9 March 2021

Dear Secretary-General,

I am writing to formally report misconduct and abuse of authority by the Executive Director of the Office of Administration of Justice. Since my first report, submitted one year ago, further evidence has come to light that justifies a new complaint.

In particular, I am now aware that Judge Downing had drafted his judgements in my cases. The Administration was, of course, likely aware of the content of those draft judgements. Judge Downing has stated that publication of judgements would have taken at most 10 days from the date on which he was declared *functus officio*, i.e. at latest by 20 July 2019. Judge Downing was removed from his post on 10 July 2019, but remained on full pay until 31 July 2019. The available evidence indicates that his immediate removal was engineered by the Administration, through deliberate deception of member states, expressly to prevent issuance of his judgements in my cases. Judge Downing should be interviewed to provide further evidence regarding these events.

The UNAT has ruled that my appeals regarding the removal of Judge Downing were not receivable, as Judge Bravo did not "clearly" exceed the jurisdiction of the UNDT in reassigning my case when presented with the *fait accompli* of Judge Downing's removal. However, that Tribunal did not examine the actions of the Secretariat, and notably the Executive Director, in bringing about his removal by deliberately lying to the General Assembly. This complaint includes written evidence that the Executive Director deliberately misled member states about the end date of the *ad litem* judges' mandates, the fact that they had been provided no notice, and the huge expenses incurred, contrary to the express purpose of the General Assembly resolution, and UN rules against fraud.

Justice delayed is justice denied, and there can now be no doubt that it is the deliberate intention of the UN Administration to deny me a review by an independent judge, in order to cover up a policy that, under international law, constitutes criminal complicity of the UN itself in the international crimes of arbitrary detention, torture and genocide. The UN Administration has consistently refused to investigate this policy since my first report in February 2013.

I appeal to you to respect the Basic Principles of Independence of the Judiciary, endorsed by the General Assembly, and to reinstate Judge Downing for 10 days to finalise his judgements. I do not believe that any Member State would object to a measure that is so clearly in the interests of justice, and that would prevent further waste. Such a measure would renew confidence that the UN Administration intends to permit independent oversight as desired and directed by member states.

The Ethics Office has recognised that OIOS has a conflict of interest in my regard, and this complaint should therefore be referred externally. I reported to you a recording of the Director of Investigations of OIOS detailing collusion among three allegedly independent entities responsible for accountability in the UN to merely fake compliance with the whistleblower protection policy in order to "get the Americans off the UN's back." You took no action on that most serious report.

As OIOS was previously unable to identify that a UN senior official deliberately lying to member states and thereby committing fraud is capable of constituting misconduct in the UN, I have spelled this out in more detail. I remain available to provide further information and evidence.

Kind regards,

Emma Reilly

Formal complaint of abuse of authority against the Executive Director of the Office of Administration of Justice, Ms Alayne Frankson-Wallace

Facts relied upon:

1. At the relevant time (10 July 2019), I had filed a total of three applications with the UNDT. The cases relate to my treatment as a whistleblower in the Office of the UN High Commissioner for Human Rights (OHCHR) regarding the provision by OHCHR to the Chinese Government of names of human rights activists who were to attend the Human Rights Council ahead of their attendance, acceptance of favours with financial value from the Moroccan delegation, and corrupt recruitment practices. The Secretary-General himself is implicated in the cases, having issued instructions to the former High Commissioner for Human Rights for my protection on 2 April 2018 which were not followed.

2. Judge Downing was seized of these matters since they were filed on 17 July 2017, 16 March 2018 and 11 September 2018 and had handed down judgment in my favour in relation to the first case on 24 May 2019. That judgement was highly critical of the Organization's failure to address my complaint of abuse of authority against the former High Commissioner for Human Rights for issuing a false and defamatory press release about me and my reports (judgement no. UNDT/2019/094).

3. The remaining two cases were subject to hearings on 3, 4, 11 and 12 June 2019. Evidence was heard from five witnesses, and significant argument was presented including closing submissions. The matters were adjourned awaiting judgment.

