



# General Assembly

Distr.: General  
8 July 2021

Original: English

---

## Seventy-sixth session

Item 149 of the preliminary list\*

### Administration of justice at the United Nations

## Administration of justice at the United Nations

### Report of the Internal Justice Council

#### *Summary*

The present report of the Internal Justice Council, which is the first 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 extensive consultations with stakeholders. To further improve the system, the Council has made recommendations concerning access to justice, including the gender and racial aspects thereof, and the standing of staff associations before the Tribunals. As required, the Council has also presented its programme of work for the period 2021–2022. Lastly, the report includes the respective views and reports of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal.

---

\* A/76/50.



## Contents

	<i>Page</i>
I. Introduction . . . . .	3
II. Recommendations . . . . .	4
A. Judicial and operational efficiency . . . . .	4
B. Standing of staff associations before the Tribunals . . . . .	9
C. Gender and racial aspects of access to justice . . . . .	10
III. Programme of work of the Internal Justice Council for the period 2021–2022 . . . . .	12
IV. Acknowledgements . . . . .	14
 Annexes	
I. Views of the United Nations Appeals Tribunal report of the United Nations Appeals Tribunal on allegations of misconduct and information on incapacity of judges in 2020 . . . . .	15
II. Views of the United Nations Dispute Tribunal and report of the United Nations Dispute Tribunal on allegations of misconduct and information on incapacity of judges in 2020 . . . . .	18

## 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 consistently 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. Subsequently, 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 and tasked the Council with providing its views to the Assembly on the implementation of the system of administration of justice. In its resolution [75/248](#), the Assembly approved the conditions of service and appointment requirements for the Council, as set out in annex V to report of the Secretary-General [A/75/162](#).

3. The membership of the fourth Internal Justice Council, whose terms of office expire on 12 November 2024, consists of the following: Dennis Byron (Saint Kitts and Nevis), distinguished jurist nominated by the other four members to be the Chair; Carmen Artigas (Uruguay), distinguished external jurist nominated by staff; Adama Dieng (Senegal), management representative; Louise Otis (Canada), distinguished external jurist nominated by management; and Matthew Perkins (United States of America), staff representative.

4. From 5 to 14 April 2021, the Council held its plenary session and meetings with stakeholders by videoconference.<sup>1</sup>

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

6. The Council agreed to produce a focused report facilitating its consideration by Member States during the next session of the General Assembly. It therefore decided to postpone consideration of some important issues raised by stakeholders to allow members of the Council to gather more information, analyse the issues thoroughly and propose possible ways of approaching them. The Council is also aware that some of the issues have been studied extensively by former panels of the Council and intends to review the past research and proposals so as to optimize its own views. The issues are elaborated in section III below.

7. The views of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal are contained in annexes I and II, respectively, to the present report, in accordance with paragraph 34 of resolution [75/248](#). The respective reports of the two Tribunals on allegations of misconduct and information on incapacity of judges in 2020 are also included in the report, in annexes I and II, as required under paragraph 21 of the mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.

---

<sup>1</sup> The meetings were held with the President of the Appeals Tribunal, the judges of the Dispute Tribunal, members of the registries, the Office of Administration of Justice), including the Executive Director, the Office of Staff Legal Assistance, a number of staff unions and associations, the Office of Human Resources of the Department of Management Strategy, Policy and Compliance, the Human Resources Services Division of the Department of Operational Support, legal offices from the Secretariat and funds and programmes representing the Secretary-General, the Management Evaluation Unit and the Office of the United Nations Ombudsman and Mediation Services. All were invited to freely raise concerns and matters of interest.

## II. Recommendations

### A. Judicial and operational efficiency

8. In paragraph 27 of resolution 74/258, the General Assembly urged the Tribunals to amend their respective rules of procedure with a view to streamlining and harmonizing their approach to case management, including by ensuring that the first judicial action in a case was taken no later than 90 days from the date on which an application was filed. In paragraph 26 of resolution 75/248, the Assembly welcomed the progress made in reducing the number of pending and ageing cases before the Dispute Tribunal, stressed the importance of the continued implementation of all measures introduced in resolutions 73/276 and 74/258, and requested the Secretary-General to continue to report on the measures taken to further address the backlog of cases, with priority given to cases that were pending for more than 400 days. In paragraph 35 of the same resolution, the Assembly welcomed further views of the Council on possible ways to improve judicial and operational efficiency.

9. Having reviewed the charts regarding the disposal flow for judgments issued by the Dispute Tribunal, the Council notes that the Tribunal has reduced the backlog from 404 pending cases as at the end of 2018 (see A/75/162, table 4) to 177 pending cases as at April 2021.<sup>2</sup> The Council notes, however, that there are 69 cases pending for more than 400 days and that 58 cases remain unassigned to a judge for more than 100 days.<sup>3</sup> Despite the efforts made, the Tribunal must reduce the backlog of cases pending before the Tribunal for more than 400 days.

10. The Council is also of the view that the Division of Mediation is not operational and does not fulfil its primary goal, which, as a crucial element in the administration of justice, is to avoid unnecessary litigation (see General Assembly resolution 61/261, para. 11).

#### Formal system

11. The two-tier system of justice at the United Nations has been implemented to resolve labour law disputes. As recognized by literature on labour law, an effective and efficient mechanism for the resolution of individual labour disputes contributes to a healthy workplace environment, improves motivation and reduces costs related to absenteeism. The categories of applications filed before the Dispute Tribunal in 2019 fell into seven main categories: (a) separation from service (non-renewal and other separation-related matters); (b) appointment-related matters (non-selection, non-promotion and related matters); (c) disciplinary matters; (d) benefits and entitlements; (e) Ethics Office matters; (f) imposition of administrative measures; and (g) other.<sup>4</sup>

12. The cases remaining unassigned for more than 90 days and currently pending before the Tribunal for more than 400 days should draw the special attention of the Tribunal. A dedicated and teamwork effort should therefore be undertaken to reduce those backlogs. The Council considers that that could become a special judicial assignment designed and managed by the President of the Tribunal.

13. The authority and independence of the President is a key component in modernizing and improving the efficiency of the Tribunals and overseeing the modernization and development of the rules of procedure. The Council considers that

<sup>2</sup> See United Nations Dispute Tribunal, "Case load dashboard for May 2021", available at <https://www.un.org/en/internaljustice/pdfs/Caseload-dashboard-UNDT-2021.pdf>.

<sup>3</sup> Ibid.

<sup>4</sup> See A/75/162, para. 18.

the current system of rotating the presidency of the Tribunals annually inhibits the exercise of the authority of the office. The appointment of a president by the General Assembly for a term of seven years would better enable real-time judicial administration and management of the tribunals, including setting and monitoring measurable performance targets for the judges, and supervising the allocation of cases by the principal registrar. The President of the Dispute Tribunal could address the backlogs in the assignment of cases for initial judicial intervention within 90 days of filing and eliminating the backlog of cases pending for longer than 400 days. Empowering the presidency with a longer term would enable improved case management systems that could incorporate measures based on the complexity of the cases, so that the current numeric system of case assignment could be changed to a more efficient model. The method of appointment will require amendment to the rules even if the current method is retained.

