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### Administration of justice at the United Nations

## Administration of justice

### Report of the Advisory Committee on Administrative and Budgetary Questions

#### I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on administration of justice at the United Nations (A/63/314). The Committee also had before it the reports of the Secretary-General on the activities of the Ombudsman (A/63/283) and on the outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel (A/63/211). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification.

2. By its resolution 62/228, the General Assembly established the basic framework of the new system of administration of justice at the United Nations and approved the establishment of a series of posts for the formal and informal systems. In response to the resolution, the Secretary-General submitted a report (A/62/782) in which he elaborated on a number of issues, including categories of non-staff personnel, details of the functioning of the formal part of the system and transitional measures required for the Organization to shift smoothly to the new internal justice system, which was expected to be in place by 1 January 2009. The report also contained proposals for the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. That report, as well as the related report of the Advisory Committee (A/62/7/Add.39), are currently before the Assembly. The most recent report of the Secretary-General on administration of justice (A/63/314) addresses other requests made by the Assembly in resolution 62/228, including those concerning the delegation of authority on disciplinary matters, the conditions of service of judges in the new system of internal justice, mechanisms for the formal removal of judges, a staff-funded scheme for legal assistance for staff and possible uses of information and communications technology in the administration of justice system.



3. In this connection, the Advisory Committee points to the coordinating role of the Deputy Secretary-General, as Chairperson of the Management Committee, in such reforms as the new system of administration of justice.

## **II. Administration of justice at the United Nations**

### **A. Preparations for the new system of administration of justice**

4. The Advisory Committee notes the information provided by the Secretary-General in paragraphs 4 to 8 of his report on administration of justice at the United Nations (A/63/314) regarding the establishment of the Internal Justice Council, the circulation of vacancy announcements for judicial positions on the Dispute and Appeals Tribunals, and the preparation and advertisement of new posts in the Office of Administration of Justice. The Committee was informed that some other activities had been completed, such as the convening of an administration of justice management group, which includes staff working in the current internal justice system and representatives from all of the offices concerned (the Office of the Under-Secretary-General for Management, the Office of Human Resources Management, the Office of Programme Planning, Budget and Accounts, the Office of Legal Affairs, the Executive Office of the Secretary-General, the Office of the Deputy Secretary-General, the Ombudsman's Office and the United Nations funds and programmes) and the establishment of working groups to address specific administration of justice issues.

5. During its exchanges with the representatives of the Secretary-General, the Committee was informed that the Secretariat was behind schedule in the preparatory work related to the implementation of the new system of internal justice. Since the adoption of General Assembly resolution 62/228 in December 2007, none of the 30 posts authorized for the Office of Administration of Justice (18 new posts and 12 redeployments) have been filled. Upon request, the Committee was provided with additional information on the status of recruitment for those posts (see annex I). The Committee notes in particular that the key position of Executive Director has still not been filled; however, the selection process is under way. As a consequence of the lack of staff in the Office, as well as the fact that the statutes of the Dispute and Appeals Tribunals have not yet been adopted, delays have occurred in such areas as the development of procedures for the transition phase, a code of conduct for legal practitioners, terms of reference for the registries and a training and communications plan for the new system of internal justice. As regards the Office of the Ombudsman, the Mediation Division has yet to be established, and the terms of reference for the Ombudsman are still under preparation (see also para. 46 below). The Committee also notes that the Secretariat has not yet been able to reach agreement on cost-sharing arrangements with the funds and programmes for the new system of administration of justice and the Office of the Ombudsman (see also para. 45 below).

6. The Advisory Committee notes that in a letter dated 27 October 2008, the President of the General Assembly transmitted to the Chairman of the Fifth Committee a letter from the Chairman of the Sixth Committee transmitting the draft statutes of the Dispute Tribunal and the Appeals Tribunal, as adopted by the Sixth Committee (A/C.5/63/9). In the view of the Advisory Committee, the expeditious

adoption of the statutes of the Dispute and Appeals Tribunals is of critical importance. The Committee also notes the issuance of the report of the Internal Justice Council (A/63/489) regarding candidates for the Tribunals.

**7. In view of the delays outlined above, as well as the tasks still outstanding, the new system of administration of justice may not be ready for implementation in January 2009, as envisaged by the General Assembly in paragraph 36 of its resolution 61/261. The Advisory Committee emphasizes that every effort should be made to complete the preparatory work required to implement the new system of administration of justice as a priority issue. The Committee therefore recommends that the Assembly request the Secretary-General, as necessary, to update the timeline for the implementation of the new system of internal justice. In this connection, the Committee is of the view that the timely appointment of an Executive Director of the Office of Administration of Justice is particularly important for providing the leadership necessary to direct preparatory work so that the new system of internal justice can be launched as soon as possible after the adoption of the statutes of the Dispute and Appeals Tribunals. The Assembly may also wish to request the Secretary-General to make the necessary preparations to ensure that the existing system can continue to function satisfactorily in the meantime (see also A/62/7/Add.39, para. 15).**

8. With respect to the clearing of backlogs of the Joint Appeals Boards, the Joint Disciplinary Committees, the Panel of Counsel, the Administrative Law Unit in the Office of Human Resources Management and the United Nations Administrative Tribunal, the Advisory Committee notes that, despite the additional resources provided by the General Assembly for this purpose, progress was affected by the exceptionally large number of new cases filed in the first half of 2008. A high proportion of those were disciplinary cases, which are generally more time-consuming (see A/63/314, para. 9). In response to its enquiry, the Committee was provided with data on the evolution of the number of disciplinary cases handled by the Office of Human Resources Management in the past few years, as shown in table 1 below. The average time required to complete cases referred from the Department of Peacekeeping Operations and the Department of Field Support increased from 6.7 months in 2005 to 7.5 months in 2006 and 9.9 months in 2007, but was reduced to 6.2 months for the cases handled so far in 2008. The Committee was also informed that a censure had been imposed for two disciplinary cases in 2005 and three each in 2006 and 2007. Of those, one case involved the imposition of a fine. In 2008, three censures have been imposed to date.