4. On 21 December 2018, the General Assembly had extended the contract of Judge Downing. The full consideration of the General Assembly regarding this issue was as follows:

> "(h) Appointment of the judges of the United Nations Dispute Tribunal
>
> The President: Members will recall that by its resolution 73/276, of 22 December, the General Assembly decided, inter alia, to extend the positions of the two *ad litem* judges in Geneva and Nairobi whose current terms of office are about to expire. The Assembly also decided not to extend the *ad litem* judge position in New York. The three ad litem judges whose terms expire on 31 December are Rowan Downing of Australia, in Geneva; Alessandra Greceanu of Romania, in New York; and Nkemdilim Amelia Izuako of Nigeria, in Nairobi. The General Assembly will now proceed to the extension of the terms of the two ad litem judges in Geneva and Nairobi, in accordance with paragraph 37 of resolution 73/276, by which the Assembly decided to extend the positions of the two *ad litem* judges in Geneva and Nairobi and current incumbent judges, pending the nomination of candidates by the Internal Justice Council and the appointment of the aforementioned four half-time judges by the General Assembly, which should take place no later than 31 December 2019. May I therefore take it that the Assembly wishes to extend the terms of office of the two *ad litem* judges, namely, Rowan Downing of Australia, in Geneva, and Nkemdilim Amelia Izuako of Nigeria, in Nairobi?

It was so decided (decision 73/408)."[1]

5. On 10 July 2019, the General Assembly held elections for new half-time judges to the UNDT. The decision that such elections would be held was transmitted only following the hearings in my cases. This was considerably less notice than had ever provided in the past to member states of such elections.

6. In the normal course of events, judges elected after 1 July in any year would take up their functions on 1 July of the following year, with existing judges' contracts extended until the date of commencement (not election) of the new judges. This standard process was not followed. Member states were not advised of the non-standard process, and relied upon false assurances from the UN Administration, in the person of the Executive Director of the Office of Administration of Justice (henceforth, "the Executive Director").

7. The Executive Director lied to at least one member state delegation ([redacted]) just prior to the vote. She expressly stated that Judge Downing would continue to serve on the Tribunal until 31 July 2019. Furthermore, she expressly stated that Judge Downing had been informed of the forthcoming end of his contract (Annex 1). At the time of making these statements, the Executive Director knew them to be untrue. She took no action to correct them despite receiving notice from Judge Downing that they were untrue prior to the vote (Annex 2).

8. On the same date as the election, 10 July 2019, the Geneva Registrar informed Judge Downing that he was now *functus officio*, and should cease work on my cases and stop reporting for duty. This was despite Judge Downing's contract having been extended until 31 July 2019. Judge Downing was not informed in advance of this date of the election or its intended effect (Annex 2). No transitional arrangements or handover of cases occurred.

9. By Orders 54 and 55 (GVA/2019) of 16 July 2019, I was informed that Judge Downing had been removed only two months prior to expiry of the usual deadline for handing down judgment. His removal from the cases was due to an alleged immediate termination of his mandate resulting from General Assembly resolution 73/276.

10. On 30 July 2019, I appealed the Orders on the grounds, *inter alia*, that the removal of Judge Downing by a party to the case offended against the fundamental principle of independence of the judiciary and violated my human right to due process.

11. On 31 July 2019, the UNAT Registry required that I reduce the length of my appeal to only 5 pages, despite the Rules of Procedure at that time specifically providing that appeals may be up to 15 pages, and the Practice Direction specifically indicating that I should comply with the limit prescribed by the standard form, which for appeals was clearly and unambiguously 15 pages. The five page restriction related to other types of request than appeals. I believe this arbitrary decision of the Registry, under the ultimate supervision of the Executive Director, had a significant negative impact on my chances of success, as I had to effectively cut my arguments relating to international law, notably international human rights law in which I am an expert, and which is supposed to guide the Tribunal. An investigation should determine whether the Registry took this unilateral decision without informing the judges.

[1] https://digitallibrary.un.org/record/3799432/files/A_73_PV-65-EN.pdf

12. On 3 October 2019, the new judges were sworn in. The Tribunal was thus without two judges for a three month period prior to the four new judges being sworn in, despite the stated purpose of General Assembly resolution 73/276 to reduce the backlog of cases. Member states were not given accurate information as to the impact of the resolution, which had been falsely presented by the Executive Director as cost neutral when it was in fact extremely expensive to reassign my cases, which are of unusual legal complexity.

