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Administration of justice at the United Nations

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Report of the Internal Justice Council

Summary

The present report of the Internal Justice Council, which is the second 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 on mediation, confidentiality and anonymization, and the necessity of a training programme for new judges. Finally, the Council has addressed the issues of the provision of data related to cases involving racial discrimination and protection against retaliation. As required, the Council has also presented its programme of work for the period 2022–2023.

* A/77/50.



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I. Introduction

1. The General Assembly, in its resolution [61/261](#), established the internal system of administration of justice at the United Nations as an independent, transparent, professionalized, adequately resourced and decentralized system operating in accordance with the relevant rules of international law and the principles of the rule of law and due process, in order to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.
2. In 2008, in its resolution [62/228](#), the General Assembly established the Internal Justice Council to ensure independence, professionalism and accountability in the system of administration of justice. The principal tasks of the Council are selecting judges, drafting a code of conduct for the judges and communicating its views on the implementation of the system of administration of justice. The Council prepares and includes in its annual report to the Assembly, for its approval, a detailed programme of work for each calendar year in accordance with the mandates under relevant Assembly resolutions.
3. The membership of the fourth Internal Justice Council consists of the following: Dennis Byron (Saint Kitts and Nevis), a distinguished jurist nominated by the other four members to be the Chair; Carmen Artigas (Uruguay), a distinguished external jurist nominated by staff; Adama Dieng (Senegal), management representative; Louise Otis (Canada), a distinguished external jurist nominated by management; and Matthew Perkins (United States of America), staff representative.
4. The Internal Justice Council has devoted the current year mainly to the selection of the judges of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal.
5. The Internal Justice Council received 380 applications. After a conformity assessment, the Council retained 90 applications. The Council then prepared a preselection judicial examination, which was sent to 90 candidates for completion. After grading their responses, the Council invited 31 candidates to online or on-site interviews in The Hague. One candidate withdrew his candidacy prior to the interview. After conducting the interviews, the Council selected 18 candidates to be submitted to the General Assembly for its consideration.
6. The Internal Justice Council members have devoted eight weeks to preparing, conducting and grading the judicial examination; shortlisting and interviewing the candidates; and consolidating a final list of recommended candidates.
7. With regard to the second part of its mandate, namely submitting annually its views on the system of administration of justice to the General Assembly, the Council has reviewed the charts regarding the disposal flow for judgments issued by the two-tier Tribunals and the cases and conflicts mediated by the Office of the United Nations Ombudsman and Mediation Services.
8. From 28 March to 1 April 2022, the Council held its plenary session and meetings with stakeholders by videoconference. The Council has interviewed the main stakeholders of the United Nations system of administration of justice, including the Presidents of the Appeals Tribunal and the Dispute Tribunal, the Principal Registrar, the Executive Director of the Office of Administration of Justice, the United Nations Ombudsman and mediators, the Director of the General Legal Division, the Chief of the Office of Staff Legal Assistance, the Director of the Human Resources Services Division, the Assistant Secretary-General for Human Resources, the Director of the Ethics Office, counsel representing the Secretary-General before the Dispute Tribunal in the Secretariat and funds and programmes, the Chief of the Management Evaluation Unit, the Assistant Secretary-General for Internal Oversight

Services and the heads of federations of staff associations, including at headquarters, in field missions and in funds and programmes.

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

10. In previous reports, the views of the Appeals Tribunal and the Dispute Tribunal have been included as annexes. However, as this mandate was not included in the most recent resolution [76/242](#), the Council has incorporated the inputs of the Tribunals in the stakeholder consultation process and the recommendations into the present report.

II. Recommendations

A. Formal system

Judicial and operational efficiency

11. In its previous report ([A/76/124](#)), the Internal Justice Council, in reviewing the formal justice system, pointed out that a dedicated plan and team effort should be undertaken to reduce the backlog of cases pending before the Dispute Tribunal.