9. Concerning cases before the United Nations Administrative Tribunal, the Advisory Committee also notes that, while 15 cases were disposed of during an extra session of the Tribunal held in April/May 2008, the Secretary-General expects a backlog exceeding 130 cases at the end of the year (see A/63/314, para. 10).

Table 1  
**Summary of disciplinary cases handled by the Administrative Law Unit of the Office of Human Resources Management**

	<i>Review cases</i>		<i>Appeal cases</i>				<i>Disciplinary cases</i>				
	<i>Total</i>	<i>Completed</i>	<i>Carried over from previous year</i>	<i>New</i>	<i>Total</i>	<i>Completed</i>	<i>Carried over from previous year</i>	<i>New</i>	<i>Total</i>	<i>Completed</i>	<i>Total</i>
2006	157	79	31	68	99	78	51	72	123	66	379
2007	157	109	21	55	76	67	57	173	230	79	463
2008 <sup>a</sup>	181	84	80	45	125	44	143	277	448	84	754
2008 <sup>b</sup>	240				150				560		

<sup>a</sup> Based on the number of cases received as at 24 October 2008.

<sup>b</sup> Projected for 31 December 2008 based on the number of cases as at 24 October 2008.

10. The Advisory Committee notes the increase in the number of disciplinary cases, from 72 in 2006 to 173 in 2007 and 277 in 2008. It also notes that no analysis of the causes of this trend or information on corrective measures taken to contain the number of new cases is provided in the report of the Secretary-General. **In the view of the Committee, the Secretary-General should monitor and analyse such trends on an ongoing basis and keep the General Assembly informed of any exceptional developments. The absence of any explanation as to the underlying causes of the higher number of new disciplinary cases, as well as the variations in the time required to complete them, is of particular concern in view of the fact that the report of the Secretary-General is devoted largely to proposals for dealing with such cases (ibid., paras. 11-49). The Committee emphasizes the need to address the backlog of disciplinary cases as a matter of urgency, using available resources as efficiently as possible.**

## B. Delegation of authority for disciplinary matters

11. The Advisory Committee recalls that the Redesign Panel on the United Nations system of administration of justice had recommended delegating authority to heads of offices away from Headquarters and heads of mission to handle disciplinary cases and to impose the full range of disciplinary measures (A/61/205, para. 27). The Secretary-General had proposed limited delegation of authority to heads of offices away from Headquarters and heads of mission to impose minor sanctions, while the authority to impose more severe sanctions would remain with the Under-Secretary-General for Management (A/62/294, para. 116). In paragraph 49 of its resolution 62/228, the General Assembly requested a detailed proposal regarding possible options for the delegation of authority for disciplinary measures, including full delegation, as well as an assessment of possible implications for the due process rights of staff members. In that resolution, the Assembly also decided to endorse, in principle, the delegation of authority for disciplinary measures to heads of offices away from Headquarters and heads of mission/Special Representatives of the Secretary-General.

12. The current proposals of the Secretary-General were submitted in response to that request. The Secretary-General emphasized the need to ensure the consistent application of disciplinary measures as well as full and equal access to the new system of administration of justice before any delegation of authority is implemented.

13. Concerning the option for delegation of the full range of disciplinary authority, the Secretary-General, while recognizing its advantage in eliminating some of the current delays, mainly described the associated constraints and risks. He argued in his report that in order to ensure a consistent application of disciplinary measures among different duty stations, a robust system must be in place in the field, requiring decentralization of all the formal and informal components of the new administration of justice system. He further argued that such decentralization would require a major organizational effort, which might not be cost-effective in all duty stations. The Secretary-General appeared to remain convinced that the option for full delegation of authority was not feasible at this stage, largely on the basis of the arguments put forward in his previous report (A/62/294, para. 116).

14. The Secretary-General reiterated his earlier proposal for limited delegation of authority to heads of office/mission for certain proceedings, which would allow the imposition of minor sanctions, including censures and/or fines at an appropriate level, while the authority to impose more severe disciplinary measures under chapter X of the Staff Rules would remain with the Under-Secretary-General for Management (A/63/314, para. 19; see also para. 11 above). In this context, the Secretary-General proposed to proceed in a phased manner, beginning with a selected number of peacekeeping operations (the United Nations Organization Mission in the Democratic Republic of the Congo; the United Nations Mission in the Sudan, also covering the African Union-United Nations Hybrid Operation in Darfur; and the United Nations Mission in Liberia, also covering the United Nations Operation in Côte d'Ivoire and the United Nations Integrated Peacebuilding Office in Sierra Leone) (see A/63/314, paras. 47 and 87).