13. On the same date, two weeks after the last judgement of the Tribunal was due to be issued in my cases, I was forcibly transferred from my post funded under the regular budget to a post funded through voluntary contributions. I remain without terms of reference or functions. This was despite evidence given before the Tribunal on 4 June 2019 by the Chief of Human Resources in OHCHR that I would be consulted and asked to express preferences on any transfer. This has been recognised as an act of retaliation, but the Secretary-General, despite his public rhetoric that UN whistleblowers will be protected, has refused to apply recommendations for my protection made by the Alternate Chair of the Ethics Panel on 27 July 2020.

14. On 25 October 2019, the UNAT found my appeal non-receivable (Judgement no. 2019-UNAT-975).

15. On 13 July 2020, in response to a complaint filed on 29 September 2019, UNFPA communicated a decision expressly stated as being a decision of the Secretary-General not to investigate the ASG for Human Resources Management relating to this removal, stating that "there does not appear to exist any affirmative obligation on the part of the Assistant Secretary-General for Human Resources Management specifically or the Administration generally to provide… notice" to judges on the end date of their mandates. This is clearly contrary to every principle of independence of the judiciary, as outlined below.

Unsatisfactory conduct and abuses of authority demonstrated by these facts

16. Unsatisfactory conduct is defined in ST/AI/2017/1, para. 3.1, as follows:

> "Unsatisfactory conduct is any conduct where a staff member fails to comply with the staff member's obligations under the Charter of the United Nations, the Staff Regulations and Rules of the United Nations or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant."

17. The UN Charter expressly provides at article 101(3) that "The paramount consideration in the employment of the staff… shall be the necessity of securing the highest standards of efficiency, competence, and integrity…"

18. This provision of the UN Charter is reflected in Staff Regulation 1.2(b), which requires that "Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status."

19. Contrary to the on-the-record position of OIOS, it may constitute unsatisfactory conduct for a UN staff member to deliberately lie to representatives of member states. This is in fact the case whether or not the lies are, as in this case, told in order to engineer the immediate removal of a judge as part of a broader cover-up of a UN policy that amounts to complicity in international crimes. Lying to member states can even constitute misconduct, as such lies serve to discredit the United Nations (ST/AI/2017/1, para. 3.5(h)).

20. Abuse of authority is defined in ST/SGB/2019/8, para. 1.8, as follows:

> "Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses their influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation, working conditions or promotion…"

21. There is no requirement for a finding of abuse of authority that the active *intention* of the individual abusing their authority was detriment to the individual making the complaint. It is perfectly possible that the primary intention of the Executive Director was to remove Judge Downing from office as swiftly as possible given the apparent friction among judges documented in successive reports of the Internal Justice Council to the General Assembly, although the timing tends to suggest a more direct relation to my case. Nonetheless, the abuse of her position of influence, power and authority was indeed also directed against me as the Applicant in two of Judge Downing's cases at the deliberation stage, as required by para. 1.8.

22. The removal of Judge Downing has left me exposed to serious retaliation, which since 14 September 2019, when judgement was due, has included a forcible transfer without my consent to a post with no actual functions and further public defamation by both OHCHR and UN spokespeople, who have openly lied to the press about the very policy the Administration defends and admits is ongoing in court.

Failure to apply the Rules of Procedure

23. The role of the Registry is to apply the rules of procedure, and not to substitute its own judgement for them. The rules of procedure of the UNAT at the time my appeal was submitted (30 July 2019) contained no exception to the general rule that appeals should be up to 15 pages in length. This provisional amendment was, per the new rules of procedure published in January 2020, made only on 24 October 2019, apparently following my objections (Article 8(2)(a)). Staff members are entitled to the application of the published rules of procedure of the Tribunals applicable at the time. There were no legal grounds for the Registry to require that I reduce the length of my appeal on 31 July 2019, some three months prior to amendment of the Rules of Procedure. In so doing, the Registry, under the ultimate supervision of the Executive Director, abused its authority to my detriment, requiring me to remove significant legal argument.

