Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

NDETI

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 currently serving with the United Nations Environment Programme ("UNEP") as a Financial Management Officer at the P-4 level on a permanent appointment.

2. On 12 October 2025, he filed an application requesting for suspension of action ("SOA") of two contested decisions:

   a. The 2025 process that preceded the decision to place him in a Comparative Review Process ("CRP"), and

   b. The process of implementation of the CRP from 13 to 24 October 2025.

3. The Respondent filed a reply to the SOA application on 16 October 2025.

4. On 17 October 2025, the Applicant filed a rejoinder to the reply.

Facts

5. 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 term. 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.

> 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.
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> f. Further streamlining efforts focused on business process simplification and maximising our substantive and support capabilities will be announced soon.

6. In another memorandum dated 2 April 2025, the ED/UNEP recognised 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

> (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).

7. 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 the Environment Fund ("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).

8. 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.

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

10. 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 the 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."

11. On 30 September 2025, the ED/UNEP informed staff that UNEP had 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.

12. On 1 October 2025, UNEP's Human Resources Section ("HRS") informed all affected staff, including the Applicant, that following the activation of the downsizing policy, their positions fell within the scope of the comparative review. Staff were requested to verify their personal data in Umoja in preparation for the review. Staff were instructed to use the data verification tool in Umoja between 2 and 7 October 2025, with a step-by-step user guide provided.

13. On 8 October 2025, the ED/UNEP issued a memorandum to the SMG confirming the activation of the downsizing policy and the commencement of the CRP. The ED/UNEP endorsed the SMG's proposed scope for the CRP and communicated it to staff. The memorandum also announced the replacement of the

Director, UNEP Regional Office for Africa ("ROA") with the Director, Governance Affairs Office ("GAO"), as a management representative on the SMG.

14. On 12 October 2025, the Applicant requested management evaluation. He describes the administrative decisions to be evaluated as:

> A. Process to subject my post to the Comparative Review Process (CRP) under EO-HRM12-03827 (memo attached).
>
> B. Decision/process to apply paragraph 6 of the referenced memo above ("same Division/Office, same grade/level, same funding source") as the definition of "interchangeability."
>
> C. Decision/process to proceed with the CRP under an SMG whose composition has raised substantive grounds for conflict of interest.
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> D. Failure to pause the process pending independent review despite formal requests by staff and the Staf Union (11 Oct 2025 correspondence).

15. On 13 October 2025, the Applicant submitted a formal request for protection against retaliation under ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) to the Ethics Office. In his request, the Applicant states, *inter alia,* that, as a "[c]onsequence of reporting the various incidents of prohibited conduct against me by the [Director/ RAO]; my post has been submitted for inclusion in the comparative review process leading to downsizing, without any due regard to a transparent process as outlined in the staff rules and the ST/AI/2023/1."

Parties' submissions

16. The Applicant's principal contentions are:

a. Noting the strict deadlines outlined in the ED/UNEP's memorandum of 30 September 2025 and in light of the multiple outstanding grey areas and requests for clarification, the SOA application is receivable.

b. The Tribunal should concern itself with the legality, rationality, procedural correctness, and proportionality of matters that come before it. As long as the prerequisites are met, these are critical ingredients of a process, not just a decision. A flawed process cannot birth a just decision.

c. He has sought informal remedies to no avail, hence this SOA application is not premature.

d. Paragraph 6 of the ED/UNEP's 30 September 2025 memorandum narrows "interchangeability" to stand-alone posts within the same Division/Office and funding source, such as the post held by the Applicant. This restriction is neither found in ST/AI/2023/1 nor is it consistent with its duty-of-care objectives and is therefore *ultra vires*.

e. The original list of SMG members appointed on 9 September 2025 was amended via a memorandum dated 8 October 2025 following his and other staff members' protests.

f. There is no record that the Staff Union was consulted and endorsed the staff representatives in the SMG. Officials with pending cases reported to the Office of Internal Oversight Services and to the Ethics office were appointed without recusal in breach of staff regulation 1.2(m).

g. SMG members did not disclose any conflicts of interest and no "formal declaration or recusal protocol was published" therefore the CRP is procedurally defective and tainted by apparent bias.

h. There are procedural deficiencies in the CRP and the Respondent should reinitiate the process in compliance with ST/AI/2023/1 and the OHRM Policy Guideline on Downsizing or restructuring resulting in termination of appointments, Ref OHR/PG/2023/1 of 20 January 2023.

i. ST/AI/2023/1 provides for various mitigation measures to be undertaken before resorting to downsizing as a last option. Other than offering voluntary separations to staff it is not evident that any other mitigation measures have been implemented. The Respondent should make available to the Tribunal the official record of any mitigation measures recommended by the SMG to the Head of the entity in compliance with ST/AI/2023/1.

j. The Respondent has not demonstrated to the Tribunal "any interventions made by the organization in relation to the recommendations of the Joint Inspection Unit, in their report reference# JIU/REP/2025/1, in as far as it impacts the organization's human resources."