15. Upon enquiry as to the commitment authority mentioned in paragraph 47 of the report of the Secretary-General (A/63/314), the Advisory Committee was informed that 12 positions would be required (3 P-4 Legal Officers, 3 P-3 positions, 3 General Service staff and 3 National Officers). The Committee was further informed that those were the same positions requested by the Secretary-General previously (see A/62/294), including, for each mission, a P-4 Legal Officer reporting to the Department of Management to provide the heads of the missions with advice on disciplinary decisions and to support the management evaluation function (*ibid.*, para. 158), as well as one P-3, one General Service position and one National Officer reporting to the Office of Staff Legal Assistance at Headquarters (*ibid.*, para. 156). Furthermore, the Committee was informed that the Secretary-General intended to accommodate the related requirements of \$294,000 from within the approved budget of the support account for peacekeeping operations for the 2008/09 period. At full cost, this would amount to some \$909,400 a year. The General Assembly would subsequently be requested to approve the establishment of the same positions under the support account for 2009/10.

16. The Secretary-General reported that certain prerequisites in respect of human resources, administrative instructions, guidelines and training, as well as the relevant manuals and standard operating procedures, must be in place prior to the

introduction of the proposal for limited delegation of authority for disciplinary measures (A/63/214, paras. 21-25). As indicated by the Secretary-General in paragraph 25 of his report, much work still remains to be done in respect of the prerequisites. The Advisory Committee has also identified some areas that require further clarification. Among the outstanding issues are the following:

(a) The Secretary-General has not completed the comprehensive review of the recommendations for disciplinary action made by heads of mission to Headquarters under the current system, which he considers to be essential for the formulation of a concrete proposal on the imposition of fines and/or censures and which will form the basis for the development of guidelines for programme managers on the level of such fines and censures (*ibid.*, para. 24). In his previous report (A/62/294, para. 120), the Secretary-General had indicated that a comprehensive monitoring exercise would be undertaken prior to the implementation of the new system in January 2009;

(b) With respect to the investigation process, the Committee notes that training for programme managers is being designed by the Office of Internal Oversight Services (see A/63/314, para. 23) and that standard operating procedures will be developed by the Office of Human Resources Management for investigations and fact-finding functions conducted under the authority of programme managers (*ibid.*, paras. 30-33). In this regard, the Committee emphasizes the importance of the contribution of the Office of Internal Oversight Services. It also stresses the need for specification of the roles and responsibilities of the various entities mentioned in the report of the Secretary-General. The Committee has commented on this issue in its report on strengthening investigations (A/62/7/Add. 35, para. 6);

(c) With respect to staff legal assistance, the code of conduct for persons providing such assistance is still under preparation. The Committee notes the Secretary-General's statement regarding the obligation of the legal officer to consult the legal counsel for the staff member before advising the head of mission or head of office away from Headquarters as to whether disciplinary proceedings should be initiated (A/63/314, para. 37). The Committee considers that a number of questions regarding legal assistance for staff remain to be clarified. These include the type of legal assistance that would be provided to staff and the stage of the proceedings at which such assistance would be provided, as well as the possible contribution and/or assistance of staff (see also para. 33 below);

(d) The procedures related to the new mechanisms of the disciplinary process, including the reporting of misconduct, investigations, the due process rights of staff, the evaluation of investigation reports and disciplinary proceedings, have not yet been completed. The Committee notes that, according to the Secretary-General, staff will be consulted on those matters and a revised administrative instruction relating to the modalities of the disciplinary process will be issued (*ibid.*, para. 25). The Committee recognizes, however, that the administrative instruction can be finalized only following a decision by the General Assembly on the policy regarding limited delegation of authority. In this context, the Committee emphasizes the need to ensure effective monitoring and adequate guidance on the delegation of authority for disciplinary cases, as well as clear consequences for the failure to exercise such delegated authority in a proper manner (A/63/526, para. 11). There is also a need for clearly defined lines of responsibility and accountability in the disciplinary process.

17. **The Advisory Committee is of the view that the Secretary-General's proposals on limited delegation of authority are incomplete in respect of numerous key issues. Furthermore, the Committee considers that the Secretary-General's proposals do not fully respond to the request of the General Assembly in paragraph 49 of its resolution 62/228 in that they do not provide "an assessment of possible implications for due process rights of staff members" nor do they present "options for delegation of authority for disciplinary measures".**

18. The Advisory Committee also considers that the Secretary-General has not fully evaluated the option for limited delegation of authority in terms of its effectiveness or cost, including the additional resources that would be required at Headquarters to deal with the more serious remaining cases in an expeditious manner. Limited data are provided on the actual number of cases opened and disposed of in peacekeeping missions. Furthermore, the Secretary-General does not provide an estimate of the number of minor cases that would be processed at the mission level and those that would continue to be handled at Headquarters, or target time frames for the completion of cases. The basis for the resources proposed for each mission (1 P-4, 1 P-3, 1 National Officer and 1 General Service staff) is therefore not clear. **In the Committee's opinion, efforts should be made to ensure that requests for such resources are based on estimates of the workload and tasks that would actually be carried out by the staff once on board.**

19. The Advisory Committee considers that further efforts are required to explore other options for managing disciplinary cases, as well as a fuller analysis of the advantages and disadvantages of each option. For example, the Secretary-General should evaluate whether the resources envisaged to support limited delegation of authority might, in fact, be compatible with those required to support full delegation of authority, covering the whole range of sanctions. He should also consider a more centralized approach, without delegation of authority for disciplinary matters to peacekeeping operations but with a strengthened central operation to deal with a higher volume of cases expeditiously. In this connection, the Committee emphasizes the need to draw upon lessons learned and experiences gained in the context of the exercise of delegation of authority and decentralization of activities and structures. **Accordingly, the Committee recommends that the Secretary-General be requested to submit a new proposal to the General Assembly at its resumed sixty-third session, including a variety of options, with full costing.**