Failure to provide full and accurate information to Member States or to Judge Downing

24. The member states were in fact unaware that the UN Secretariat intended the resolution of the General Assembly to be read as requiring the immediate removal of the judge at the moment of election - and not of swearing-in - of new judges, without any interim measures.

The UN Administration deliberately pretended that standard processes were being followed, and misled delegations in order to engineer the removal of the judge.

25. [redacted] specifically asked the Executive Director about the proposed date of the end of the judge's mandate. According to email correspondence, the Executive Director informed [redacted] both that the judges would serve until the end of July, and that they had been informed of this fact (Annex 1). [redacted] further noted in his correspondence the extremely short notice provided to delegations of the election, which was normally held in December, not July. [redacted] also notes that the Executive Director stated that the General Assembly could order a later termination date, but the UN Administration elected not to include this information in the President's script, meaning that a majority of member states was not even informed of the issue, and no debate could be held.

26. Furthermore, it is clear that the Executive Director gave false information that the judges would continue to serve until the end of July (sufficient time for Judge Downing to publish his two judgements in my case), and not that they would merely receive a salary without being permitted to work for this period.

27. The Executive Director was fully aware at the time she made these statements that they were untrue, and was unable to provide any evidence whatsoever to Judge Downing of any information provided to him regarding the termination of his mandate (Annex 2).

28. As a UN staff member, the Executive Director has an obligation to act with honesty and integrity. She furthermore has a duty to report full and accurate information to the General Assembly, as the unique legislative body which has oversight of the functioning of the Tribunal, and its subsidiary bodies, including notably ACABQ and the Sixth Committee.

29. The majority of judges, represented by Judge Izuako in her report as (disputed) President of the Tribunal, in fact chastised the Executive Director and Principal Registrar for previous failures to communicate accurate information to member states:

> "56. In 2018, the Executive Director and the Principal Registrar, both personnel of the Office of Administration of Justice, produced erroneous statistics and narratives with regard to the Dispute Tribunal in the report of the Secretary-General on the internal justice system. For the first time in the existence of the Tribunal, neither the Principal Registrar nor the Executive Director consulted with the judges regarding the correctness of the statistics or their accompanying narratives, so that they could be readily and properly understood.
>
> 57. That inaccurate reporting led to the recommendations of the Advisory Committee on Administrative and Budgetary Questions not being properly informed and to some of the decisions of the General Assembly not being based on credible information.
>
> 58. The failure of the Executive Director and the Principal Registrar to inform the General Assembly that the ad litem judge in New York had partly heard matters and some judgments nearing completion caused a loss to the Organization that is estimated to be at least $100,000.

59. The Executive Director and the Principal Registrar further failed to inform the General Assembly with regard to paragraphs 24, 32, 35 and 37 of General Assembly resolution 73/276, including:

(a) That the judges treat the Dispute Tribunal as one Tribunal, and not three, with the President of the Tribunal in agreement with most judges to rebalance cases between Registries to ensure the most efficient disposal of cases and ensure that the number of cases filed at any Registry does not become unwieldy for the Registry (paragraph 32);

(b) The actual costs with regard to half-time judges and the workflow implications at the registry level (paragraph 32);

(c) That the judges in plenary had already fully considered the matter of the deployment of half-time judges and adopted resolution No. 2 of 13 September 2010, therefore paragraph 35 of resolution 73/276 was not required;

(d) That the General Assembly needed to take note of article 3 of the rules of procedure of the United Nations Dispute Tribunal (Assembly resolution 64/119, annex I) with regard to the "commencement" date of the office of new judges being different from that of their date of election and that there would therefore be a period within which judges are missing from the Tribunal, which would have an impact on matters of access to justice and the disposal of cases. Furthermore, the wording of paragraph 37 of Assembly resolution 73/276 would result in the ad litem judges being A/74/169 36/36 19-12043 unable to efficiently plan their dockets of cases owing to the uncertainty of their termination dates."[2]

30. Paragraph 59(d) above goes precisely to the heart of the unsatisfactory conduct. By failing to even consult the judges who would, as she must have been aware, have instructed her to inform the General Assembly that the reference in the resolution should have been to date of commencement and not date of election, the Executive Director, acting on behalf of the UN Administration, deliberately engineered the immediate removal of the ad litem judges.