14. Lastly, the Council would recommend an amendment to the code of conduct of the Tribunals to fill a lacuna in the existing norms and provide that no full-time judge shall engage in any occupation or mandate other than his or her judicial duties.

#### **Recommendation 1**

**The Council recommends that the General Assembly consider amending the respective statutes of the Tribunals to replace the present system by providing for the appointment of President by the Assembly on the recommendation of the Council for a term of seven years. It firmly advises that the selection process for such a position should allow interrogation of the specific skill sets required for this purpose.**

#### **Recommendation 2**

**The Council also recommends that the General Assembly consider amending the respective statutes of the Tribunals to adopt the concept of judicial mediation as an additional tool for expeditious and effective dispute resolution.**

#### **Recommendation 3**

**The Council recommends that the code of conduct be amended to insert the following article: No full-time judge shall, either directly or indirectly, engage in any occupation or mandate other than his or her judicial duties, but every judge shall devote himself or herself exclusively to those judicial duties.**

#### **Informal system**

15. The establishment of the Mediation Division for the informal resolution of conflicts was an important tool in the design of the new United Nations system of justice. The Redesign Panel, which in 2006 recommended the establishment of a unified informal system of justice, described the main components as follows: an Ombudsman able to mediate high-profile cases and report maladministration and a Mediation Division to settle disputes referred by the Ombudsman or by the Tribunals (see [A/61/205](#), para. 44).

16. Those features were recognized when the General Assembly established the United Nations internal system of justice. In its report of October 2007 on the administration of justice, the Advisory Committee on Administrative and Budgetary Questions, in relation to the Secretary-General's proposal for the establishment of the Mediation Division, noted that the Mediation Division "would provide a dedicated capacity for formal mediation services. Mediation would be conducted on the basis of a joint voluntary request from the parties in conflict, on cases referred to the Mediation Division by the Office of the Ombudsman, or by order of the United Nations Dispute Tribunal. The agreements reached through the mediation process are

binding and preclude further recourse to the informal and formal systems. It is proposed that the Division consist of a Coordinating Mediator (D-1), two Mediators (P-5) and two Administrative Assistants (General Service (Other level)). The Advisory Committee recommends that the Mediation Division be established from 1 January 2008 and consist of four posts, the Coordinating Mediator (D-1), two Mediators (P-5) and one Administrative Assistant (General Service (Other level)) but not the second Administrative Assistant.”<sup>5</sup>

17. The proposal of the Secretary-General, as endorsed by the Advisory Committee, was approved by the General Assembly. The Division of Mediation was established as at 1 January 2008 by a resolution adopted in December 2007 in which the Assembly recognized that the informal resolution of conflict was a crucial element of the system of administration of justice to avoid unnecessary litigation (see resolution [62/228](#), paras. 22 and 30).

18. In December 2020, the General Assembly reaffirmed that the informal system was an efficient and effective option both for staff who sought redress of grievances and for the participation of managers (see resolution [75/248](#), para. 14).

19. However, the unified informal system as it was contemplated by the General Assembly did not achieve its primary goal. The Ombudsman carried on the essential roles of monitoring and reporting maladministration with regard to practices and policies but never actively and concretely considered mediation as a crucial means to solve disputes and litigation in real time. In fact, over the past years, the Mediation Division has been shrinking and vanishing slowly within the Office of the United Nations Ombudsman and Mediation Services, while it is improving and strengthening in the funds and programmes.

20. The Council underlines that in its resolution of December 2020 on the proposed programme budget for 2021, the General Assembly took note of paragraphs I.10 and I.18 of the report of the Advisory Committee and decided to retain the post of Chief of Mediation Office (D-1) until the current incumbent’s mandatory retirement (see resolution [75/252](#), para. 41).

21. The Council has ascertained that the current incumbent of the post of Chief of Mediation Office will reach mandatory retirement in September 2021.

22. The Office of the United Nations Ombudsman and Mediation Services has proposed the hiring of two P-3 staff in replacement of the Chief of Mediation Office.

### **Statistical overview of cases**

23. In July 2020, the Secretary-General issued a report on the activities of the Office of the United Nations Ombudsman and Mediation Services, which serves the Secretariat ([A/75/160](#)).

24. In sections IV and V of the report, it was noted that the Office had opened 2,238 cases, of which only 112 were mediation cases. According to information provided by the Office of the United Nations Ombudsman and Mediation Services, in 2020, 96 cases were opened by the Mediation Division. Only a very small fraction of cases were brought to mediation. The total number of staff at the Secretariat amounts to approximately 37,000.<sup>6</sup>

25. According to interviews undertaken by the Council with stakeholders and reports made available to the Council, the lack of knowledge and information

<sup>5</sup> See [A/62/7/Add.7](#), para. 21.

<sup>6</sup> In the report of the Secretary-General entitled “Composition of the Secretariat: staff demographics” ([A/74/82](#), para. 2), it is stated that the global staff of the Secretariat totalled 37,505 as at 31 December 2018.

regarding the Mediation Division, the lack of training and experience among regional ombudsmen, the absence of positive action to assist and exemplify the value of mediation and the lengthy delays in obtaining the assistance of mediators when required may explain in part why the Mediation Division has never become an efficient tool to resolve conflicts and therefore never fulfilled the aim set by the General Assembly in its resolution 62/228.

26. The time has come to strengthen mediation as the first tool to resolve disputes to avoid litigation and consider that over the past decade, mediation has acquired greater prominence in the international world, including in commercial international disputes.<sup>7</sup>

### **Strengthening mediation proposals**

#### *Maintaining the post of Chief of Mediation Office (D-1)*

27. The Council views with the utmost concern the proposal to abolish the post of Chief of Mediation Office, foreseeing its manifold negative consequences. Through conversations with stakeholders from staff and management and in accordance with its own experience of the increasing value of mediation, the Council is convinced that the abolition of the post would indicate that the Office of the United Nations Ombudsman and Mediation Services, the very office in which the Mediation Division is housed, wishes to dilute mediation as a prime means of the informal resolution of conflicts in the United Nations system. If the Office of the United Nations Ombudsman and Mediation Services does not esteem the value of mediation, those involved in conflicts in the Organization may very well follow suit and not seek mediation to resolve a conflict. According to interviews, mediation at the Office of the United Nations Ombudsman and Mediation Services is perceived and applied as “facilitated conversations” rather than neutral negotiations to resolve disputes.

28. The Council also sees a further threat to the effectiveness of mediation in the replacement of the D-1 post with two P-3 posts: the Director of Mediation at the D-1 level has a much better chance of bringing senior personnel to the mediation table than does the junior incumbent of a P-3 post, especially when the case has been referred for mediation by a Dispute Tribunal judge.

29. In view of the importance that Member States saw in mediation by creating the Mediation Division, headed by a Coordinating Mediator at the D-1 level, and observing the increasingly effective use of mediation globally, including in other parts of the United Nations system, the Council underlines the importance of maintaining the position at the D-1 level. The Mediation Division requires a senior Director fully experienced in mediation who will conduct high-profile mediations. The level of seniority of the head mediator is a crucial element in establishing and maintaining the credibility of the mediation system in a hierarchical organization such as the United Nations.