20. Upon enquiry, the Advisory Committee was informed that at present, all discipline-related matters, including the decision to place a staff member on administrative leave pending investigation, are centralized in the Office of Human Resources Management in New York. The Committee was also informed that there was currently no capacity in the field to deal with disciplinary issues and that neither the conduct and discipline teams nor the directors of mission support had a mandate in respect of disciplinary decisions. At present, the conduct and discipline teams are involved only in the predisciplinary process (receipt and categorization of allegations, and provision of advice to the Special Representatives of the Secretary-General and heads of mission on all matters related to conduct and discipline in the missions) while the involvement of the directors of mission support in the disciplinary process is limited to transmitting the decisions of the Office of Human Resources Management to the staff members concerned and implementing the decision at the administrative level.

21. The Advisory Committee notes that, should a staff member decide to contest the imposition of a disciplinary measure by the head of mission or office away from Headquarters, such a decision would be subject to a management evaluation conducted by the Department of Management (A/63/314, para. 40). It recalls that in paragraph 52 of its resolution 62/228, the General Assembly established an independent Management Evaluation Unit in the Office of the Under-Secretary-General for Management with one Chief of Unit (P-5), two Legal Officers (P-4) and three Administrative Assistants (General Service (Other level)) and general temporary assistance equivalent to one P-4 Legal Officer position.

22. Upon enquiry, the Advisory Committee was informed that it was the Secretary-General's understanding that the management evaluation would be conducted by the Under-Secretary-General for Management, with the assistance of the Management Evaluation Unit and the manager who made the contested decision. The management evaluation process would determine whether a decision made by the head of office, department or mission was proper and, ultimately, whether the delegation of authority had been properly exercised. On that basis, the Under-Secretary-General for Management could correct inappropriate or improper decisions on matters relating to human resources and finance or provide appropriate remedies. If circumstances merited it, the Under-Secretary-General for Management could also contemplate the withdrawal of delegated authority.

**23. Given that the General Assembly, in section III.E of its resolution 62/228, did not specifically confer such a role to the Under-Secretary-General for Management, the Advisory Committee considers that the Assembly may wish to clarify the potential role of the Under-Secretary-General in the management evaluation process, as well as the independence of the Management Evaluation Unit.**

### **C. Cost-sharing arrangements**

24. The Advisory Committee recalls that in paragraph 62 of its resolution 62/228, the General Assembly decided to approve the cost-sharing arrangement proposed by the Secretary-General in his previous report (A/62/294, paras. 161 and 162), which was based on the total number of staff members in the Secretariat and in the funds and programmes. In paragraph 63 of the same resolution, the Assembly urged the Secretary-General to conclude cost-sharing arrangements with the relevant funds and programmes by July 2008. The Assembly further requested the Secretary-General to report to it at the main part of its sixty-third session on the results of the negotiations between the United Nations and other participating entities on cost-sharing arrangements for the system of administration of justice (para. 67 (b)) and viable options for programme support cost/trust funds to share the cost of the new internal justice system (para. 67 (d)).

25. The Advisory Committee is aware that the funds and programmes have raised concerns about cost-sharing arrangements for the system of administration of justice and that discussions are still under way (A/63/314, para. 71). **Nonetheless, the Committee does not agree with the suggestion of the funds and programmes that cost-sharing arrangements be determined on the basis of actual cases disposed of rather than the "headcount", or total number of staff. In the Committee's view, the workload generated can be substantially different from**

case to case and the number of cases disposed of can fluctuate considerably from year to year. Furthermore, a method based on actual cases disposed of poses a number of questions on the manner in which it would be applied, namely, at what stage the actual share of costs would be known, how provision for such costs would be made in the respective budgets of the concerned entities and other practical questions related to its implementation. In addition, this approach would not be consistent with the headcount method currently applied for the three bodies of the United Nations that are financed on an inter-agency basis, namely, the International Civil Service Commission, the Joint Inspection Unit and the United Nations System Chief Executives Board for Coordination.

26. Accordingly, the Advisory Committee recommends that the General Assembly request the Secretary-General to pursue discussions with the funds and programmes on cost-sharing arrangements based on headcount, as originally envisaged. The Committee expects that the Secretary-General will exercise his leadership to conclude negotiations on this matter expeditiously.

#### **D. Compensation of judges of the Dispute Tribunal and the Appeals Tribunal**

27. The Secretary-General's proposals for the compensation of judges are set out in paragraphs 82 and 83 of his report (A/63/314). He states his intention to compensate the judges as follows:

(a) Judges of the Dispute Tribunal would be considered United Nations officials and would be compensated at the D-2 level. The detailed modalities of the salaries and allowances are provided in annex I to the report. Part-time judges would be compensated on the basis of the principles contained in administrative instruction ST/AI/291/Rev.1 on part-time employment, as appropriate;

(b) Judges of the Appeals Tribunal would be paid an honorarium equivalent to the rates applied to be judges at the International Labour Organization Administrative Tribunal.