31. Despite the obvious fact that the candidates for election had existing high-level employment that would require a notice period before they could commence their work, if successful, the Executive Director elected not to inform the General Assembly that the resolution would have the precise opposite effect of its stated aims (inter alia, to reduce backlog), depriving the Tribunal of two judges for a three-month period and making no provision for handover, requiring significant duplication of work and financial waste. Instead, the Executive Director openly lied to diplomats regarding the termination date of the judges' mandate, instead providing the termination date of their contracts with the UN. This is contrary to the obligation to carry out her role efficiently and to avoid waste.

32. By deliberately and knowingly failing to inform the honourable judge in advance of his imminent removal, the Executive Director knowingly created a situation in which I would be

[2] Administration of Justice in the United Nations, Report of the Internal Justice Council, A/74/169, Annex III B (24 July 2019).

exposed to the serious and irremediable detriment of having a judge removed from my cases between closing arguments and the issuance of his judgement.

33. As indicated above there is no basis to form the conclusion that the legislative organs of the UN desired or instructed the immediate ending of Judge Downing's mandate and his removal from my case after closing submissions and prior to judgment. Indeed, correspondence shows the precise opposite. This outcome was essentially obtained by subterfuge, with the Executive Director deliberately misleading the General Assembly about the intended outcome of the resolution, and, according to written evidence [redacted], openly lying to diplomats to prevent oversight of her actions.

Failure to take account of the object and purpose of the resolution

34. Interpretation of resolutions of UN legislative bodies in international law requires an examination of the object and purpose of the resolution. It may be presumed that, as she holds legal qualifications, the Executive Director is aware of this most basic rule of legal interpretation. The object and purpose of resolution 73/276 was, in part, to reduce the backlog of cases. Interpreting para. 37 in a manner which resulted in the immediate termination of ad litem judges with no handover arrangements in place can only have added to Tribunal's workload and had the opposite impact of exacerbating the backlog of cases.

Conflict of interests

35. The Principal Registrar leads recruitment of the Registrars working under his supervision, who are in turn under the ultimate supervision of the Executive Director of OAJ. One of my cases (UNDT/2018/099) concerned failure of the Ethics Office to correctly apply the policy on protection against retaliation. The Ethics Officer initially assigned to my complaint, whose conduct was under review in the case, was [redacted], who was subsequently hired as the UNDT Registrar in New York.

36. The fact that the Executive Director was involved in interpreting the resolution in such a manner as to require the immediate removal of the judge, without any attempt at a smooth transition, gives rise to reasonable suspicion that her conduct may have been tainted by a conflict of interest. It would certainly be in her interests not to have a Registrar working under her supervision be criticised in a judgement for failure to apply a policy of the Organization. As a UN staff member, the Executive Director is required to avoid the appearance of a conflict of interest.

37. The Executive Director should have been particularly sensitive to the conflict of interests in removing the judge hearing a case in which the conduct of their supervisee was in question, particularly given the explicit warning of Judge Izuako contained in the report of the Internal Justice Council which, as they were aware, was about to be published. I have been informed that the suspicions of cronyism raised in the below in fact related directly to the hiring of [redacted], following direct lobbying of the Principal Registrar on her behalf by the Director of the Ethics Office, Ms Elia Armstrong:

> "34. Judicial efficiency depends to some extent on the availability of qualified independent judicial support. Competencies required from candidates for the positions of legal officers must be determined by judges, rather than the

administration. It is necessary that all legal officers have experience and extensive training in legal research and writing.

35. Current staffing methods often result in situations in which staff face a conflict of interest in cases, having served elsewhere in the United Nations, staff prospects of promotion and mobility are adversely affected and staff loyalties are divided between serving the Tribunal on the one hand and the Office of Administration of Justice on the other, the latter being responsible for their selection and performance appraisal.

