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### Administration of justice at the United Nations

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### Report of the Internal Justice Council

#### *Summary*

The present report of the Internal Justice Council, which is the third report of the current panel of the Council, focuses on the judicial and operational efficiency of the internal justice system and draws on relevant resolutions of the General Assembly and consultations with stakeholders. To further improve the system, the Council makes recommendations regarding the functioning and authority of the Tribunals, the judicial mediation system and the scope of judicial review, as well as overarching issues related to both the formal and informal systems. As required, the Council also presents its programme of work for the period 2023–2024.

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\* A/78/50.



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## I. Introduction

1. The General Assembly, in its resolution [61/261](#), established the internal system of administration of justice at the United Nations as an independent, transparent, professionalized, adequately resourced and decentralized system operating in accordance with the relevant rules of international law and the principles of the rule of law and due process, in order to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

2. In 2008, in its resolution [62/228](#), the General Assembly established the Internal Justice Council to ensure independence, professionalism and accountability in the system of administration of justice. The principal tasks of the Council are selecting judges, drafting a code of conduct for the judges and communicating its views on the implementation of the system of administration of justice. The Council prepares and includes in its annual report to the Assembly, for its approval, a detailed programme of work for each calendar year in accordance with the mandates under relevant Assembly resolutions.

3. The membership of the fourth Internal Justice Council consists of the following: Dennis Byron (Saint Kitts and Nevis), a distinguished jurist nominated by the other four members to be the Chair; Carmen Artigas (Uruguay), a distinguished external jurist nominated by staff; Adama Dieng (Senegal), management representative; Louise Otis (Canada), a distinguished external jurist nominated by management; and Matthew Perkins (United States of America), staff representative.

4. With regard to its mandate to provide annually to the General Assembly its views on the implementation of the system of administration of justice, the Council has reviewed the written statements submitted by the following stakeholders: Appeals Tribunal, Dispute Tribunal, Principal Registrar, Executive Director of the Office of Administration of Justice, Chief of the Office of Staff Legal Assistance, United Nations Ombudsman, Director of the Ethics Office, Director of the General Legal Division of the Office of Legal Affairs, Director of the Human Resources Services Division of the Department of Operational Support, Assistant Secretary-General for Human Resources, Chief of the Management Evaluation Unit, Assistant Secretary-General for Internal Oversight Services, Victims' Rights Advocate, counsel representing the Secretary-General before the Dispute Tribunal in the Secretariat and funds and programmes, heads of federations of staff associations and external counsel representing staff members before the tribunals.

5. In preparing its report on the system of administration of justice, the Council relied on relevant General Assembly resolutions and information received from the various stakeholders in the internal justice system.

6. In previous reports, the views of the Appeals Tribunal and the Dispute Tribunal have been included as annexes. However, as this mandate was not included in the most recent resolution [77/260](#), the Council has incorporated the inputs of the Tribunals in the stakeholder consultation process and the recommendations into the present report.

## II. Recommendations

### A. Formal system

#### **Judicial and operational efficiency**

7. The Council underlines that there was a significant improvement in the disposal of cases by the two Tribunals in 2022.

8. As a result of the implementation of the case disposal plan, the Dispute Tribunal further reduced its pending caseload in 2022, while its case intake increased by 7 per cent compared with the previous year. By the end of 2022, there were only nine cases pending for over 400 days, a reduction of 68 per cent since 31 December 2021.

9. During 2022, the Dispute Tribunal continued to operate with three full-time and six half-time judges. In the third quarter of 2022, the registries underwent a staffing transition with respect to the Registrar in New York and legal officer posts. Nevertheless, the Tribunal continued to operate at maximum judicial and operational efficiency. As a result, and despite the challenges, the Appeals Tribunal disposed of a larger number of appeals in 2022 than in previous years.

10. The Appeals Tribunal began 2022 with 123 pending cases and received 124 new cases during the course of the year. However, it disposed of a total of 147 cases in 2022, effectively reducing the backlog of appeals. On 31 December 2022, there were 98 cases on the docket.

11. The Presidents of the Dispute Tribunal and the Appeals Tribunal have worked with the United Nations registries and the Office of Administration of Justice to provide the usual three-day training programme for incoming judges.