**28. The Committee recommends approval of the Secretary-General's proposals regarding the compensation of judges.**

#### **E. Mechanisms for the removal of judges**

29. The Secretary-General's proposals regarding mechanisms for the removal of judges are outlined in paragraphs 73 to 79 of his report (A/63/314). In his previous report (A/62/294, para. 70), the Secretary-General had proposed that the removal of judges by the General Assembly be initiated at the request of the Secretary-General. The Secretary-General proposed that allegations of misconduct or incapacity of a judge be brought to the attention of the President of the Dispute or Appeals Tribunal, which would establish a panel of specialists to investigate the allegations. According to the Secretary-General, this would be consistent with the practice of administrative tribunals of other international organizations. The Advisory Committee notes that the report of the panel would be reviewed by the entire Tribunal, with the exception of the judge under investigation, and if there were a unanimous opinion that the allegation of misconduct or incapacity were well

founded, the President of the Tribunal would report the matter to the General Assembly and request the removal of the judge (A/63/314, para. 78). The Secretary-General indicated that that approach was aimed at addressing concerns about a potential conflict of interest, since Tribunal judges are mandated to review challenges to administrative decisions made by him. With respect to the proposal concerning the panel of specialists for investigating allegations of misconduct or incapacity of judges, the Committee was informed, upon enquiry, that it would be composed of external experts rather than United Nations officials or staff members in order to eliminate concerns about potential conflicts of interest.

## **F. Revisions to the Staff Regulations**

30. In paragraph 80 of his report (A/63/314), the Secretary-General is seeking the approval of the General Assembly for the revision of staff regulations 10.1 and 11.1, which would come into effect simultaneously with the implementation of the new system of administration of justice on 1 January 2009. The Advisory Committee points out that the proposed amendments are contingent upon the adoption of the statutes of the Tribunals and/or the procedures for dealing with disciplinary cases. **Accordingly, it recommends that consideration of the proposed revisions to staff regulations be deferred.**

31. Upon enquiry, the Advisory Committee was informed that the provisional promulgation of the revised staff regulations effective 1 January 2009 was consistent with staff regulation 12.4, which states:

The provisional rules and amendments reported by the Secretary-General, taking into account such modifications and/or deletions that may be directed by the General Assembly, shall enter into full force and effect on 1 January following the year in which the report is made to the Assembly.

## **G. Staff-funded scheme for legal assistance**

32. The General Assembly has on numerous occasions reiterated its invitation to staff representatives to further explore the possibility of establishing a staff-funded scheme in the Organization that would provide legal advice and support to the staff (resolutions 61/261, para. 24, and 62/228, para. 17). The Advisory Committee notes the challenges cited by the Secretary-General in establishing such a fund and, in particular, notes that the idea lacks support among the staff (A/63/314, paras. 51-53). As indicated in paragraph 52 of the report, staff representatives stated that by joining the United Nations staff members lose their right to pursue labour-related disputes according to their national legislation and that in many national jurisdictions, those rights include access to legal representation. The Committee also notes that staff unions have expressed their willingness to enhance the ongoing support for staff volunteering professional legal counselling and to cooperate with the Secretary-General to develop incentives to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance, as requested in resolution 62/228 (*ibid.*, para. 55).

33. **The Advisory Committee reiterates its position that the formal provision of legal assistance by the Organization should be complemented by some form of staff participation and/or contribution (A/62/7/Add.7, para. 45; see also**

para. 16 (c) above). In its view, this would ensure that staff have a stake in the process and could discourage frivolous litigation. The Committee requests that the Administration continue to work with staff representatives to seek creative methods for encouraging staff participation in and/or contribution to the process.

#### **H. Information and communications technology**

34. The Advisory Committee notes with interest the Secretary-General's proposals regarding the use of information and communications technology to improve the functioning of the system of administration of justice in response to paragraph 71 of General Assembly resolution 62/228. Emphasis is placed on using information and communications technology to improve transparency and speed in the processing of cases, as well as on providing access to information via the Internet and the electronic filing of submissions. The Committee notes that the Secretariat is in contact with the International Tribunal for the Former Yugoslavia in this regard. **The Committee emphasizes that the information and communications technology systems put into place should ensure full confidentiality, include appropriate safeguards and be designed for ease of use.**

### **III. Outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel**

35. The Advisory Committee takes note of the report of the Secretary-General on the outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel (A/63/211). It notes the sharp increases in the number of appeals and suspension cases filed (*ibid.*, table 1) in almost all duty stations. With respect to the work of the Panel of Counsel, the Committee notes that the number of new cases brought to the Panel in New York increased by 15.3 per cent, from 294 in 2006 to 339 in 2007, and that of the 339 new cases, 240 went through formal appeals processes and 99 were dealt with informally (*ibid.*, para. 12).

36. **The Advisory Committee is of the view that it would be helpful if, in the future, statistical tables in the report included, in addition to the number of cases filed and disposed of during a given period, data on the outstanding cases at the beginning and end of each period and statistical data on five-year or longer trends. In addition, the Committee encourages the Secretariat to provide further analysis, elaborate on the activities accomplished and highlight trends and systemic issues.**

### **IV. Activities of the Ombudsman**

37. The report of the Secretary-General on the activities of the Ombudsman during the period from 1 August 2007 to 31 July 2008 (A/63/283) was submitted in accordance with General Assembly resolution 59/283.