12. After reviewing the charts regarding the disposal flow and judgments issued by the two-tier Tribunals, the Internal Justice Council concludes that:

(a) With the combined efforts of all the registries and the Tribunal, the Dispute Tribunal has successfully reduced the backlog of pending cases according to the case disposal plan and implemented a real-time case-tracking dashboard;

(b) The Dispute Tribunal has reduced its backlog of pending cases after one year by more than 30 per cent compared with 2020 and 60 per cent compared with 2019;

(c) The Appeals Tribunal disposed of 122 cases¹ and received 140 cases in 2021.

13. The reduction of the backlog of pending cases without compromising the quality of the judgments rendered in 2021 deserves to be commended.

14. Mediation remains underutilized in the justice system. Special attention should be given to a 12-month pilot project to test the main goal of judicial mediation, which is to avoid unnecessary litigation and reduce costs.

15. Case management discussions should precede hearings in the first instance. This shortens hearings, allows admissions, reduces the number of witnesses and occasionally can even encourage the settlement of all or part of the claims. Other alternative dispute resolution mechanisms, such as judicial settlement conferences, particularly in cases involving unrepresented litigants, have the potential to reduce costs and increase operational efficiency. However, this would require a significant change to matters such as jurisdiction, processes (and, consequently, the Registry's role) and authority. The Council proposes to further study this issue in the context of the proposed programme of work to provide fully developed proposals for consideration.

¹ A case is considered to be disposed of when a judgment has been issued or there has been a withdrawal of the party or abandonment of proceedings.

16. Rule 9.4 of the Staff Regulations and Rules of the United Nations provides that “a temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment”. As pointed out by stakeholders, the practice of providing compensation in lieu of notification to staff members in advance of non-extension of fixed-term appointments may create an unfair situation and may often compromise their access to justice. Such practice should be minimized, and rule 9.4 should be modified to ensure that staff members are notified of the non-extension of fixed-term contracts at least three months before the end of their contract.

17. Furthermore, the Council reiterates its recommendation in 2021 of appointing a dedicated president to each Tribunal, who would be selected by the Council and recommended to the General Assembly, rather than continuing with the current system of a rotating presidency.

18. The President should be a judge of the Tribunal. The President’s appointment should be for seven years, as any other judge. The President would oversee administrative duties directly connected to judicial functions in close collaboration with the Principal Registrar, such as the allocation of cases, due diligence regarding the efficiency and diligence of the Tribunal members, working sessions, and the junction of similar or related recourses. The President of a Tribunal could carry on the effective and real-time judicial administration of the Tribunal while fully respecting the independence of the judges’ authority. It would be within the mandate of the President to modernize existing rules of procedure and practices and to develop new ones to improve the efficiency of the Tribunal.

Confidentiality and anonymization

19. The Tribunals deal with many applications involving private and often sensitive matters that might have an impact on the terms of appointment, such as medical conditions related to disputes about benefits and personal data of the staff member’s children and other family members when discussing dependency benefits and education grants. The negative impacts of making such information public might be many and involve substantially reducing the chances of a staff member being employed, re-employed or promoted by the Organization or elsewhere, causing collateral damage by revealing sensitive personal information and causing embarrassment to children and partners.

20. Furthermore, disciplinary matters such as those involving harassment (both sexual and non-sexual), abuse of authority and other kinds of misconduct have a significant impact on the work relationships between staff members and the Organization. In such cases, the privacy of witnesses and victims must be safeguarded. Therefore, confidentiality is critical to the Organization’s victim-centred approach and to building confidence and trust among staff members in the Organization’s disciplinary and accountability frameworks.

21. The statute of the Dispute Tribunal, in its article 11 (6), provides that the judgments of the Tribunal shall be published while protecting personal data. The same provision can be found in the statute of the Appeals Tribunal, in its article 10 (9). Nevertheless, it has been established jurisprudential praxis that the judgments of both Tribunals are made public, including the names of the applicants and witnesses, whereas anonymity is to be granted in exceptional circumstances only.