12. The judicial induction programme included a review of the Tribunals' jurisprudence, common issues and specific rules on case management. The programme was conducted in June 2023 to allow the departing judges, who are experienced not only in the Tribunals' jurisprudence but also in international labour and administrative law in general, to assist in training and onboarding the incoming judges.

13. Finally, the Council reiterates that the time has come to appoint a full-time President, for a three-year term, to each Tribunal, replacing the current system of rotating Presidents. The full-time Presidents would be selected by the Council and recommended to the General Assembly.

14. The full-time Presidents would oversee the performance of administrative duties directly connected with judicial functions, including setting the judges' performance targets, working in close collaboration with the Principal Registrar in the allocation of cases, monitoring and ensuring the efficiency and diligence of the Tribunals, preparing and holding working sessions and dealing with the joinder of cases.

15. Most importantly, the full-time President of each Tribunal would be the first authority to decide, after a preliminary review, if further action is warranted against a judge in connection with a complaint made under the code of conduct for the judges of the Dispute Tribunal and the Appeals Tribunal. The President of the Tribunal would also determine the terms of reference of the panel of experts. In cases warranting sanctions, the President would be empowered to order corrective actions as the President deems appropriate, except dismissal. Because of these powers and responsibilities, the President of the Tribunal must be entirely independent and impartial. The President will be subject to the mechanism for addressing complaints in the case of misconduct or incapacity.

#### **Applications for interpretation of judgment by the Appeals Tribunal**

16. The expeditious disposition of applications for interpretation of judgment is especially important when the judgment requires the Organization to pay compensation for damages and there is a lack of clarity regarding the amount to be paid. Notwithstanding, the Appeals Tribunal presently addresses such applications at the session that succeeds the issuance of the judgment requiring interpretation, which often significantly extends the execution of the judgment beyond 60 days.

17. In order to ensure the effective enforcement of judgments, the Council recommends that the Appeals Tribunal address applications for interpretation of judgment between sessions.

### **Rules of procedure**

18. The rules of procedure are essential to ensure the efficiency and independence of the Tribunals. The Council recalls that establishing rules of procedure is the statutory prerogative of the Tribunals, subject to the approval of the General Assembly. In particular, the statute of the Dispute Tribunal, adopted by the Assembly in its resolution [63/253](#), provides:

#### **Article 7**

1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules of procedure of the Dispute Tribunal shall include provisions concerning:

...

(l) other matters relating to the functioning of the Dispute Tribunal.

19. In instances in which there are concerns pertaining to the adoption or modification of their rules of procedure, the Tribunals should be afforded the opportunity to articulate their stances before the Fifth Committee and the Sixth Committee of the General Assembly.

20. Moreover, the Administration must consult the Tribunals prior to proposing any legislative amendments affecting the functioning of the Tribunals.

### **Scope of judicial review**

21. The Council notes that the General Assembly has been invited to amend the statute of the Dispute Tribunal by introducing a new article 9.4. The statute provides as follows in article 2.1 (b):

#### **Article 2**

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

...

(b) To appeal an administrative decision imposing a disciplinary measure.

This provision is consistent with the power to conduct a judicial review of an administrative decision, which is a judicial power in all major judicial systems globally. It includes the power to determine the basis for the challenged decision, including the accuracy of the factual basis.

22. The proposed article 9.4, as discussed in the submissions justifying the proposal, seeks to change the jurisprudence of the Appeals Tribunal on the interpretation of article 2.1 (b) of the statute of the Dispute Tribunal to prevent it from making any judicial enquiry on the factual basis on which an administrative decision imposing a disciplinary measure is based. The Council wishes to emphasize the difference

between investigative and adjudicative powers. The Council respectfully considers that the submissions and the proposed statutory amendment are flawed and disagrees with the submissions complaining that the Tribunal was wrong:

(a) To liken the investigation of the Office of Internal Oversight Services (OIOS) to a police inquiry;

(b) To find that the OIOS report is not a substitute for a judicial determination of whether misconduct occurred;

(c) To rule that it was insufficient for the Secretary-General to defend a decision on the basis of the investigative report without adducing testimony before the Tribunal to prove the veracity of the report and other materials from the investigation.