30. The Council also observes that on the website of the Office of the United Nations Ombudsman and Mediation Services, it is further noted: “It has become quite common for practitioners in the alternate dispute resolution field to be trained in both areas. At the Office of the United Nations Ombudsman and Mediation Services, ombudsman and mediators are professionally trained in both fields and can provide both services, as required”.<sup>8</sup>

31. The Council views this with great circumspection: there are fundamental differences between the professional training required to certify a mediator and that required to certify an ombudsman. There are even more fundamental differences

<sup>7</sup> See [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements).

<sup>8</sup> See <https://www.un.org/en/ombudsman/assets/pdf/faq.pdf>.

between the exercise of the two professions. One cannot declare oneself a high-profile mediator without solid experience in high-profile cases. The Council does not believe that mediators and ombudsman should be seen as interchangeable, given that such an approach diminishes the role of both.

32. Maintaining the post of Chief of Mediation and removing all authority from the Ombudsman over the Mediation Division seems crucial. The Chief of Mediation should be in total control of the Mediation Division and receive requests for mediation directly without any control or supervision by the Office of the United Nations Ombudsman and Mediation Services.

*System of on-call external mediators*

33. The Council sees great advantage in strengthening mediation services in the United Nations system and in facilitating access to them rather than weakening them by the abolition of the current D-1 post in the Office of the United Nations Ombudsman and Mediation Services. The Council believes that an effective cost-saving measure would be to establish a panel of professionally trained, external on-call mediators with a mandate to provide systematic, informal dispute resolution options for workplace disputes.

34. Bearing that in mind, the Council has consulted, among others, the 2019 report of the Office of the Ombudsman for United Nations Funds and Programmes. In his report, the Ombudsman noted that 2019 “was a momentous year for the Office, in great part because of the significant expansion of mediation services. This was largely due to the initiative of one of the organizations served by the Office that supported the strengthening of both the supply and the demand side of mediation. This investment has already caused a significant increase in the use of mediation during the first quarter of 2020”.<sup>9</sup>

35. The Council has also learned that the Office “has developed a Global Mediation Panel consisting of external on-call mediators approved by the Office of the Ombudsman who will mediate workplace disputes involving the five United Nations organizations as they occur.”<sup>10</sup> The Global Mediation Panel is presently accessible by personnel of the five United Nations organizations served by the Office of the Ombudsman for United Nations Funds and Programmes, and other organizations are showing interest in sharing the resources. By the first quarter of 2021, all five organizations served by the Office had each signed a mediation pledge whereby they committed to discussing the possibility of resolving conflicts through mediation.<sup>11</sup>

36. The Director of the Mediation Division could carefully select a list of other on-call external mediators remunerated upon mandate of mediation. Such mediators should be offered a training programme on the Staff Regulations and Rules and characteristics of the United Nations. In addition, the Director of Mediation would draft a guide intended for staff and management. The ground rules of mediation would be clearly enunciated, including the protection of confidentiality, and given that awareness-raising has not proved sufficient, the Director would present, explain, advertise and encourage the use of mediation to solve disputes.

<sup>9</sup> United Nations Development Programme (UNDP) and others, “2019 annual report of the Office of the Ombudsman for United Nations funds and programmes”, 2020. The promotion of mediation efforts comes from the United Nations Children’s Fund.

<sup>10</sup> See <https://fpombudsman.org/global-mediation-panel/>.

<sup>11</sup> United Nations Development Programme (UNDP) and others, “Office of the Ombudsman for United Nations funds and programmes: annual report 2020”, 2021.



*Independent and separate office*

37. Lastly, the Council recommends housing the Mediation Division in a different office or even establishing it as an independent office to assure its full independence. According to the interviews conducted by the Council, at the World Bank and the International Monetary Fund, for example, the services are not integrated and there are separate offices providing mediation and ombudsman services respectively. That is becoming the new trend, since the expansion of mediation in international organizations globally makes mediation of prime importance. The Council sees the distinct advantage in establishing an independent Mediation Office to promote mediation in real time and reduce the costs of long and unnecessary litigation.

**Recommendation 4**

**The post of Director of the Mediation Division (D-1) should be retained after the retirement of the present incumbent to ensure the continuity of the importance and effectiveness of mediation in the United Nations system as envisaged by the General Assembly on its establishment.**

**Recommendation 5**

**The Mediation Division should be housed in an office other than the Office of the United Nations Ombudsman and Mediation Services, as in other organizations of the United Nations system, without the supervision of the Office of the United Nations Ombudsman and Mediation Services. A pilot programme to that effect should be undertaken without delay to increase the use of mediation as a prime, cost-effective means of informal conflict resolution.**

**Recommendation 6**

**A panel of on-call mediators should be established as a further cost-effective means of increasing the use of mediation in the Organization, and the possibility of cooperation with other mediation offices in the United Nations system should be explored.**

**B. Standing of staff associations before the Tribunals**

38. Former panels of the Council have advocated for the General Assembly to consider the issue of the standing of staff associations to file applications before the Dispute Tribunal, upholding their members' rights to freedom of association, as recognized in staff rule 8.1 (g).<sup>12</sup> The Council noted that "during current and past discussions with staff unions and associations, the Council was informed of their concern that they are unable to file applications on their own behalf in the Dispute Tribunal regarding interference with their institutional interests, such as claims of interference with the exercise of rights of association of their members. In the Council's meetings with the judges and management, the Council heard no suggestion that this limited form of associational standing would create operational difficulties."<sup>13</sup> The current panel of the Council concurs with that view and adopts the corollary recommendation (see Council report [A/73/218](#), recommendation 16).

39. Moreover, the staff associations and unions should be recognized as staff representative in the application for authorization to institute a class action. Such

<sup>12</sup> See [A/73/218](#), para. 34; see also Council report [A/74/169](#), recommendation 7, and General Assembly resolution [63/253](#), para. 15, in which the Assembly decided to revert to the issue of the possibility of staff associations filing applications before the Dispute Tribunal at its sixty-fifth session.

<sup>13</sup> See [A/73/218](#), para. 33.

lawsuits help to eliminate the need for several claims pursuing identical or similar issues of fact and law. One single judgment can dispose of a series of individual related claims, providing efficient justice at lower costs for the parties concerned.

#### **Recommendation 7**

**Staff associations and unions should be recognized as having the legal standing to file actions before the Dispute Tribunal regarding their institutional interests, such as claims of interference with the exercise of the rights of association of their members. The Council recommends that the General Assembly amend the statute of the Tribunal in the interest of recognizing such standing of staff associations and unions.**

#### **Recommendation 8**

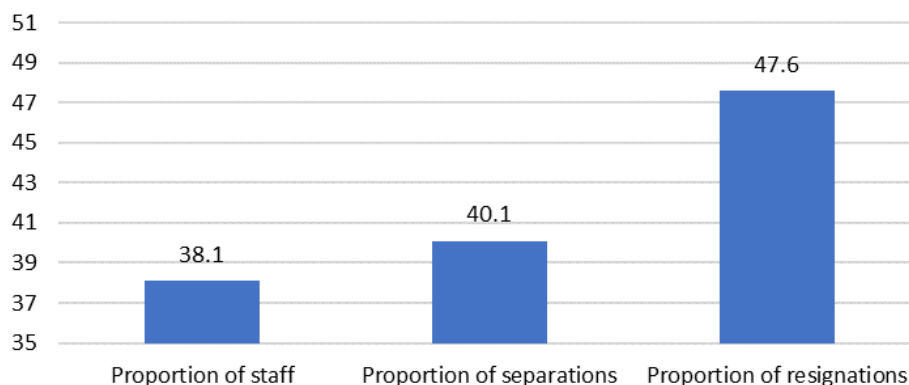
**Class actions should be allowed upon authorization of the Dispute Tribunal. The authorization criteria would be: (a) an identical or similar issue of law and fact has been demonstrated; (b) the facts alleged appear to justify the conclusions sought; and (c) the composition of the class makes the class action an efficient and economic recourse.**