k. He has filed substantive applications with the Ethics office seeking protection against retaliation, as well as with the Management Advice and Evaluation Section, whose outcomes will have a direct impact on the outcomes of the deficient process via which the functional review assigned his post to the CRP. This was necessitated by the Respondent's inability to address substantive matters of prohibited conduct he reported through the office of the Ombudsman as well as to the Conduct and Discipline Officer.

l. The downsizing follows his complaint of alleged misconduct and abuse of authority and therefore raises a *prima facie* case of retaliation under ST/SGB/2017/2/Rev.1.

m. The CRP window runs from 13 to 24 October 2025. Official notifications are expected by 31 October 2025 and separations by 31 January 2026. If not stayed, he will be irrevocably scored and ranked within days.

n. He is already suffering irreparable emotional, psychological, mental, social and professional harm.

o. Loss of retention rights, break in career continuity, and reputational damage to him as a long-serving staff member cannot be remedied by compensation. A tainted CRP record would permanently affect future placement prospects.

17. The Respondent's submissions on receivability are:

a. The decision to activate the downsizing policy and initiate the CRP is a preparatory step under ST/AI/2023/1. A staff member may only challenge a decision resulting from restructuring once that decision has been made, such as termination of appointment.

b. The inclusion of a post in the CRP, or the conduct of scoring and ranking, does not in itself constitute an administrative decision subject to judicial review.

c. While the Applicant's post may currently be under review, no final decision has been made to terminate the appointment. Even if a downsizing decision were to affect this position, retention could still occur through mitigation measures or reassignment in accordance with the applicable staff rules and procedures.

d. The Applicant's request is premature and not properly before the UNDT. The CRP process is ongoing and does not, at this stage, produce direct legal consequences affecting the Applicant's appointment. Moreover, the preparatory actions, such as the functional review, establishment of the SMG, and the approval of the CRP scope, have already been finalized.

e. It is procedurally impossible to suspend a process that has already occurred. Accordingly, the application for suspension of action should be dismissed as not receivable.

18. On the merits, the Respondent submits:

a. The Applicant alleges that limiting the CRP to posts within the same Division/Office and funding source is *ultra vires* and inconsistent with ST/AI/2023/1. However, section 4.1 of ST/AI/2023/1 expressly permits the head of entity to limit the scope based on relevant criteria, including organizational units and funding source. The scope was recommended by the SMG and approved by the ED, who communicated it transparently to staff on 30 September 2025.

b. The Applicant claims procedural flaws in SMG composition, including lack of Staff Union consultation and unresolved misconduct allegations.

These claims are unfounded: the SMG included the President of the Nairobi Staff Union and Offices Away from Headquarters among three staff members designated to represent staff's interest, and the Director/ROA was replaced on 8 October 2025 by the Director, GAO. This was prior to the Applicant's Protection Against Retaliation and SOA application filings.

c. The Applicant asserts that the absence of published conflict-of-interest declarations rendered the process biased. However, the SMG membership was published on 9 September 2025, and no concerns were raised until 12 October; moreover, the Director/ROA's replacement on 8 October rendered the concern moot prior to the submission of his SOA application.

d. The Applicant alleges failure to implement mitigation measures, other than agreed termination, prior to activation of the downsizing measures. This is demonstrably incorrect: UNEP undertook extensive mitigation efforts from February 2025, including staffing rationalization, extrabudgetary conversions, internal redeployment, and three calls for agreed separation, reducing anticipated terminations from 102 to 52 to date.

e. The Applicant asserts that his inclusion in the CRP constitutes retaliation for prior protected disclosures under ST/SGB/2017/2/Rev.1. However, his request for protection against retaliation was submitted to the Ethics Office on 13 October 2025, the same day the CRP commenced. The Ethics Office must be afforded the opportunity to assess the allegations and, if it finds merit, to confidentially share its conclusions and any recommended actions with the ED/UNEP. At that point, the ED/UNEP will take the necessary measures in accordance with the applicable regulatory framework. Until then, the allegation is premature.

f. The inclusion of positions within the scope of the CRP originates from the outcomes of the functional review, which was undertaken as part of an organization-wide restructuring exercise. This review was a collective, multilayered process led by the BSC - comprising the Deputy Executive Director, Chief of Staff, and Directors of Programme Policy Division and

Corporate Services Division, which examined functional and budgetary requirements across all divisions, taking into account inputs provided by Directors. The results of that functional review were approved by the ED/UNEP following that collective process, forming the basis for the CRP. Accordingly, the inclusion of the Applicant's position in the CRP stemmed from an institutional decision grounded in the approved functional review outcomes, not from any individual decision by a director.

g. Administrative decisions made pursuant to managerial discretion are presumed lawful, and the Applicant must rebut this presumption with clear and convincing evidence. Bare assertions or speculative allegations cannot establish *prima facie* unlawfulness. This presumption is particularly strong in matters where the Secretary-General enjoys broad but fettered discretion to organize work, align staffing structures with operational requirements, and make decisions about staffing levels consistent with organizational priorities. At present, the retaliation claim remains unsubstantiated and cannot establish *prima facie* unlawfulness.