22. The tradition of making judgments containing the names of parties, witnesses and third parties public predates the popularization of the Internet and search engines. It is standard for employers to research candidates and other co-workers on search engines, through which the judgments can be easily found. Therefore, it is legitimate

to accept as a premise that putting the names in the public domain does not satisfy the minimum levels of protection of personal data.

23. Since the inception of the internal justice system, national, regional and international approaches to data protection and privacy have changed significantly. It is time for the internal justice system to follow this modernization and mitigate the unnecessary risk of damage due to names being made public.

Training programme for new judges

24. In the period 2022–2023, the appointment of five Appeals Tribunal judges, two full-time Dispute Tribunal judges and one half-time Dispute Tribunal judge should be coordinated with the development of a robust and efficient five-day training programme for the selected judges prior to the commencement of their judicial duties.

25. First, a three-day joint programme should be designed for Dispute Tribunal and Appeals Tribunal judges concerning: (a) the general rules of international administrative law to develop knowledge of the Organization's features; and (b) the specific rules of international labour law regarding appointments, benefits, entitlements, disciplinary matters, protection against retaliation, renewal of contracts, leave without pay and remedies.

26. A two-day programme designed for each Tribunal should then be organized. For Dispute Tribunal judges, this would include specific rules on case management, the burden of evidence and the administration of proof. For Appeals Tribunal judges, it would focus on the drafting of appeal judgments.

27. The training programmes can be offered via videoconferencing. The training should be conducted by a team of academics and judges experienced in international labour and administrative law.

Recommendation 1

The Council recommends notifying staff members of the non-extension of fixed-term appointments at least three months before the end of their contracts.

Recommendation 2

The Council recommends the appointment of a dedicated President for the United Nations Appeals Tribunal and the United Nations Dispute Tribunal, who would be preselected by the Council and recommended to the General Assembly for selection.

Recommendation 3

The Council recommends the anonymization of the names of applicants, witnesses and third parties in the versions of judgments that are published on the website of the internal justice system.

Recommendation 4

The Council recommends the creation of a training programme for new judges.

B. Informal system

Mediation and data on racism and cases involving racial discrimination

28. In 2020, the Office of the United Nations Ombudsman and Mediation Services opened a total of 1,880 cases across its eight regional offices, including 96

mediations. Therefore, only 5 per cent of the files opened at the Office involved mediation services. The number of mediation cases opened in 2020 was 14 per cent lower than in the previous reporting period. Mediation services are on a course to the bottom at a moment when the international community aims to increase the use of mediation to promote judicial efficiency, solve conflicts and reduce the human and financial costs attached to unresolved conflicts and litigations.

29. The establishment of mediation services for the 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 justice system, described its 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. The informal system was designed to mediate cases on a voluntary basis.

30. In its resolution [75/248](#), the General Assembly reaffirmed that the informal resolution of conflicts was a crucial component of the system of administration of justice and emphasized that all possible use should be made of the informal system to avoid unnecessary litigation.

31. The role of mediation continues to be underutilized. The Council notes that the General Assembly has already tasked the Secretary-General with including measures to increase the utilization of those services. Accordingly, the Council will defer further recommendations in this area, pending the submission of such measures, and includes further study of the issue in the proposed programme of work.

32. In this context, the Council notes that the General Assembly has repeatedly reiterated the need for the Office of the United Nations Ombudsman and Mediation Services to report detailed information on the efforts to address racism and the cases involving racial discrimination in the reports of the Secretary-General on the administration of justice at the United Nations and on the activities of the Office, most recently in resolution [75/248](#). The matter was extensively discussed during the stakeholder consultations, and the Council noted that the Office did not intend to provide data on such cases. The Council received a number of justifications for this non-responsiveness but did not find the objections persuasive, as they would apply equally well to the existing data-reporting structure. Therefore, the Council reiterates the clear need for such data and underscores the repeated mandates for the Office to provide data related to the number of cases of racism received.

33. The Council notes that further efforts and proposals to strengthen mediation are already under way. Therefore, an analysis of the outcomes of those efforts, and further recommendations in this regard, will be proposed in the Council's programme of work in 2023.