### **C. Gender and racial aspects of access to justice**

40. The Internal Justice Council is concerned to note consistent warning signs related to gender, race and access to justice in the Secretariat. The importance of achieving gender parity has been well noted, and some progress has been seen in recruitment. For example, when considering the data in the annual report “Composition of the Secretariat: staff demographics”, particularly concerning posts from P-2 to Under-Secretary-General, the gender parity rate was 40.5 per cent in 2014. That rose to 44.5 per cent in 2019. While noting that change in the aggregate, women remain more likely to hold posts at the junior levels of the Organization, such as P-2 and P-3 posts. Those levels have stayed remarkably stable over time, with women holding about 57.3 per cent of P-2 posts and 46.7 per cent of P-3 posts. At higher levels, the gender divide very quickly becomes significant, with organizational averages for the P-4 to D-2 levels ranging from 39 per cent to 25 per cent.

41. The Council is particularly concerned when considering the rates of staff selection and organizational composition compared with the rates of attrition. As above, while women made up 44.5 per cent of staff in 2019, they made up 45.8 per cent of separations and 50.3 per cent of resignations. While those rates are clearly seen at the P-2 and P-3 levels, it is also disturbing that while women made up only 38.1 per cent of the P-5 level staff, they comprised 47.6 per cent of the resignations, demonstrating a 9.5 per cent gender gap for 2019.

### Gender gap: leadership exodus (P-5 level) (percentage)



42. This consistent trend in the data is particularly troubling when viewed together with the rates of utilization for the activities of the Office of the United Nations Ombudsman and Mediation Services. For all locations reported, female staff members reported a greater utilization of services than their proportional representation would predict. In some cases, such as at Headquarters locations, the margin was +3 per cent. However, offices away from Headquarters and the Secretariat in general reported a +18% gender utilization gap.

43. Data explaining such gender variances are currently insufficient. Some insight has been drawn from survey instruments on levels of sexual harassment and racial discrimination experienced by respondents. In the case of sexual harassment, according to the *Safe Space Survey Report* (January 2019), barriers to reporting were fears that doing so would have a negative impact on the target's career (19 per cent) and that complaints would not be taken seriously (18 per cent).<sup>14</sup> Data reported by the survey undertaken by the United Nations People of African Descent identifies similar barriers in access to justice.<sup>15</sup>

44. These perspectives on the function of the justice system appear to be reflected in the utilization and reporting rates experienced since the launch of the system-wide strategy on gender parity in 2017<sup>16</sup> and the update to the prohibited conduct policy in 2019.<sup>17</sup> Upon review of the report entitled "Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 January to 31 December 2019" (A/75/648), the Organization does not appear to have significantly increased rates of reported misconduct in such areas. Particularly when compared with the reported incidents in survey mechanisms, the rate at which either the formal or informal system is utilized for redress of sexual harassment or racial discrimination is likely to be a small minority of cases.

45. In the light of the totality of data before it, the Council is of the view that both structural and cultural problems are combining to perpetuate obstacles in the access to justice across the Secretariat.

<sup>14</sup> Deloitte, *Safe Space Survey Report* (2019), para. 2.2.

<sup>15</sup> "UNPAD Survey on Racism in the UN System", available at [https://uploads-ssl.webflow.com/5d6dfc1714166128aae8ffe7/5f8951188d691f3be3b4bc85\\_Final%20UNPAD%20Race%20Survey%20Report%202020.pdf](https://uploads-ssl.webflow.com/5d6dfc1714166128aae8ffe7/5f8951188d691f3be3b4bc85_Final%20UNPAD%20Race%20Survey%20Report%202020.pdf).

<sup>16</sup> United Nations, "System-wide strategy on gender parity", 6 October 2017.

<sup>17</sup> See Secretary-General's bulletin on addressing discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2019/8).

**Recommendation 9**

**The Secretariat should adopt a gender-aware mechanism for the reporting of changes in the composition of the Secretariat that reflects both levels of parity and proportional changes in the flow of staff members in accordance with the Fundamental Principles of Official Statistics and the system-wide strategy on gender parity.**

**Recommendation 10**

**The Secretariat should give full consideration to intersectional aspects of discrimination, particularly those involving women of colour and from underrepresented countries, in the function of the internal justice system.**

### **III. Programme of work of the Internal Justice Council for the period 2021–2022**

46. According to the conditions of service and appointment requirements for the Council adopted by the General Assembly, the Council shall prepare and include in its report to the General Assembly, for its approval, a detailed programme of work for each calendar year in accordance with the mandates under General Assembly resolutions (see [A/75/162](#), annex V, para. 4.1).

47. The current report of the Council has been structured along various mandates of the General Assembly, and the proposed programme of work is aimed at developing the most relevant issues that are considered by the Council to require further elaboration as well as other subjects that have been noted as areas of work that the Council intends to approach.

**Matters to be examined by the Council and addressed in its next report as appropriate**

48. Some areas were not included in the present report either because the Council wished to respect the guidelines on the length of the report or because of the need for Council members to analyse and discuss them with more time. Stakeholders provided valuable input during the meetings, which the Council members will continue to study and discuss with them during the coming year.

49. In principle, the areas to be approached in the months ahead before the next report are:

- (a) Access to justice, particularly for staff in the field, and dissemination of information about the internal justice system;
- (b) Racism, gender bias and other forms of discrimination and their impact on the internal justice system;
- (c) Fear of, and protection against, retaliation for staff bringing cases and those testifying before the Tribunals and for reporting misconduct;<sup>18</sup>
- (d) Remedies and implementation of judicial decisions;
- (e) Remedies available to non-staff personnel;
- (f) Strengthening of the Office of Staff Legal Assistance;

---

<sup>18</sup> See Secretary-General's bulletin [ST/SGB/2017/2/Rev.1](#).

(g) Recommendations on improvement of instruments such as the code of conduct for the judges of the Dispute Tribunal and the Appeals Tribunal, the mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and the rules of procedure of the Tribunals;

(h) Staff advocacy function;

(i) Other issues of critical importance, as may be raised by stakeholders in the system.

### **Organization of work**

50. The Council intends to nominate members to take the lead on particular issues and report to the Council as a whole for analysis and discussion. Those specific responsibilities will naturally entail strengthening contacts with particular stakeholders either by audio or video calls through the support of the Office of Administration of Justice.

51. The Council will continue the practice of periodic video calls as a way of maintaining contact, exchanging views on the implementation of the mandates and consulting on emerging matters as appropriate.

52. The Council envisages that it will meet for longer periods to further advance the preparation of its next report and to hold exchanges on legal issues and challenges pertinent for the fulfilment of its role.

53. 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. Should the presentation be virtual, as was the case in 2020, the Chair would be grateful if the rest of the members could also attend virtually.