23. The proposal that the General Assembly should adopt a resolution for the purpose of overturning the judicial decisions of which the administration, being a party to the judicial proceeding, disapproves is contrary to the universally accepted principle of judicial independence.

24. The adoption of such a resolution would signal that the General Assembly will compel the Tribunals to adopt submissions of management in disputes to which they are parties, thereby depriving or at least appearing to deprive staff of the right to an independent and impartial hearing of their appeal against an administrative decision imposing a disciplinary measure.

25. The proposal offends the most basic principle of justice, the *audi alteram partem* rule, in this case the right of a person who complains against an administrative decision imposing a disciplinary measure to be heard in their defence.

26. The role of OIOS in the disciplinary process is defined by the General Assembly in paragraph 5 (c) (iv) of resolution [48/218 B](#) as being to investigate and transmit the results of investigations together with recommendations. It has no power to exercise any adjudicative function and no duty to hear and consider the position of the complainant, nor to provide the complainant with a copy of its report. At the time at which the Secretary-General takes a decision based on the said report, it has not undergone any evaluation and may contain the types of errors that are universally consistent with the investigative process.

27. An administrative decision that is based on a report that contains errors of fact will inevitably reflect those errors. The only opportunity that a complainant has to contribute to or appeal against the findings on which the decision is based is that provided by article 2.1 (b) of the statute of the Dispute Tribunal. It is respectfully submitted that the jurisprudence of the Appeals Tribunal is consistent with universally accepted principles of judicial review, which must include an opportunity for a judicial interrogation of the factual basis on which the decision is made.

28. The Council expresses its concern that the passage of the proposed article 9.4 will undermine the independence of the internal judicial system of the United Nations, and respectfully recommends that it not be adopted by the General Assembly.

### **Access to justice**

#### *Caselaw database*

29. All stakeholders have welcomed the creation of the caselaw database with case digests and search facilities. It provides significantly greater access to the law for counsels and unrepresented litigants or staff members with an interest in the system.

30. The new caselaw portal has been a great improvement and has made legal research more efficient, intuitive and accessible. Coupled with the new e-filing

system, the improvements have been beneficial to the work of practitioners in the area of administration of justice.

#### *Staff representation*

31. In 2013, the General Assembly, in paragraph 33 of resolution [68/254](#), approved, on a temporary and experimental basis, the supplemental funding mechanism through voluntary contributions by staff members to enhance the staffing capacity of the Office of Staff Legal Assistance, effective 1 January 2014. Currently, staff contributions supplement the Office's staffing with seven additional positions (six legal officers and one legal assistant). The voluntary contribution scheme initiated in 2013 is still operating on an experimental basis. According to the Office of Staff Legal Assistance, the voluntary contribution scheme has permitted the Office to significantly reinforce its legal team, which has had an impact on the service provided. The time has come to make the voluntary contribution scheme a permanent funding mechanism.

#### *Reinstatement versus compensation*

32. The issue of execution/reinstatement versus compensation remains a matter of deep concern for the fair and proper administration of justice.

33. The Council has already expressed the view that the "no rescission, no reinstatement" approach does not serve justice in every instance.

34. The Council is of the view that the statute of the Dispute Tribunal should be amended to provide that, prior to opting for payment of compensation in lieu of rescission or reinstatement, the respondent should provide satisfactory evidence to the Tribunal that rescission or specific performance is not feasible for compelling operational, administrative or budgetary reasons.

35. Therefore, the Tribunals should be entitled to order reinstatement in appropriate cases.

#### *Medical and classification disputes*

36. Administrative instruction [ST/AI/2019/1](#), dated 15 February 2019, established the following:

##### **Section 4 Review by a medical board**

4.3 The third independent medical practitioner selected by the other two members of the medical board shall be the Chair of the board. If the other two members do not reach an agreement, the Medical Director must refer the decision to an appropriate external medical authority, who shall select the Chair.

...

##### **Section 7 Application for review by the United Nations Dispute Tribunal**

In accordance with staff rule 11.2 (b), staff members wishing to formally contest an administrative decision taken pursuant to advice obtained from an independent medical practitioner or a medical board are not required to request a management evaluation before filing an application to the United Nations Dispute Tribunal.