38. The Advisory Committee notes that a total of 670 new cases were opened during the reporting period (*ibid.*, para. 23), as compared to 667 during the previous period (see A/62/311, para. 19). The main types of issues brought before the Ombudsman continue to be related to promotion and career advancement (23 per cent), interpersonal issues (18 per cent), issues related to conditions of service (15 per cent), entitlements (13 per cent) and separation and termination issues (11 per cent) (A/63/283, paras. 28-34).

39. The Ombudsman has identified a number of areas of systemic malfunction, including perceived disparities in recruitment processes, mobility and career development. Upon enquiry, the Advisory Committee was informed that the Ombudsman communicates his findings during meetings with the Secretary-General and other members of the Administration through annual reports on the activities of the Ombudsman and through interactions and consultations on individual cases. The Committee was further informed of the Ombudsman's intention to engage all stakeholders in this process, including staff representatives, in the future.

40. The Advisory Committee notes that, as requested by the General Assembly in paragraph 32 of its resolution 62/228, the Secretary-General reported on specific measures taken by the administration to address seven systemic human resources issues raised in the report of the Secretary-General on the activities of the Ombudsman (A/62/311) in the context of the reform of the internal system of administration of justice (A/63/132). These issues relate to promotion and career issues; mobility; the different sets of benefits and entitlements for locally and internationally recruited staff members; contractual arrangements; the status of special entities established with the United Nations (Special Court for Sierra Leone and United Nations Assistance to the Khmer Rouge Trials); staff welfare activities and coverage for psychological care. Those questions were considered by the Committee in the context of its deliberations on human resources management (see A/63/526). **The Committee is of the view that the Secretary-General should report regularly to the General Assembly on actions taken to address the findings of the Ombudsman on systemic issues.**

41. The Advisory Committee notes with concern the comments of the Ombudsman concerning the lack of clarity and overlap in the role of the Office of the Ombudsman and that of other offices, such as the Ethics Office (see A/63/283, para. 83). Upon enquiry, the Committee was informed that there were 10 cases that had been dealt with jointly by the Office of the Ombudsman and the Ethics Office. In such cases, the decision to place a case before either office or to waive any requirements for confidentiality is made by the concerned staff member alone. The Committee commented on the possible duplication of work between the Office of the Ombudsman and the Ethics Office in its report on human resources management (A/63/526, paras. 95 and 96). **It urges the Secretary-General to clarify the respective roles and responsibilities of the Office of the Ombudsman and the Ethics Office as a matter of priority.** The Committee further notes the recommendation to update the information circular on conflict resolution in the Secretariat (ST/IC/2004/4) to reflect the new system of administration of justice as a matter of priority (see A/63/283, para. 83). **It recommends that the Secretary-General ensure the expeditious issuance of the updated information circular on conflict resolution.**

42. With respect to performance, the Advisory Committee was informed that the Office of the Ombudsman measures the satisfaction levels of its clients through such

indicators as staff feedback and the number of users of its services. The Committee was also informed that the Office was evaluated periodically by independent experts in the field.

43. The Advisory Committee notes the timely appointment of the new Ombudsman in April 2008, as the Office undergoes restructuring and strengthening of its capacity, which involves: (a) the creation of a single, integrated and geographically decentralized Office of the Ombudsman to serve the Secretariat and the United Nations funds and programmes; (b) the establishment of a Mediation Division; and (c) the creation of regional offices in Geneva, Vienna, Nairobi, Bangkok and Santiago, as well as in the Democratic Republic of the Congo and the Sudan (see A/63/283, paras. 5-8, 53 and 55). **The Committee considers the strengthened Office of the Ombudsman, as well as the new Mediation Division, to be key elements of the new internal justice system, which should be instrumental in facilitating the early resolution of conflicts in the United Nations. It emphasizes that both the formal and informal components of the system of internal justice must be effective in order to ensure that cases are disposed of in a fair and timely manner.**

44. The Advisory Committee was informed that the Ombudsman had intensified efforts to coordinate and cooperate with his counterparts at the funds and programmes in order to harmonize and enhance the complementarity of their roles and services. With respect to the establishment of the Mediation Division at Headquarters, the Committee was informed that job descriptions for the new posts authorized by the General Assembly had been submitted for classification and were to be advertised shortly. Standards of procedures and working guidelines for the Mediation Division are also being developed. As regards the creation of the branch offices, the Office is currently in the process of reviewing applications for the selection of regional Ombudsmen and related staff. A summary of vacant posts and their recruitment status was provided to the Committee (see annex II).

45. As regards cost-sharing arrangements with the funds and programmes, the Advisory Committee notes that further negotiations are under way regarding the details of cost-sharing in relation to the integrated Office of the Ombudsman (see A/63/314, para. 71). The Committee was informed that those negotiations were required in view of the fact that not all the resources in the integrated Office of the Ombudsman would be subject to cost-sharing, given that some of the posts in the Office of the Ombudsman (2 D-1 Principal Officers, 1 P-3 Case Officer and 2 General Service (Other level) Administrative Assistants) were currently funded by the United Nations Development Programme, the United Nations Population Fund, the United Nations Children's Fund and the United Nations Office for Project Services (see annex III). **The Committee expects that the Secretary-General will report to the General Assembly on the results of the negotiations.**

46. The Advisory Committee enquired as to the status of the elaboration of the revised terms of reference for the Ombudsman, taking into account the changes in functions, presence and proposed locations, as requested by the General Assembly in paragraph 67 (a) of its resolution 62/228. It was informed that the terms of reference were currently being revised to incorporate the new elements of the reform of the administration of justice system. **The Committee urges the Ombudsman to complete this process as a matter of priority and to issue the revised terms of reference as rapidly as possible.**

47. The Advisory Committee was informed that the report on the activities of the Ombudsman was transitional and that the integrated Office of the Ombudsman would issue its first joint report in 2009. The Office of the Ombudsman is in the process of assessing the format and content of current reports with the funds and programmes in order to evaluate best practices and develop an appropriate structure for the future joint report. In addition, the Ombudsman intends to put into place common procedures and methodologies for gathering and processing data, as well as shared databases and information and communications technology tools.