### **Judicial selection exercise**

54. On 30 June 2023, the seven-year terms of office of three Dispute Tribunal judges and four Appeals Tribunal judges will come to an end. In accordance with its mandate, prescribed by the General Assembly in its resolutions [62/228](#) and [63/253](#), the Council will undertake a thorough selection exercise early in 2022 in order to recommend to the Assembly the required number of qualified and suitable candidates for judicial positions, with due regard to gender balance and geographic distribution. In line with relevant Assembly resolutions and established practice, the selection exercise will include a wide dissemination of the vacancy announcement, vetting of applicants, including a written assessment to test the legal expertise and drafting ability of qualified applicants, and in-person interviews. The process will be elaborated in the Council's report, which will include the list of recommended candidates with their biographies and will be submitted in advance of the seventy-seventh session, in 2022, to allow the Assembly to appoint the seven judges in a timely manner.

## IV. Acknowledgements

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

56. 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**

## Annex I

### **Views of the United Nations Appeals Tribunal and report of the United Nations Appeals Tribunal on allegations of misconduct and information on incapacity of judges in 2020**

#### **Views**

1. The United Nations Appeals Tribunal is the tribunal of final instance in the internal justice system of the United Nations dealing with employment law issues of staff members of the United Nations, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the International Civil Aviation Organization and several other international agencies and entities, as well as for participants of the United Nations Joint Staff Pension Fund.

2. As at 1 July 2021, the Appeals Tribunal was composed of seven judges, namely (in alphabetical order):

Graeme Colgan (New Zealand)

Martha Halfeld F. de Mendonça Schmidt (Brazil)

Sabine Knierim (Germany)

John Murphy (South Africa)

Jean-François Neven (Belgium)

Dimitrios Raikos (Greece)

Kanwaldeep Sandhu (Canada)

3. Between July 2020 and June 2021, the Appeals Tribunal held three two-week sessions, all of them remotely because of the coronavirus disease (COVID-19) pandemic.

4. The Appeals Tribunal functions well and implements its mandate within the limitations of its jurisdiction and powers. There is a strong sense of collegiality among the judges and the registry staff and a conscientious commitment to the tasks at hand. Throughout 2021, one of the Tribunal's main concerns in dealing with the workload has been to maintain clear and kind communication in order to avoid misunderstandings and contribute to better work performance and satisfaction in the particular context of remote work.

5. The remote work has proved to be challenging in terms of human interactions and its possible detrimental impacts on the work environment and, sometimes, legal discussions and deliberations. A closer collaboration among judges and registry staff has helped to overcome some of the main difficulties experienced in the past, although there are still challenges to be faced by the small and able complement of registry staff, legal officers and administrators, who, apart from other duties within the Office of Administration of Justice, provide administrative support, preparatory work, legal research, the drafting of briefing notes and the finalization and publication of judgments. The possibility of resuming in-person sessions will incontestably offer more opportunity to handle the routine difficulties that surround the work at the Tribunal.

6. The jurisprudence of the Tribunal with regard to the situation of the specialized agencies, pursuant to article 2 (10) of the statute of the Appeals Tribunal, has remained stable since the previous report to the Internal Justice Council. This provision contemplates and takes into consideration the character of the internal justice system as a two-tier system, with a first instance Dispute Tribunal and a second instance Appeals Tribunal. Consequently, under the statute of the Appeals Tribunal, that Tribunal's powers are limited.

7. Since the fall session in 2019, the Tribunal has consistently held that some practices under the agreements were not in accordance with article 2 (10) of its statute, which requires a written record and a written decision providing reasons, fact and law, by a neutral first instance process, including a first instance decision (and not a mere recommendation to the Secretary-General of the specialized agency, who may or may not follow it). If the documentary evidence or the written record before the Tribunal are not sufficient, it has on occasion been necessary to remand a case to the first instance body which, or person who, purported to make the decision being appealed. As a result, since 2019, some specialized agencies have joined the United Nations internal justice system and now use the United Nations Dispute Tribunal for first instance processes or have enabled their appeals boards to issue decisions.

8. The development of a backlog has become a major concern for the Tribunal and, as a consequence, the adequacy of assistance provided to it so that it can tackle the challenges therefrom. The number of appeals filed before the Appeals Tribunal has been rising at an extraordinary rate. The current average filing rate is 12 cases per month. If that trend holds, the Appeals Tribunal will have received 144 cases in 2021. If the Tribunal maintains the current average of case disposal in the upcoming sessions (approximately 30 to 35 appeals per two-week session), a backlog of at least 150 pending cases will be created by the end of the year. That is an increase of more than 50 per cent compared with the number of pending cases at the end of 2020. The backlog itself has grown at an alarming rate over the past two years, almost doubling from 2019 to 2020 and still growing in 2021.

9. On the one hand, the Appeals Tribunal is pleased that the continued rise in appeals indicates an effort by the Dispute Tribunal to increase its productivity. However, on the other hand, that raises concern for the Tribunal. In addition to the increased output of the Dispute Tribunal, the rate of appeals (the percentage of Dispute Tribunal judgments appealed) is also growing exponentially. In 2018, the rate was 36 per cent, in 2019 it was 39 per cent and in 2021 it is 51 per cent. The signing of new agreements with entities accepting Appeals Tribunal jurisdiction is also a contributing factor to the elevated number of appeals.

10. In order for the Appeals Tribunal to face the increasing demand and avoid a growing backlog, one possibility would be for the Tribunal to increase its caseload at each judicial session. Another possibility would be to hold extraordinary sessions as permitted under article 4 (3) of the statute of the Tribunal. It might also be necessary to extend the number of weeks in some of the sessions and to develop some flexibility in terms of location for the sessions, which may be held in person at one of the locations stipulated in the statute or in a hybrid manner. Of course, any increased sitting durations would require the agreement of the judges, who are professionally engaged in their national jurisdictions.

11. When it comes to adequate assistance in terms of staff for its registry, the Appeals Tribunal has been operating with only two legal officers. In order to increase the caseload, additional resources are necessary in the light of the increase in tasks related to the writing of briefing notes, the editing and finalizing of judgments and so forth. It is thus in the best interests of the Tribunal that that necessary additional assistance be provided by a competent, full-time and hopefully experienced legal officer, whose assistance is considered to be more efficient and cost-effective than the part-time assistance provided by interns, who need constant coaching and must leave after a short period of three to four months. While short-term internships have provided some immediate relief in 2021, their continuation instead of the appointment of a permanent legal officer will not benefit the work of the Tribunal in the long term. To date, the caseload of the Tribunal has been a strain for the two legal officers. Having a reliable third legal officer funded either through the regular budget or extrabudgetary means is crucial at this juncture to allow the Tribunal to meet the expanding caseload demands and alleviate an increasing backlog.



12. That need has been recently acknowledged by the extension of the current legal officer hired to backfill the senior legal officer during her maternity leave. Longer extensions of contracts such as that one are an important means of attracting the interest of people who have already demonstrated competence and commitment to the workflow of the Tribunal. Short incremental contract extensions, apart from creating a feeling of job insecurity, incentivizes departure, putting the continuity of the work at risk at a critical moment of the work of the Tribunal. It is essential for the operations of the Tribunal to have three legal officers on staff year-round in order to allow for long-term plans and certainty. It goes without saying that the collaboration of an additional legal officer would allow the Tribunal to engage in further efforts to meet its increased demand.