37. To guarantee the independence of the Medical Board and avoid any conflict of interest, the Chief Medical Director should not be involved in the appointment of the

neutral Chair of the Board in the event that the other two members do not reach an agreement.

38. The rules of practice of the Dispute Tribunal should therefore be amended to authorize a judge of the Tribunal to dispose of a request for appointment when the other two members cannot agree on the appointment of the Chair of the Medical Board.

#### *Judicial mediation*

39. Judicial mediation, defined as mediation led by a judge, has been implemented in various countries. The Council reiterates its recommendation in 2021 that an 18-month pilot programme of judicial mediation be developed and tested. An essential three-day training session would provide the judges who act as mediators with the skills required to conduct effective and quick mediations. Judges would be called upon to conduct mediations only if they volunteer to do so.

40. In national tribunals that have adopted judicial mediation, around 70 per cent of all pending cases are resolved with one session lasting an average of four to six hours. The system would prove very efficient owing to the moral authority of the Tribunal. If the case is not resolved, the judge who has acted as the mediator would then be excluded from hearing the case as part of the Tribunal and would not express opinions on the merits of the case. The process of mediation would remain entirely consensual and confidential.

41. Despite its successful results, mediation has been underutilized by the international system in addressing administrative and labour disputes. The international justice system still lags behind in acting on opportunities for the proactive use of mediation as a tool to improve the quality of the relationship between management and staff and therefore the quality of the work performed within the Organization.

#### *Victims' rights*

42. The Council notes that, although there is still room for improvement, the Victims' Rights Advocate is pleased that individuals within the system of administration of justice are supportive of the victim-centred approach and its implementation.

#### **Recommendation 1**

**The Council recommends that the Appeals Tribunal address applications for interpretation of judgment between sessions.**

#### **Recommendation 2**

**The Council recommends that the Presidents of the Tribunals should be afforded the right to articulate their views before the Fifth Committee and the Sixth Committee of the General Assembly in matters pertaining to the adoption or modification of their respective rules of procedure.**

#### **Recommendation 3**

**The Council recommends that, in situations in which the Administration intends to propose legislative amendments that would have an impact on the functioning of the Tribunals, a prerequisite step must involve prior consultation with the Tribunals. Such consultation should be mandatory.**



**Recommendation 4**

**The Council recommends that the voluntary supplemental funding mechanism be replaced by regular budgetary funding.**

**Recommendation 5**

**The Council recommends that the Tribunals be granted the authority to order reinstatement in appropriate cases.**

**Recommendation 6**

**The rules of practice of the Dispute Tribunal should be amended to authorize judges to dispose of a request for appointment when the other two members of the Medical Board cannot agree on the appointment of the Chair of the Board.**

**Recommendation 7**

**The Council recommends that the Sixth Committee endorse a pilot programme for the Council, the Dispute Tribunal and the Appeals Tribunal to develop recommendations for expanding the use of judicial mediation in the formal system, drawing upon the existing authorities, such as case management hearings.**

**B. Informal system****Mediation and informal resolution**

43. On 30 December 2022, the General Assembly adopted resolution [77/260](#), in which it requested the Secretary-General to increase awareness among staff of the possibility of having conversations with the Office of the United Nations Ombudsman and Mediation Services to explore informal resolution, including mediation, as a first step, where feasible, prior to filing a formal complaint.

44. In order to comply with the terms of the resolution, the Office has provided a series of information sessions on mediation for staff. Conducted in various time zones in English, French and Spanish, the sessions help United Nations personnel globally to make informed decisions when encountering workplace conflict.

45. The Council considers that this informative instrument is a valuable tool to increase the use of mediation in order to solve conflicts prior to litigation.

46. However, the Council noted that, according to the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/77/151](#)), the number of cases opened by the Office in 2021 was 1,611, including mediation cases. Furthermore, the Office responded to 170 requests for mediation in 2021, including informal sessions called facilitated conversations, which should not be included in the calculation of the number of mediation cases before the Office.

47. Facilitated conversations are inherent to the mission of the Ombudsman in monitoring the healthy administration of the Organization. The Division of Mediation, which is part of the Office, should be devoted to the resolution of disputes in order to alleviate the caseload of the Tribunals and optimize their settlement.

