

Case No.: UNDT/NBI/2020/052  
UNDT/NBI/2020/053  
Order No.: 143 (NBI/2020)  
Date: 23 July 2020

## **Introduction**

1. By motion dated 20 July 2020, the Applicant requested the Judge President of the United Nations Dispute Tribunal (“UNDT”) to order that the Dispute Tribunal Judge assigned to the present cases, namely Judge Sikwese, be recused from adjudicating them. The Applicants contend that Judge Sikwese is biased against them

**The legal framework for requesting a recusal of a Dispute Tribunal judge**

6. Article 28.2 of the Rules of Procedure of the Dispute Tribunal sets out the procedure by which an applicant can request the recusal of a judge assigned to her/his case(s) as relevant to the present case:

independently in the performance of their duties, free of any inappropriate influences, inducements, pressures or threats from any party or quarter” (see, para. 1(a)). If a Judge inappropriately holds bias against any of the parties, this would therefore constitute a conflict of interest.

### **Considerations**

11. The Judge President notes that according to art. 19 of the Rules of Procedure of the Dispute Tribunal, “[t]he Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. Each case before the Dispute Tribunal turns on its own circumstances, and an order made in one case has, in principle, no binding effect on another case. It is therefore for the Judge assigned to a particular case to decide whether a response to a reply is necessary in a given case, and not the Judge President in the context of a recusal request. If a party disagrees with the assigned Judge’s management of her/his case, the option is to appeal the determination of that case to the Appeals Tribunal if the relevant requirements are met.

12. Regarding bias, the Judge President further observes that the Appeals Tribunal has consistently held that a party who claims any such ulterior motive must be able to substantiate her/his claim to be successful (see, for instance, 2010-UNAT-012 and 2019-UNAT-944).

13. In the present cases, the only circumstance that the Applicants set forth to show that Judge Sikwese is biased against them and their counsel is that she and other Dispute Tribunal Judges in other cases concerning suspension of action—unlike in the present cases—have allowed applicants to file responses to replies. The reason provided by Judge Sikwese in the present cases was that she did not “consider it

informed for her to proceed with determining the cases. By itself, the Judge President