13. There is one particular issue that needs to be addressed here, namely, the position regarding travel and in particular medical insurance for judges when they are able to travel again. No one questions the benefits of an in-person session for the work at the Tribunal. However, even before the COVID-19 pandemic, the cost of such travel insurance was considerable, although highly recommendable, given the medical costs in and repatriation costs from the different locations where the sessions can be held. The premiums for such travel insurance policies have been met by the judges themselves without contribution or reimbursement. In some cases, the costs constituted a very significant contribution from the judges' own pockets to the operations of the Tribunal. Such costs are likely to be even more expensive post-COVID, and it is possible that COVID-related illnesses will be excluded from such policies, as has been the case in the past. It would thus be desirable to include the Appeals Tribunal judges in the United Nations travel/medical group coverage so that they are insured during their work-related travel and that that cost could be reimbursed or met by the United Nations, without the judges having to use significant portions of their honorariums (which have been fixed and without adjustment since 2009) for that purpose. Furthermore, it is highly likely that any additional costs for seven people for a number of weeks a year would be relatively modest if added to the Organization's existing insurance arrangements for staff, when compared with each of the judges arranging their own insurance.

14. The Tribunal is well aware of the current financial circumstances of the Organization, even though the costs of the Tribunal were significantly alleviated by the savings incurred from the judges working remotely. However, according to article 5 of the statute of the Tribunal and in order for the Tribunal to adequately respond to the growing trend in the number of appeals in the current context, the Tribunal must be provided any available additional resources, be it by means of extrabudgetary funds, which would be managed by the Office of Administration of Justice.

#### **Report of the United Nations Appeals Tribunal on allegations of misconduct and information on incapacity of judges in 2020**

15. In keeping with the request to provide information under paragraph 21 of the mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, the Appeals Tribunal has received one complaint, which was dismissed owing to the fact that the content of the complaint was a clear discontent with the decision of the Appeals Tribunal. Judicial decisions are not matters of judicial conduct and shall not be the subject of a complaint under the mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Appeals Tribunal. No further action was required in the complaint and the complainant was so informed, in accordance with paragraph 11 of the mechanism.

Martha **Halfeld F. de Mendonça Schmidt**  
United Nations Appeals Tribunal President

## Annex II

### **Views of the United Nations Dispute Tribunal and report of the United Nations Dispute Tribunal on allegations of misconduct and information on incapacity of judges in 2020**

#### **Views**

##### **Introduction**

1. The report of the judges of the United Nations Dispute Tribunal provides a summary of the Tribunal's achievements during the year 2020 and identifies the current and future challenges. It also mentions some actions and achievements from early 2021.
2. Following the establishment of the Dispute Tribunal by the General Assembly in its resolution [63/253](#), and the appointment and swearing of its judges, the Tribunal commenced operations on 1 July 2009 at its three locations of Geneva, Nairobi and New York.
3. As the first instance Tribunal, the Dispute Tribunal deals with cases brought by staff members challenging administrative decisions that negatively affect their conditions of service.
4. The Tribunal interprets and applies the relevant legal framework and relevant international human rights norms and renders reasoned decisions. The Tribunal's decisions encompass all aspects of international administrative law, including the judicial review of administrative decisions in matters such as disciplinary cases, the observance of due process and the proportionality of imposed sanctions.
5. In 2020, despite the difficulties created by the coronavirus disease (COVID-19) pandemic, the Tribunal maintained high productivity and reduced its backlog. That notwithstanding, the new structure of the Tribunal, with a majority of six half-time judges, who also pursue careers in their domestic courts, and a reduction to three in the number of full-time judges, raised several challenges.
6. Therefore, it remains essential for the future of the Tribunal and the internal justice system of the United Nations that, as mentioned in previous reports, the General Assembly, the Internal Justice Council and the judges address the key challenge of judicial independence to ensure that both the mandate of the Tribunal and the universal principle of the separation of powers are properly understood and respected.

##### **President of the Dispute Tribunal**

7. Judge Joëlle Adda, who has served as President since 4 November 2019, was re-elected President for the year 2021 at the plenary session, on 4 December 2020.

##### **Composition of the Tribunal**

###### *Judges*

8. As at 10 July 2019, the Tribunal was composed of the following nine judges (six half-time and three full-time):
  - (a) Joëlle Adda (France), full-time, based in New York;
  - (b) Francis Belle (Barbados), half-time;
  - (c) Francesco Buffa (Italy), half-time;
  - (d) Teresa Maria da Silva Bravo (Portugal), full-time, based in Geneva;

- (e) Eleanor Donaldson-Honeywell (Trinidad and Tobago), half-time;
- (f) Alexander W. Hunter, Jr. (United States of America), half-time;
- (g) Agnieszka Klonowiecka-Milart (Poland), full-time, based in Nairobi;
- (h) Rachel Sikwese (Malawi), half-time;
- (i) Margaret Tibulya (Uganda), half-time;

#### *Registrars*

- (j) Abena Kwakye-Berko, based in Nairobi;
- (k) René Vargas, based in Geneva;
- (l) Nerea Suero Fontecha, based in New York.

#### **Challenges faced by the Tribunal in 2020**

9. With three full-time judges and six half-time judges instead of six full-time judges and two half-time judges, since 2019, the majority of judges are available only six months a year. Given that most half-time judges maintain a job in their home country, it is sometimes difficult for some of them to accommodate the needs of the Dispute Tribunal. Thus, the management of the half-time judges imposes additional work on the registries and the President. It renders the scheduling of meetings including all the judges extremely complicated and hinders the administration of the Tribunal.

10. In addition, the registrars must take into account the short duration of deployments when assigning cases to half-time judges. In doing so, they endeavour to select cases which, on their face, appear to be disposable during the short deployment. In principle, that bars the assignment of complex cases, including most disciplinary cases, to half-time judges, given that such cases typically require lengthier litigation.

11. Moreover, the need for the half-time judges to dispose of their assigned cases during their deployment to avoid delays affects the assistance provided to the full-time judges. Legal and administrative assistance to half-time judges is prioritized over the full-time judges, who are not limited by a specific disposal deadline.

12. Given that half-time judges work remotely rather than on-site, the time difference between their home location and the site of the registry to which they are deployed has also presented difficulties. Only two of the half-time judges are based in Africa, one of them is based in Europe, and three are in the Americas (United States, Barbados and Trinidad and Tobago).

13. Yet, given that Nairobi was the registry branch with the heaviest caseload and oldest backlog, in addition to the two African judges, two other half-time judges based in the Americas were deployed in Nairobi. Because the pandemic made the deployment on-site impossible, both judges faced a time difference of over six hours between their home location and the registry.

14. In addition, telecommuting requires an adequate Internet connection capable of supporting voice and video calls. However, some of the half-time judges based in Africa lacked access to a strong Internet connection, which severely hampered their ability to conduct hearings and case management discussions remotely.

15. During the reporting period, the holding of public hearings remotely raised its own set of difficulties. The registries experienced difficulties in controlling the access to the virtual public gallery, which is not problematic in the physical courtroom. It is also more difficult to control whether the public abide by the Tribunal's instructions, in particular the prohibition of recording the hearing.