48. In 2022, a total of 24 cases before the Dispute Tribunal were resolved by the parties prior to a hearing: 22 were resolved informally between the parties and their counsel and 2 were resolved by formal mediation. Mediation is therefore still underutilized in addressing formal workplace disputes.

49. The Council recommends that the Office of the United Nations Ombudsman and Mediation Services establish cooperation with other successful mediation offices in the United Nations systems in order to improve and strengthen the Division of Mediation.

#### **Recommendation 8**

**The Council recommends that the Office of the United Nations Ombudsman and Mediation Services establish cooperation with other successful mediation offices in the United Nations system in order to improve and strengthen the Division of Mediation in the best interests of staff and the Organization.**

### **C. Overarching issues related to both the formal and informal systems**

#### **Ethics Office**

50. In 2022, the Ethics Office conducted many in-person outreach sessions and continued to disseminate information regarding the policy on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations ([ST/SGB/2017/2/Rev.1](#)).

51. The Ethics Office continues to believe that the judges are best placed to assess a risk of or actual retaliation during a case pending before the Tribunals. Moreover, paragraph 6 (d) of the code of conduct for the judges of the Dispute Tribunal and the Appeals Tribunal explicitly states that judges have a duty to protect witnesses and parties from harassment and bullying during Tribunal proceedings. The Office reiterates its support for the first two sentences of recommendation 1 of the Council's report in 2019 ([A/74/169](#)), which would give explicit authority to the judges of the Dispute Tribunal and the Appeals Tribunal to issue orders to protect staff believed to be at risk of retaliatory harassment for acting as a party or a witness in the internal dispute resolution system.

52. In 2022, the Ethics Office returned to in-person outreach sessions, visiting nine missions and offices. Although the Office continued to deliver town halls during the sessions, it also launched more targeted and participatory workshops on conflicts of interest and protection against retaliation.

53. The Council welcomes the launch of the Ethics Office iSeek page in March 2022, which includes information on the work of the Office, links to documents and videos. One video outlines the Office's five lines of service, and another focuses on potential conflicts of interest when staff members rent properties. The Office plans to post other short videos on topics of interest in 2023, including on protection against retaliation.

54. In 2021 and 2022, the Ethics Office conducted 336 tailored ethics outreach sessions, including 104 induction briefings for newly appointed staff at the level of Assistant Secretary-General and above, as endorsed by the General Assembly in its resolution [65/247](#), as well as for senior mission staff and resident coordinators. Protection against retaliation is discussed at the briefings.

55. The Ethics Office accomplished many important initiatives in 2022. The Council emphasizes that in achieving its important mission the Ethics Office should always comply with its fundamental duty of confidentiality and ensure that all information provided remains confidential except when required by the Tribunals.

### **III. Programme of work for the period 2023–2024**

56. According to the conditions of service and appointment requirements for the Council (A/75/162, annex V), adopted by the General Assembly in its resolution 75/248, the Council shall prepare and include in its annual report to the Assembly, for its approval, a detailed programme of work for each calendar year in accordance with the mandates under relevant Assembly resolutions.

57. The Council intends to approach the following additional matters in the months ahead:

(a) Reviewing the code of conduct for the judges of the Dispute Tribunal and the Appeals Tribunal;

(b) Continuing to examine fear of and protection against retaliation for staff bringing cases and those testifying before the Tribunals and for reporting misconduct, including further information on the progress made in protection against retaliation for both staff and non-staff personnel in the context of the reviews currently under way;

(c) Providing recommendations to reduce the number of unfounded applications.

58. As every year, the Chair of the Council will attend, in the appropriate modality, the session of the Sixth Committee of the General Assembly to present the Council's report and would appreciate it if the rest of the members could also attend.

#### IV. Acknowledgements

59. The Council wishes to express gratitude to all stakeholders for their availability and contributions during the interviews and thereafter. Their input was crucial to the development of the recommendations contained in the present report.

60. The Council is also indebted to the Office of Administration of Justice for its support.

*(Signed)* Dennis **Byron**

*(Signed)* Carmen **Artigas**

*(Signed)* Adama **Dieng**

*(Signed)* Louise **Otis**

*(Signed)* Matthew **Perkins**