Recommendation 5

Data related to cases involving racial discrimination should be provided by the Office of the United Nations Ombudsman and Mediation Services.

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

Racial discrimination

34. The Council notes that extensive efforts are under way to address the issue of racism in the Organization. Notably, the Secretary-General has recently released the strategic action plan of the Secretary-General's Task Force on Addressing Racism and

Promoting Dignity for All in the United Nations Secretariat. The Council shares the view of the Secretary-General that this will likely require changes to the internal justice processes and a review of Secretary-General's bulletin [ST/SGB/2019/8](#) to address racism and racial discrimination and promote diversity, equality, inclusion and equity. Accordingly, the Council believes that issuing specific recommendations while those efforts are under way would be premature. Nevertheless, the Council notes the intention to undertake a sample review of past allegations of racism to derive lessons learned, inform the administration of future cases and accountability measures, and address retaliation. The Council looks forward to continuous engagement with all stakeholders on this issue and future recommendations on enhancements to the justice system in this regard.

Protection against retaliation

35. Survey mechanisms have indicated that concerns regarding retaliation are a persistent problem facing the Organization. With regard to sexual harassment and racism, fear of retaliation against witnesses has been reported by 16.7 per cent and 37 per cent of survey respondents, respectively. In addition, only 55.7 per cent of respondents were familiar with the whistle-blowing policy (the non-retaliation policy for reporting misconduct). Furthermore, orders of protection against retaliation for witnesses appear to be quite rare in the formal system.

36. The Council notes that, at the time of the issuance of the updated policy on addressing discrimination, harassment, including sexual harassment, and abuse of authority ([ST/SGB/2019/8](#)), it was also determined that a review of the administration instruction on unsatisfactory conduct, investigations and the disciplinary process ([ST/AI/2017/1](#)) should be carried out in 2019. The review remains pending. The Council was also informed that a review of Secretary-General's bulletin [ST/SGB/2017/2/Rev.1](#) on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations, was imminent. Therefore, the Council will defer specific recommendations on these points until pertinent stakeholders have had the opportunity to undertake their consultations.

Recommendation 6

With due regard to the specific mandates of the Fifth and Sixth Committees, the Council recommends that the efforts of the Secretary-General to conduct a review of past allegations of racism should be suitably resourced.

Recommendation 7

In conjunction with the revision of the relevant policies, additional steps to raise the awareness of all categories of personnel on the existence and substance of the whistle-blowing policy and protections against retaliation should be undertaken. Integration into the next version of training programmes, such as the "United to respect" toolkit, is recommended for consideration.

III. Programme of work for the period 2022–2023

37. Given the scope of the efforts to fill several judicial vacancies in 2022 and the efforts under way to address elements of the programme of work as referenced in paragraph 49 of its previous report, the Council proposes to defer the outstanding elements to its report to the General Assembly at its seventy-eighth session for operational expediency.

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

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

(a) Developing a draft training programme for judges that contains a solid component of judicial mediation;

(b) Carrying out further consultations with the broadest possible range of stakeholders in order to report to the General Assembly on how the widespread choice of compensation over reinstatement may affect the jurisdiction of the Tribunals and the achievement of the main goals of the system of administration of justice, including accountability;

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

(d) Remaining seized of the issue of strengthening the mediation approach and providing further recommendations at the subsequent session.

40. The Council has made the best possible use of virtual meetings during the past two years. Although this has proved to be efficient and cost-effective, the past practice of on-site meetings allowed the Council to interact with stakeholders fully, securing extended exchanges and more meaningful feedback. Therefore, with reference to the unique operational challenges in offices away from Headquarters, the Council proposes to hold an additional session in a regional hub hosting funds and programmes (preferably in a French- or Spanish-speaking environment), which is an area where structural and legal mechanisms require further understanding and assessment in connection with the implementation of the internal justice system.

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

IV. Acknowledgements

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

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

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