16. The lockdown also impeded in-person meetings during the annual plenary session of the judges. The organization of remote plenary sessions proved extremely complex and time-consuming, given that the time difference among the judges' locations needed to be accommodated.

### **Plenary sessions held by the Tribunal**

#### *Plenary session of May 2020*

17. In paragraph 27 of its resolution [74/258](#), the General Assembly welcomed recommendation 9 on judicial efficiency and accountability contained in the report of the Internal Justice Council, and urged the Dispute Tribunal and the Appeals Tribunal to review and amend their respective rules of procedure subject to the approval of the General Assembly, with a view to streamlining and harmonizing their approach to case management, including by ensuring that the first judicial action in a case was taken no later than 90 days from the date on which an application was filed.

18. At their plenary meeting in May 2020, the judges, having identified several legal issues impeding the speedy management of the proceedings, discussed and adopted the draft amended rules of procedure.

19. In addition, in paragraph 31 of its resolution [74/258](#), the General Assembly requested that the judicial directions of the Dispute Tribunal and the Appeals Tribunal that were of general application be posted online and thus made available to all stakeholders.

20. Accordingly, the Tribunal adopted an updated judicial direction, which is currently available on the Tribunal's website.

21. The Tribunal also discussed the deployments of half-time judges and considered ways to improve the efficiency of the internal judicial system.

#### *Follow-up of the plenary session of May 2020*

22. The amended draft rules of procedure adopted at the plenary session of 12 May 2020 were shared with the registrars and stakeholders (Office of Staff Legal Assistance and representatives of respondents), for comments.

23. On 8 June 2020, the Tribunal accepted the comments from the registrars and the stakeholders that it found appropriate and useful.

24. The new rules of procedure, as finally adopted by the Tribunal on 8 June 2020, were submitted to the Department of General Assembly and Conference Management for transmission to the General Assembly in late June 2020, with comments explaining the amendments.

25. The stakeholders requested confirmation from the Tribunal regarding the entry into effect of the newly adopted rules of procedure.

26. Pursuant to article 7 of the statute of the Dispute Tribunal and article 37 (2) of the previous version of its rules of procedure, the Tribunal acted within its authority in deciding that the adopted amendments would take effect only after their approval by the General Assembly, as explained in the commentary to the proposal (new rule 37 (2)). The stakeholders were informed accordingly.

27. The Tribunal found it necessary to engage in further discussion with the stakeholders, especially on the rules of procedure, at its next plenary session.

#### *Plenary session of 30 November to 4 December 2020*

28. The Tribunal found that a virtual resumed plenary session was required, in particular to broach several other issues. These included jurisprudential matters,

challenges arising from the lockdown, and discussions with the registries, counsel regularly representing applicants and representatives of the respondents concerning both the rules of procedure and the handling of sensitive information in judgments and orders.

### **Deployment of half-time judges in 2020**

29. In compliance with paragraph 29 of General Assembly resolution [75/248](#), the Tribunal made full use of telecommuting in the deployment of half-time judges.

30. Moreover, because of the lockdown, even the full-time judges were forced to telecommute for most of the year.

31. Once the lockdown restrictions are lifted, however, it will be necessary for the half-time judges to be able to travel to the place of their deployment to hold hearings and case-management discussions on-site, as explained above.

32. Considering the imbalance in respect of the caseload and backlog among the duty stations, Nairobi was reinforced with the deployment of two additional half-time judges during the second and third quarters of 2020.

33. During the first quarter, Judge Francesco Buffa was deployed in Geneva, Judge Rachel Sikwese was deployed in Nairobi and Judge Eleanor Donaldson-Honeywell was deployed in New York.

34. During the second quarter of 2020, Judge Margaret Tibulya and Judge Donaldson-Honeywell were both deployed in Nairobi, and Judge Alexander Hunter was deployed in New York.

35. During the third quarter of 2020, Judge Buffa was deployed in Geneva and Judge Sikwese and Judge Francis Belle were deployed in Nairobi.

36. During the fourth quarter of 2020, Judge Belle was deployed in Geneva, Judge Hunter in New York and Judge Tibulya in Nairobi.

### **Judicial statistics of the Tribunal**

37. During the reporting period, from 1 January to 31 December 2020, the Tribunal registered a total of 216 cases (this figure does not include the inter-registry transfers).

38. The number of applications is lower than in previous years. That could probably be explained by the lockdown and the budgetary freeze, which likely caused a slowdown in the administrative functioning of the Organization.

39. A breakdown by duty station indicates that 62 new cases were received by the Registry in Geneva, 103 cases in Nairobi and 51 in New York.

40. The Tribunal disposed of 350 cases. That number is comparable with the number in 2019<sup>1</sup> (389) and clearly higher than that of 2017 (268) and 2018 (317). The Tribunal rendered 221 judgments, compared with 188 judgments in 2019. The number of judgments does not equal the number of cases closed because some of the cases were closed by order. Moreover, there could be instances in which a single judgment disposed of two or more cases concerning similar issues.

41. Therefore, there were only 189 cases still pending before the Tribunal at the end of 2020 (323 at the end of 2019), with 80 cases pending in Nairobi, 82 in Geneva and 27 in New York.

<sup>1</sup> In 2019, there were, among the cases disposed of, 80 applications that were group cases in respect of the same administrative decisions. Once the legal solution had been determined by the Appeals Tribunal, the Dispute Tribunal was able to easily dispose of these cases.

42. The backlog of cases pending for more than 400 days fell sharply again, from 205 cases on 31 December 2018 and 104 cases on 31 December 2019 to only 69 cases on 31 December 2020.

43. It is noteworthy that almost a quarter<sup>2</sup> of the backlog is in part attributable to matters beyond the power of the Tribunal. Those may include suspensions at the request of the parties engaged in out-of-court settlement discussions. When the informal resolution efforts fail, the case, which aged during the resolution efforts, returns to the docket for adjudication.

44. Other cases in the backlog are suspended at the request of one of the parties for various reasons, such as medical impediments. Other cases are suspended pending the resolution of appeals of related cases. Lastly, some of the cases in the backlog had previously been assigned to one of the judges whose mandate ended in 2019 and remained under the monitoring of the duty judge until their assignment to a half-time judge.

45. The imbalance in the backlog among duty stations has different causes. In Geneva, most of the backlog is due to circumstantial reasons, such as the significant shortage of legal officers in 2019 and 2020.

46. The shortage in legal support in Geneva affected the New York Registry indirectly, whose staff were required to assist the judges deployed in Geneva.

47. The backlog in Nairobi is caused by what can be termed as “structural” reasons. On the one hand, a batch of highly complex cases concerning post adjustment entitlements, originally filed in Geneva, was transferred to Nairobi because the handling of the cases by a Geneva-based judge raised a conflict of interest. The adjudication of that group of cases occupied a significant portion of the time of the Nairobi full-time judge.

48. On the other hand, Nairobi receives considerably more applications than the two other duty stations, most of which involve disciplinary decisions, which require a more complex and more time-consuming litigation.

49. The New York Registry, where most of the backlog has been eliminated, therefore provided substantial support to the Geneva Registry.