36. The integrity and standing of the formal system of justice is not enhanced when there is a credible basis for suspecting cronyism in decisions of the appointment of staff members. The judges stress that a staff selection and performance appraisal system and reporting line that are independent of the administration and the Office of Administration of Justice are required."[3]

38. Recruitment by cronyism rather than the highest standards of efficiency, competence and integrity, as required by article 101(3) of the UN Charter, is capable of constituting misconduct in the UN. Indeed, staff members have been referred by the Tribunal for accountability for such actions. For example, prior to his re-hiring as a consultant to "investigate" me for the act of whistleblowing, the former Director of Human Resources of UNFPA was so referred.[4] This is, of course, despite repeated instructions from member states for the UN to apply rules and ensure accountability when they are breached. While the UN Administration has demonstrated that it prefers in my case compliant staff who are willing to break the rules to cover up illegal actions, this does not change the fact that, contrary to the view of OIOS, UN rules are supposed to apply to all UN staff.

39. Judge Izuako further raised significant concerns about the independence of the Office of Administration of Justice itself, and notably that senior officials in the Office of the Administration of Justice could require staff to report to them on how cases were being handled.[5]

40. Judge Downing had drafted his judgements in my cases, which were imminently to be published. My cases are both of exceptional political sensitivity, involving retaliation due to my reports of UN complicity in international crimes by providing the government of China with names of individuals planning to speak out about abuses. Senior UN officials have actively defamed me to governments, NGOs and the press for these reports, and OHCHR issued a false and defamatory press release which was the subject of two of my three cases. The extent of the cover-up is indicated by the fact that, as recently as 26 February and 4 March 2021, the spokesperson of the Secretary-General openly lied to the press, initially lying that no names had ever been transmitted (26 February), and later contradicting even that lie by admitting names were handed over, but falsely claiming that any assessment of danger to activists had been carried out, or that the practice stopped two years prior to the 2017 press release that admitted it in the present tense (4 March).[6]

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[3] Ibid.

[4] Judgement No. UNDT/2014/102, para. 74.

[5] Ibid., para. 49.

[6] See contradictory accounts at https://www.un.org/press/en/2021/db210226.doc.htm (26 February 2021) and https://www.un.org/press/en/2021/db210304.doc.htm (4 March 2021).

Both positions contradict the UN's court position, which is that the policy is required because a list of requests for accreditation that is never published anywhere is somehow public, and the request from the Chinese delegation cannot be resisted.

41. It is reasonable to assume in these circumstances that the Administration was aware of the direction of Judge Downing's reasoning, and was thus keen to ensure his removal before he could issue judgement. Judge Downing can give evidence to this point.

42. There cannot be a plausible management reason for removing an *ad litem* judge without provision for them at least to complete the cases on their dockets where their judgements were ready, and to hand over those that were not. To act in this manner violates the rule of law, as well as the basic principles of business management. It must therefore call into questions the Organization's motivation for the action.

Interference with independence of the judiciary

43. The function of the Office of Administration of Justice is presented on its own website as "ensuring the independence of the UN's internal justice system." The actions of the Executive Director outlined above and detailed in Judge Izuako's submission to the General Assembly constituted abuse of her authority. She directly and deliberately undermined the independence of the judiciary. By lying to representatives of member states, she effectively acted to nullify the supervisory role of the General Assembly.

44. Throughout the UN system, when a judge's term is to end, the UN has sought to implement good management practices by requesting the legislative bodies to extend their terms to allow for completion of cases. The Security Council and General Assembly have both consistently approved extension of the term of ad litem judges until such time as judgment was rendered in cases of which they were seized.[7] In not doing so in this instance, the Principal Registrar and Executive Director departed from both standard practice and the principles of good management.

45. The UN Special Rapporteur on Independence of Judges and Lawyers, summarising findings of mandate-holders over the years, has raised specific concerns regarding the appointment of judges on a provisional basis without security of tenure and the threat such situations pose to independence of the judiciary.[8] These are concerns mirrored in the decisions of the Inter-American Court of Human Rights.[9]

46. The European Court of Human Rights considered the removal of a judge in *Baka v. Hungary* finding the inability to review the premature ending of a Judge's mandate incompatible with the rule of law and with an Appellant's right to access to the court.[10] They have previously found that "the irremovability of judges by the executive must in general be considered as a corollary of their independence."[11]

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[7] See, for example, S/RES/1581 (2005); A/59/PV.80; A/59/666-S/2005/9

[8] A/HRC/35/31 particlarly at para. 3

[9] IACtHR Case of the Constitutional Court v. Peru para. 73 and 75, Report on the Situation of Human Rights in Venezuela, OAS document OEA/Ser.L/V/II.118 doc. 4 rev. 2, 29 December 2003 paras 159 and 160.