h. 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. Thus, the requirement of urgency is not met.

i. The Applicant contends that inclusion in the CRP will result in loss of retention rights, career disruption, and reputational damage, which he claims cannot be remedied by compensation. However, these assertions are speculative, as the CRP has not concluded and no final decision has been made regarding his post.

j. Irreparable harm must be specific and demonstrable, not hypothetical or anticipated. Mere financial loss is insufficient, and harm must rise to the level of sudden loss of employment, health impact, or demonstrable damage to professional reputation.

k. In this case, the Applicant has not shown how suspending the CRP would prevent any specific harm. He has not demonstrated any legal, contractual, or factual basis that would elevate his speculative concerns to that of irreparable harm. While reputational harm may, in some cases, constitute irreparable damage, there is no evidence that such harm will occur here.

l. The CRP may result in reassignment, retention, or mitigation, and any adverse outcome could be addressed through a substantive claim and, if successful, compensated monetarily.

Considerations

Receivability

19. The Respondent challenges the receivability of the application on the grounds that: the decision to activate the downsizing policy and initiate the CRP is a preparatory step under ST/AI/2023/1; a staff member may only challenge a decision resulting from restructuring once that decision has been made; the inclusion of a post in the CRP, or the conduct of scoring and ranking, does not in itself constitute an administrative decision subject to judicial review; and the preparatory actions, such as the functional review, establishment of the SMG, and the approval of the CRP scope, have already been finalized.

20. 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.

21. The Applicant seeks: 1) suspension of the 2025 process that preceded the decision to place him in the CRP; and 2) the implementation of the CRP.

22. In respect to the first decision, the milestones of the "2025 process" leading up to the inclusion of the post the Applicant encumbers in the CRP are:

a. On 18 August 2005, the ED/UNEP endorsed the outcomes of Phases 1 and 2 of the UNEP Functional Review and also endorsed the way forward on implementation of the post actions which the UNEP BSC recommends including approval of all proposals on post reassignment, reclassification and redeployment.

b. On 9 September 2025, ED/UNEP formal established the SMG pursuant to ST/AI/2023/1.

c. On 30 September 2025, ED/UNEP activated the downsizing policy as governed by ST/AI/2023/1.

d. On 1 October 2025, HRS notified the Applicant that his post falls within the scope of the CRP and, on 8 October 2025, the ED/UNEP confirmed activation of the downsizing policy and the commencement of the CRP.

23. As stipulated under art. 2.2 of the Tribunal's Statute and art. 13.1 of the Rules of Procedure, a jurisdictional requirement for the Tribunal to entertain an SOA application is that the contested decision must not have already been implemented. *Applicant* Order No. 87 (NBI/2014):

> A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the status quo between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented. *Id.,* para. 24.

24. In this case, the "2025 process" or in other terms, the contestable decisions that preceded the decision to place him in the CRP have already been implemented. The Applicant's challenge of these decisions is therefore not receivable *ratione materiae.*

25. On the other hand, a decision having continuous legal effect is only deemed to have been implemented when it has been implemented in its entirety. *See,* for example, *Samarasinha* Order No. 9 (GVA/2024), para 12. The second contested decision, the implementation of the CRP which is taking place from 13 to 24 October 2025 and separations by 31 January 2026 is ongoing and has not been fully implemented. That said, however, it is premature to challenge its implementation because no adverse decision(s) have been made affecting the terms and conditions of the Applicant's appointment.

26. It is settled law that the Tribunal should not interfere with an organizational restructuring exercise unless there is evidence that the discretion was exercised unreasonably, unlawfully or without due process. In this regard there is always a presumption that effective official acts have been regularly performed. The presumption of regularity is, however, rebuttable. *See, for example, Mihai Nastase* 2023-UNAT-1367, para. 35.

27. In *Maryam H. Wathanafa* 2023-UNAT-1389, para. 46, the United Nations Appeals Tribunal held,

> In the first prong of the test for suspension of action, the UNDT reviews the contested decision to verify its lawfulness. The judicial review in this context is however different from the review conducted by the Tribunal on the merits of an application contesting the administrative decision. The UNDT Statute provides for a *prima facie* unlawfulness. This means that the intensity of review conducted by the UNDT is limited. The Tribunal examines whether the contested decision appears, after a summary review, to be unlawful. It is a matter of having serious doubts as to the lawfulness of the decision rather than an exhaustively established unlawfulness. This type of cursory judicial review is fundamental to the effectiveness of the process of suspension of action that is intended to respect the urgency of the situation. A full judicial review would require the Tribunal to spend more time and would contradict the spirit of urgency in which the process of suspension of action occurs.

28. Applying this reasoning to this case, the Tribunal notes that the Applicant argues that "a flawed process cannot birth a just decision". However, absent any convincing proof that his inclusion in the CRP is unlawful or lacks due process compared to the documented and seemingly rational record provided by the

Respondent, his SOA application is premature because currently there is no contestable decision resulting from his inclusion in the ongoing implementation of the CRP.

Conclusion

29. The application for suspension of action pending management evaluation is not receivable and is accordingly DISMISSED.

(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