#### **Other measures taken in 2020 and early 2021 to improve the work of the Tribunal**

50. Following its judicial direction concerning cases older than 400 days, the Tribunal instructed the registrars to assign cases to the judges in the order in which they had been filed, unless an efficient docket management required the occasional assignment of more recent cases. However, as half-time judges are expected to close their assigned cases during the limited period of their deployment and to avoid cases remaining inactive until their next deployment, exceptions must be made to that general principle.

51. In total, of the 350 cases closed in 2020, 163 were more than 400 days old.

52. To be able to both handle emergencies and satisfy the requirement of the General Assembly for early case management, the duty judge system, established in the judicial direction, allows the handling of preliminary matters arising in cases pending assignment.

---

<sup>2</sup> In Geneva, 2 out of 37 cases have been held up by activity outside the control of the Dispute Tribunal or where an appeal was awaited. In Nairobi, 9 out of 27 cases seem to fall into that category. In New York, 5 out of 5 cases fall into the category.

*Situation in June 2021 on the amendments to the rules of procedure*

53. The General Assembly, in paragraph 38 of its resolution [75/248](#), decided to consider at its seventy-sixth session the proposed amendments to the rules of procedure of the Appeals Tribunal and the Dispute Tribunal, as set out in annexes I and II to the report of the Secretary-General on administration of justice at the United Nations ([A/75/162](#)).

54. Given that the General Assembly postponed its decision on the approval of the text submitted by the Tribunal and that the revision had been done under great time constraints, not allowing enough time for consultations, on 25 February 2021, the Tribunal decided to create a new working group consisting of three judges and including counsel representing both applicants and respondents. Given that this ongoing consultation is aimed at finding the largest consensus possible, the Tribunal respectfully requests the General Assembly to defer its decision on the rules of procedure until the completion of the current consultation process. A fresh draft will be submitted for adoption at the seventy-seventh session of the Assembly.

55. In the meantime, to address the General Assembly's requirement for the inclusion of a rule for a first judicial action to be taken no later than 90 days from the date on which an application is filed (resolution [74/258](#), para. 27), the judges agreed as follows: each judge (and the half-time judges when they are deployed) will be assigned each quarter three cases, within 90 days of their filing, for a first judicial action.

56. The Tribunal already had a practice in place to ensure prompt judicial action as needed. Applications for suspension of action or manifestly non-receivable cases were promptly assigned to a judge for immediate adjudication. The duty judge addressed urgent preliminary procedural matters.

57. However, it should be noted that a general rule whereby cases are assigned within 90 days of filing may result in serious delays in the adjudication of older cases, given that it would divert the attention of the judges to cases that are not ripe for adjudication. To avoid the perverse effects of such a rule, it was decided to prioritize the assignment of newly filed disciplinary cases and other fact-heavy cases requiring a more enhanced case management.

**Remaining challenges and proposals to improve the independence and efficiency of the Tribunal**

58. The Tribunal emphasizes that, being fully aware of its accountability to the General Assembly and to the stakeholders, it has significantly improved its productivity and functioning, despite the challenges faced during the pandemic.

59. However, while two thirds of the Tribunal were renewed in 2019, it is extremely disheartening that the current judges continue to be blamed for some of the dysfunctions originated before their election.

60. Some of the suggestions made to improve productivity, such as the imposition of unreasonable disposal targets or deadlines, however, have little factual base and appear instead to be based on a lack of trust in the current judges, inevitably affecting the morale of the Tribunal, which has proved by its results that its only objective is to maintain an efficient and fair judicial system.

61. The Tribunal therefore renews its plea that the General Assembly place its trust in the judges to deal with the workload of the Tribunal.

*Status of the half-time judges*

62. The current structure of the Tribunal with an overwhelming majority of half-time judges raises several questions about their status when they are not deployed.

63. When deciding the deployment of half-time judges in accordance with article 5 (2) of the statute of the Dispute Tribunal, the President considers the constraints of the half-time judges owing to their obligations in their domestic courts. The President also organizes meetings to discuss and decide administrative issues, in which all the half-time judges are included even when they are not deployed.

64. In addition, doubt remains as to the status of half-time judges while not deployed. When a half-time judge decides on a judgment during the period of deployment but has not had the time to complete its issuance, the matter may have to be delayed until the judge's following deployment.

65. The half-time judges recall that, even when not deployed, they remain judges of the Tribunal and, while unpaid, they still have the right and duty to vote on any decision taken by the Tribunal. However, they regret that, although they are elected for a seven-year term, they are not considered as filling the conditions of a contributory service of five years or longer upon their retirement for the purposes of the calculation of their benefits under the United Nations Joint Staff Pension Fund.

66. The half-time judges therefore wish to be considered as employed half-time during the entire year even when deployed full-time only up to six months in accordance with article 5 (2) of the statute of the Tribunal. That would qualify them for "a contributory service of five years or longer" for the purposes of the calculation of their retirement benefits at the end of their term.

*Securing the employment rights of judges*

67. The judges respectfully request that the General Assembly clarify their salaries and entitlements in order to guarantee them in clear and certain terms, including for the half-time judges, so that they do not depend on the Secretary-General's interpretation of their entitlements.

68. The judges are concerned that they would lack standing before the Tribunal should they wish to contest an administrative decision concerning their entitlements, benefits or allowances.

69. The Tribunal therefore would respectfully request that the General Assembly amend the status of the judges of the Dispute Tribunal to allow them the possibility to apply before an impartial external Tribunal in defence of their employment rights.

*Challenges faced by the President of the Tribunal*

70. Under the statute of the Dispute Tribunal, the President shall have the authority, inter alia, to monitor the timely delivery of judgments (article 4 (7)). As the figures show, from mid-2019 to the end of 2020, the caseload and the backlog were significantly reduced.

71. Under the statute, the President is also entrusted with deciding on the recusal of judges requested by a party and on the deployment of half-time judges. With the new structure of the Tribunal, that latter function has become much heavier.

72. In addition, on 1 October 2019, the Tribunal adopted a resolution concerning the tenure and responsibilities of its President, which adds some ethical and administrative tasks to the function, such as monitoring progress in the backlog elimination plan and the case disposition plan; monitoring the compliance with the Tribunal's performance indicators; and organizing the annual plenary session and



regular meetings with the judges for consultation on issues affecting the work of the Tribunal. For the reasons explained above, the organization of Tribunal-wide meetings presents a myriad of difficulties and proves to be extremely time-consuming.

73. In sum, this function is challenging and affects the time devoted to the processing of the cases assigned to the judge encumbering the presidency.

74. Inevitably, the President can be elected only from among full-time judges, given that the presidency is a full-time function. The reduction in the number of full-time judges to only three implies that each full-time judge will encumber that function too frequently.

75. Therefore, without any incentive, it is difficult to find candidates for the function of presidency.

### **Acknowledgment**

76. The judges wish to renew their appreciation for the assistance of the Office of Administration of Justice and the work and dedication of the legal and administrative staff of the registries of the Dispute Tribunal.

### **Report of the United Nations Dispute Tribunal on allegations of misconduct and information on incapacity of judges in 2020**

77. Two complaints were filed in early January 2020, as previously mentioned in the 2020 report ([A/75/154](#)). Both complaints were considered to fall outside of the scope of the mechanism for addressing complaints of alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal.

Joëlle Adda  
United Nations Dispute Tribunal President

---