[10] Baka v. Hungary Applicatoin No. 20261/12 para. 121

[11] Campbell and Fell v. United Kingdom Application No. 7819/77 and 7878/77para. 80

47. The Human Rights Committee's General Comment No. 32 analyses article 14 ICCPR regarding the right to equality before the courts and tribunals and to a fair trial:

> "19 The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. *A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal."*

48. The Basic Principles on the Independence of the Judiciary, which were endorsed by General Assembly Resolutions 40/32 and 40/146 include a number of highly relevant principles:

> "1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
>
> 2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason…
>
> 4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law…
>
> 11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
>
> 12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."

49. It is inconceivable that the General Assembly intended to undermine all of these well-established principles by requiring the removal of Judge Downing without notice, an act that can only have been calculated to prevent him from issuing judgements.

50. The duplicity of failing to inform the General Assembly of the intended impact of its resolution effectively amounts to the removal, by a party to a case, of an *ad litem* judge fully

seized of the matter, after closing submissions and prior to judgment. This plainly offends against the principles of independence of the judiciary. It cannot be for the UN Administration to determine the mandate of sitting judges and take decisions which impact who passes judgment on specific cases.

Waste, fraud and mismanagement

51. Removal of Judge Downing when he was about to issue judgement in two complex cases, which raised issues of law rarely dealt with by the UNDT, led to the waste of significant public funds.

52. My cases include more than five thousand pages of written evidence. Even simply to read these at a normal reading speed for a native speaker and listen to the case management hearings and four full days of testimony would take more than six weeks of full-time work. Judges are paid at the level D-2 step IV, so just the financial loss in unnecessarily compensating a new judge to gain a minimum of familiarity with the facts in my cases amounted to, at minimum, US $ 33,000.

53. The Anti-Fraud and Anti-Corruption Framework of the United Nations Secretariat (ST/IC/2016/25) defines fraud as “any act or omission whereby an individual or entity knowingly misrepresents or conceals a material fact in order to obtain an undue benefit or advantage for himself, herself, itself or a third party, or to cause another to act to his or her detriment.” Corruption encompasses “any act or omission that misuses official authority or that seeks to influence the misuse of official authority in order to obtain an undue benefit for oneself or a third party.”

54. The conflict between all judges except Judge Bravo, who were advocating for genuine independence of the judiciary, and an end to inappropriate interference by [redacted] the Executive Director herself, was detailed in successive reports of the Internal Justice Council, as outlined elsewhere in this complaint. It was in the interest of the Executive Director to remove all justices apart from Judge Bravo as swiftly as possible, and she eventually achieved this aim; Judge Bravo is now the only justice remaining, with all of the eight justices who unanimously voted her out as President of the Tribunal because of undue influence of the Administration now gone.

55. By misusing her authority to conceal and misrepresent material facts from member states, Ms Frankson-Wallace committed an act of fraud and corruption, seeking both to maintain her undue influence over a judge (personal benefit or advantage) and to prevent publication of two judgements that apparently would have embarrassed the Administration to which she ultimately reports (undue advantage). She deliberately caused member state delegations to act to their detriment, and contrary to the express purpose of resolution 73/276 to increase operational efficiency.

Undue influence of Judge Bravo

56. The fact that Judge Bravo made no objection to this clear interference with the independence of the judiciary, thereby illegitimately obtaining an outcome neither known nor intended by that body, seems prima facie incompatible with Article 1 of the Code of Conduct for Judges of the UNDT and UNAT, which provides:

"1. Independence

(a) Judges must uphold the independence and integrity of the internal justice system of the United Nations and must act independently in the performance of their duties, free of any inappropriate influences, inducements, pressures or threats from any party or quarter;

(b) In order to protect the institutional independence of the Tribunals, judges must take all reasonable steps to ensure that no person, party, institution or State interferes, directly or indirectly, with the Tribunals."