48. The Advisory Committee exchanged views with the representatives of the Secretary-General on possible improvements in the format and content of the report on the activities of the Ombudsman. **In the view of the Committee, it would be helpful if future reports included monthly data and analysis for the current period as well as statistical information on cases and analysis of data and trends over a five-year period or longer. In addition, the Committee is of the view that consideration should be given to ways of measuring the effectiveness of the interventions of the Ombudsman.** In his comments on the report of the Redesign Panel, the Secretary-General stated that one of the objectives of a strong system of informal dispute resolution was to avoid unnecessary, costly litigation and to promote early problem-solving in disputes between managers and their staff (see A/61/758, para. 12). **The Committee believes that the report on the activities of the Ombudsman should provide relevant indicators that allow an assessment to be made of progress towards such goals. One such indicator could be the number of cases seen by the Ombudsman's Office that proceed to the formal system.**

49. **The Advisory Committee expects that the report on the activities of the Ombudsman will serve as a useful information resource as the new system of internal justice is put into place and will allow an assessment of the impact and effectiveness of the new methods of work. The Committee encourages the Ombudsman to elaborate on statistics and data in the report by providing descriptive material based on actual work performed, without prejudicing staff confidentiality.**

50. Upon request, the Advisory Committee was provided with additional information on the number of judgements of the United Nations Administrative Tribunal involving a person who has had prior contact with the Ombudsman's Office (see table 2).

Table 2  
**United Nations Administrative Tribunal cases involving a person who has had prior contact with the Office of the Ombudsman**

<i>Year</i>	<i>Judgements</i>	<i>Judgements concerning Ombudsman's client</i>
2004	59	5
2005	59	12
2006	35	4
2007	55	15
2008	41	15
<b>Total</b>	<b>249</b>	<b>51</b>

51. Approximately 20 per cent of the persons who brought their cases to the United Nations Administrative Tribunal over the past five years had been in contact with the Office of the Ombudsman. In addition, the Office was able to determine that, in a considerable number of cases, the Tribunal ruled that the client did not have a case.

## Annex I

### Status of recruitment for posts established in the Office of Administration of Justice

(As at 28 October 2008)

	<i>Post</i>	<i>Level</i>	<i>Remarks</i>
<b>A. Office of the Executive Director</b>			
New York	Executive Director	D-2	Vacancy announcement closed
	Special Assistant	P-4	Vacancy announcement closed
	Administrative Assistant	G-6	Vacancy announcement closed
<b>B. Dispute Tribunal Registry</b>			
New York	Principal Registrar	D-1	Posted
	Registrar	P-5	Posted
	Legal Officer	P-2	To be filled through competitive exam
	Legal Assistant	G-6	Posted
	Staff Assistant	G-5	Posted
Geneva	Registrar	P-5	Posted
	Legal Officer	P-3	Posted
	Legal Assistant	G-6	To be advertised locally by the United Nations Office at Geneva
	Staff Assistant	G-5	To be advertised locally by the United Nations Office at Geneva
Nairobi	Registrar	P-5	Posted
	Legal Officer	P-3	Posted
	Legal Assistant	G-6	To be advertised locally by the United Nations Office at Nairobi
	Staff Assistant	G-5	To be advertised locally by the United Nations Office at Nairobi
<b>C. Appeals Tribunal Registry</b>			
New York	Registrar	P-5	Posted
	Legal Officer	P-3	Posted
	Legal Assistant	G-6	Posted
	Staff Assistant	G-5	Posted

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	<i>Post</i>	<i>Level</i>	<i>Remarks</i>
<b>D. Office of Staff Legal Assistance</b>			
New York	Chief	P-5	Posted
	Legal Officer	P-3	Posted
	Associate Legal Officer	P-2	To be filled through competitive exam
	Legal Assistant	G-6	Posted
	Staff Assistant	G-5	Posted
	Staff Assistant	G-5	Posted
Geneva	Legal Officer	P-3	Posted
Nairobi	Legal Officer	P-3	Posted
Beirut	Legal Officer	P-3	Posted
Addis Ababa	Legal Officer	P-3	Posted

