Appeals Tribunal has stated that the funding source of a post to which a staff member is being assigned "is part of the legitimate considerations by which it is possible to evaluate the lawfulness of a reassignment decision." *Chemingui* 2019-UNAT-930 para.42, citing *Teo* UNDT/2018/107 (not appealed).

34. In view of the foregoing, there is a *prima facie* case that the decision to move the Applicant's post from EF funding to XB funding for one year is unlawful.

35. The question arising next is whether the Applicant is better off on the XB post or to be on the EF post and subjected to comparative review. The answer to that question is best left for the Applicant to contemplate as it is beyond the purview of

this application. However, the Tribunal notes that in his reply, the Respondent stated that "[s]hould the Applicant wish to be included in the CRP, the Organization is prepared to accommodate such a request, subject to the applicable review criteria and outcomes, and with the understanding that no particular outcome can be guaranteed."

36. Given the limited window for the CRP, between 13 and 24 October 2025, the Tribunal finds that the Applicant has met the requirement of urgency.

37. In terms of irreparable harm, it appears that a change of funding for the Applicant's post from EF to XB funds impacts the Applicant's job security given that EF funds are "the bedrock of UNEP's work worldwide".

> The [EF], established in 1973 by the United Nations General Assembly, is the core financial fund of UNEP. As the main source of unrestricted funds and the bedrock of UNEP's work worldwide, the EF is provided by Member States and enables strategic and effective delivery of results, while allowing for flexibility to respond to emerging environmental challenges.[1]

*38.* Furthermore, as the Appeals Tribunal noted, "a post funded by the regular budget is less precarious by nature." *Chemingui, supra.* Accordingly, the Tribunal finds that the Applicant would suffer irreparable harm if the decision is implemented.

[1] UNEP, "Funding and Partnerships", https://www.unep.org/about-un-environment-programme/funding-and-partnerships/environment-fund#:~:text=The%20Environment%20Fund%20is%20used%20for:%20*,critical%20multilateral%20environmental%20agreements%20*%20Robust%20oversight

**Conclusion**

39. In view of the foregoing, it is ORDERED THAT the decision to implement the CRP, to the extent that it excludes the Applicant, is suspended pending management evaluation.

*(Signed)*
Judge Sean Wallace
Dated this 22nd day of October 2025

Entered in the Register on this 22nd day of October 2025

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