57. Judge Bravo, while not recognised by her fellow judges due to a unanimous perception that she was unduly influenced by the Administration in the persons of the Executive Director and the Principal Registrar, was the President of the Tribunal recognised by the Administration. However, in an email of 10 July 2019 to Judge Downing, she expressly stated that, despite refusing to relinquish her position, she no longer undertook the most basic actions that may be expected of a President of knowing when judge's mandates began and ended in order to plan work (Annex 3).

58. Judge Bravo's knowledge of these events should be investigated as part of this complaint, as [redacted] evidence calls into question her presentation [redacted] (Annex 4).

59. The UN Administration had a vested interest in ensuring that my case be assigned to a judge on whom the Administration, according to all of her fellow judges, exercised undue influence. This was summarised as follows in the report of the Internal Justice Council:

"20. At the end of 2018, Judge Bravo was elected by the Tribunal to serve a one-year term as President of the Tribunal, effective 1 January 2019. In accordance with article 1 of its rules of procedure, the President is vested with responsibility to direct the work of the Tribunal and its registries. Based on correspondence copied to the Council, Judge Bravo set about directing the Tribunal's work very soon after taking office. Her efforts focused on fulfilling the mandate set out in resolution 73/276, in which the General Assembly requested the President of the Dispute Tribunal and the President of the Appeals Tribunal to work together to develop and implement a case disposal plan to address the backlog that had developed, with a real-time case-tracking dashboard and performance indicators on the disposal of caseloads by judges. With the assistance of the Principal Registrar, the President took the initiative to work towards fulfilling the aforementioned mandate. Her colleagues on the bench complained, however, that her manner in dealing with them was not sufficiently collegial and that she took action without sufficient consultation. Moreover, in their view, *the actions that were taken were unduly influenced by the Principal Registrar*.

21. The Council took the view that it was not in a position to evaluate the allegations levelled against Judge Bravo by her colleagues, or the counter-allegations put forward by Judge Bravo in explaining her actions. The Council can report, however, with regrettable accuracy, that an acrimonious environment

> developed on the bench, which ultimately led to the other judges asking Judge Bravo to resign the presidency, and that, following her refusal to do so, a decision was taken by the others to remove her from office and elect Judge Nkemdilim Amelia Izuako as the new President. Due to a lack of clarity in article 1(2) of the rules of procedure, it is not fully clear whether Judge Bravo could in fact be removed from office prior to the expiration of her term, except for an "inability to act". Serious questions remain as to whether such a removal is indeed authorized under the rules of procedure, for, if so, the enhanced supervisory capacity of the President called for by the General Assembly in its resolution 73/276 can be effectively nullified by the resistance of a majority of the judges" (emphasis added).

60. According to Judge Bravo, she was not involved in the assignment of my case to her, which must therefore have been undertaken by staff under the direct supervision of the Executive Director. Given that no other judge was involved in the removal of Judge Downing, it would appear to be a strange choice to assign my case to the only judge tainted with suspicion of a lack of independence, unless the reason was to unduly influence her decision, ensuring that it would be the opposite of that reached by Judge Downing on the same evidence, when he had actually heard the witnesses and seen their demeanour.

61. The actions of the Executive Director appeared to leave the UNDT on 11 July 2019 with a purported President who enjoyed the support of the Executive Director and the Administration (a party to every case), but not that or her fellow justices, who considered that she was unduly influenced by the Administration. The implications of such a situation, particularly in my case, which is highly politically sensitive, are not trivial; by abusing her authority and apparently unduly influencing the judge now assigned to my case, the Executive Director has engineered a situation where I cannot reasonably be expected to have any faith or confidence in the independence and impartiality of the Tribunal. This is merely exacerbated by the fact that Judge Bravo issued judgement in one of my cases prior to a deadline she herself had set for me to make legal arguments relating to the removal of Judge Downing by the opposing party in my case. While a judge would normally be expected not to so blatantly pre-judge a case to the benefit of one party, a Registry would also normally be expected to alert a judge to such a clear error. It is, of course, not in the interests of the Executive Director that evidence of her own conduct be heard by the Tribunal.