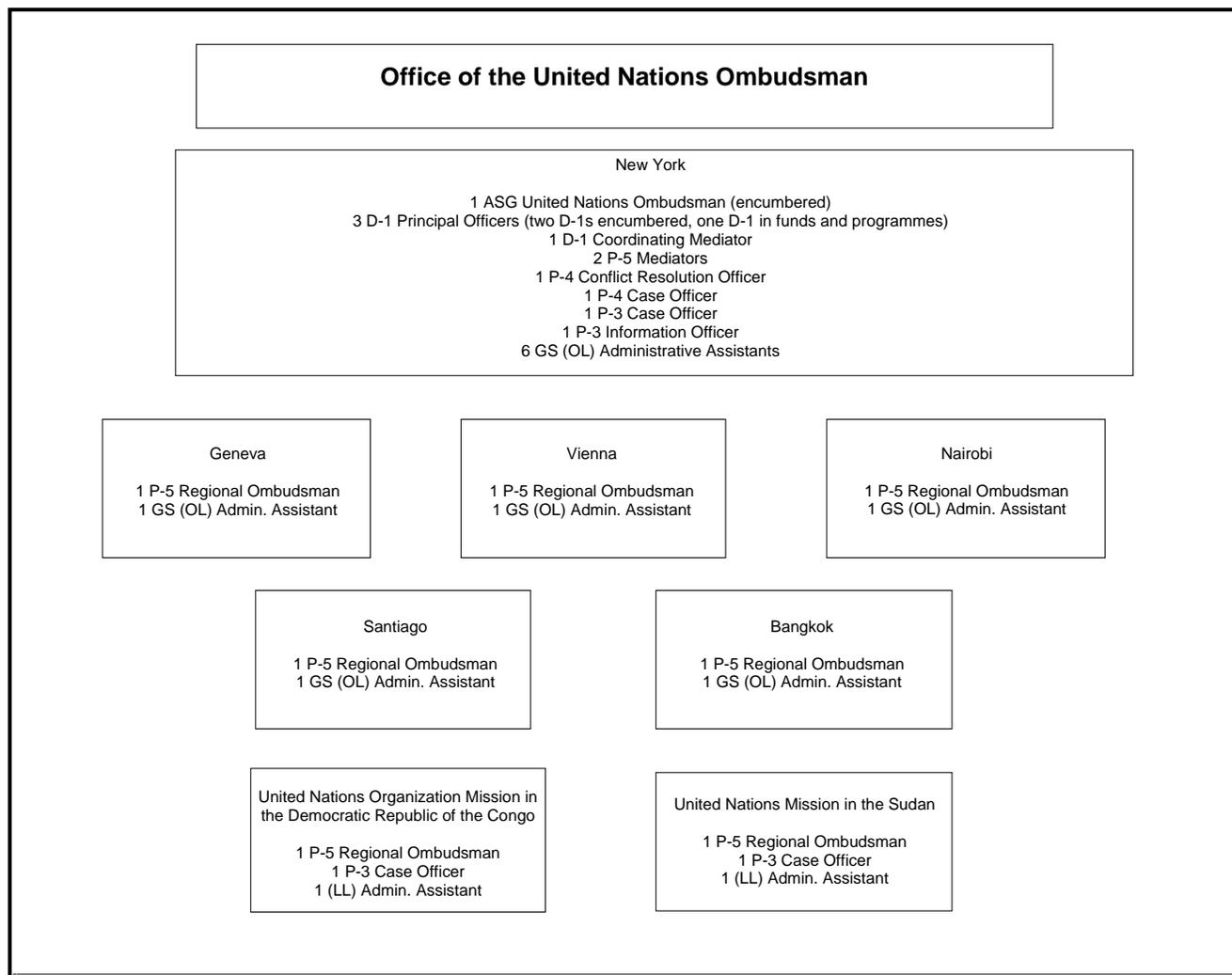
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**Annex II****Recruitment status of vacant posts in the Office of the Ombudsman**

<i>Level</i>	<i>Functional Title</i>	<i>Status</i>
D-1	Ombudsperson (United Nations Development Programme/United Nations Population Fund/United Nations Children's Fund/United Nations Office for Project Services)	Selection process under way
D-1	Coordinating Mediator, Mediation Division	Advertised on Galaxy; deadline for applications 31 December 2008
P-5	Mediator, Mediation Division	Advertised on Galaxy; deadline for applications 30 December 2008
GS	Administrative Assistant, Mediation Division	Currently in the process of being classified
5 P-5	Regional Ombudsman (Geneva, Vienna, Nairobi, Santiago, Bangkok)	Posts advertised; selection process ongoing
5 G-6	Administrative Assistant (Geneva, Vienna, Nairobi, Santiago, Bangkok)	Posts classified at the G-6 level; staff to be locally recruited upon deployment of the regional Ombudsmen
2 P-5	Regional Ombudsman (peacekeeping missions in the Democratic Republic of the Congo and the Sudan)	Posts advertised; selection process ongoing; funded under the Support Account
2 P-3	Case Officer (peacekeeping missions in the Democratic Republic of the Congo and the Sudan)	Posts advertised; selection process ongoing; funded under the Support Account
2 G-6	Administrative Assistant (peacekeeping missions in the Democratic Republic of the Congo and the Sudan)	Posts classified at the G-6 level; staff to be locally recruited upon deployment of the regional Ombudsmen

## Annex III

### Organizational structure of the Office of the Ombudsman



#### Notes:

- Includes posts for the United Nations Office of the Ombudsman and the Joint Ombudsmen of the funds and programmes (United Nations Development Programme/United Nations Population Fund/United Nations Children's Fund/United Nations Office for Project Services) as at 1 January 2008.
- One P-4 Case Officer and one General Service position are funded under the support account until 31 December 2008.
- The Office of the joint Ombudsman for the funds and programmes is located in New York. It comprises two D-1 Principal Officers, one P-3 Case Officer and two General Service (Other level) Administrative Assistants.

*Abbreviations:* ASG, Assistant Secretary-General; GS (OL), General Service (Other level); LL, Local level.