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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 fourth and last report of the current Council, focuses on the judicial and operational efficiency of the system of administration of justice at the United Nations and draws on relevant resolutions of the General Assembly and consultations with stakeholders. To further improve the system, the Council makes recommendations regarding the functioning and authority of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, a pilot programme on judicial mediation, and 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, as well as overarching issues related to both the formal and informal systems.

* [A/79/50](#).



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I. Introduction

1. The General Assembly, in its resolution [61/261](#), established the 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.
3. The membership of the fourth Internal Justice Council consists of the following: Dennis Byron (Saint Kitts and Nevis), a distinguished jurist nominated by the other four members to be the Chair; Carmen Artigas (Uruguay), a distinguished external jurist nominated by staff; Adama Dieng (Senegal), management representative; Louise Otis (Canada), a distinguished external jurist nominated by management; and Matthew Perkins (United States of America), staff representative.
4. With regard to its mandate to provide annually to the General Assembly its views on the implementation of the system of administration of justice, the Council has reviewed the written statements submitted by the following stakeholders: United Nations Appeals Tribunal, United Nations Dispute Tribunal, Principal Registrar, Chief of the Office of Staff Legal Assistance, United Nations Ombudsman, Director of the General Legal Division of the Office of Legal Affairs, Director of the Human Resources Services Division of the Department of Operational Support, Assistant Secretary-General for Human Resources, Chief of the Management Advice and Evaluation Section, Assistant Secretary-General for Internal Oversight Services, Victims' Rights Advocate, counsel representing the Secretary-General before the Dispute Tribunal in the Secretariat and funds and programmes, and external counsel representing staff members before the Tribunals.
5. The Council has also conducted interviews with members of the Office of Staff Legal Assistance, representatives of the United Nations staff unions and federations, the Victims' Rights Advocate, and the Special Coordinator on Improving the United Nations Response to Sexual Exploitation and Abuse.
6. In preparing its fourth and final report on the system of administration of justice, the current Council relied on relevant General Assembly resolutions and information received from the various stakeholders in the system. The present report marks the conclusion of the current Council's mandate, which will end in November 2024.
7. 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 resolutions [77/260](#) and [78/248](#), the Council has incorporated the Tribunals' inputs to the stakeholder consultation process and the recommendations into the present report.

II. Recommendations

A. Formal system

Judicial and operational efficiency

8. The Council underlines that, notwithstanding the financial challenges encountered by the Organization, efficiency in the disposal of cases by the two Tribunals was maintained throughout 2023.

9. The Dispute Tribunal further reduced its pending caseload in 2023 to 116 cases, in line with the 15 per cent reduction in its case intake compared with the previous year. Nevertheless, the Council observes with concern that, by the end of 2023, the number of cases pending for over 400 days had increased by 55 per cent since 31 December 2022, to a total of 14 cases.

10. During 2023, the Dispute Tribunal operated with three full-time and six half-time judges, although three judges ended their terms and three newly appointed judges began their terms in July 2023: the full-time judges in Nairobi and Geneva, as well as one half-time judge. In addition, the registries experienced significant staffing transitions and shortages. Notably, the Registrar in Nairobi retired in August 2023, and, owing to the Organization's liquidity crisis, that post has remained unfilled. Consequently, the most senior legal officer in the Nairobi Registry assumed the role of Officer-in-Charge from August to October 2023, after which the Registrar in Geneva took over for the remainder of the year. Furthermore, a P-3 Legal Officer post in the Geneva Registry became vacant in November 2023 and remained unfilled as at the end of June 2024. Similarly, in the New York Registry, one Staff Assistant post has remained vacant since March 2023.

11. These staffing shortages led to significant disruptions, necessitating extraordinary efforts and dedication from the staff to manage an increased workload while striving to maintain efficiency levels comparable to those of previous years.

12. The Appeals Tribunal began 2023 with 98 pending cases and received 116 new cases during the course of the year. The Tribunal disposed of a total of 110 cases in 2023, and 105 cases remained pending on 31 December 2023.

13. On 30 June 2023, the terms of four judges of the Appeals Tribunal ended, and four new judges were appointed; thus, over half of the Tribunal's bench was renewed. The Tribunal also faced challenges due to the Organization's liquidity crisis; notably, one Staff Assistant post in the Registry has remained unfilled since July 2023 following the departure of the incumbent.

14. The ongoing personnel shortages represent a clear deviation from the standards set by the General Assembly in resolution [61/261](#). An adequately resourced system of administration of justice is vital to safeguard the rights and obligations of staff members and ensure the accountability of managers and staff members alike. The system is designed to operate in strict adherence to international law and the principles of the rule of law and due process. Unfortunately, the current underresourcing and the resulting operational challenges directly undermine these foundational principles, calling into question the integrity of the system as it stands.

Appointment of the Presidents of the Dispute Tribunal and the Appeals Tribunal

15. The Council reiterates again that the time has come to appoint a President, for a non-renewable seven-year term, to each Tribunal, replacing the current system of rotating Presidents elected by their peers. The Presidents should be elected by the General Assembly, upon the recommendation of the Council.

16. The role of Tribunal President is pivotal in establishing and maintaining the judiciary's overarching philosophies and methodologies. A longer term of a President ensures a stable judicial environment by preserving consistency in decision-making and judicial interpretation over time. Such consistency is fundamental not only to upholding the principles of fairness and predictability in legal processes but also to maintaining confidence in the Tribunal's ability to administer justice impartially and efficiently. Continuity in leadership helps to mitigate abrupt shifts in judicial approaches that could disrupt the legal landscape, thereby fostering a more stable environment that benefits litigants and supports the systemic integrity of the Tribunal.

17. With a longer term, the Presidents of the Dispute Tribunal and the Appeals Tribunal would accumulate significant expertise in the nuances of the Tribunals' operations and the complex legal issues they handle. This deep understanding would allow them to make judicious decisions and provide valuable guidance to other judges, in particular in complex or unprecedented cases. The accumulated knowledge and experience would not only enhance the quality of judicial decisions but also foster a mentoring environment in which newer judges could more effectively develop their jurisprudential skills with regard to the legal framework of the United Nations, under the guidance of an experienced President.

18. The Tribunal Presidents, furthermore, play a critical role in overseeing the performance of administrative duties directly tied to judicial functions. This includes setting performance targets for judges, which is necessary for maintaining high standards of judicial conduct and efficiency. The ability to set and monitor these targets over a long period allows for consistent expectations and the achievement of performance goals, contributing significantly to the overall productivity of the Tribunal.

19. The appointment of the Presidents of the Dispute Tribunal and the Appeals Tribunal by the General Assembly, upon the recommendation of the Council rather than by fellow judges, would enhance judicial impartiality and independence by distancing the role of President from internal biases and conflicts of interest. This method would ensure broader organizational oversight and align the Tribunals' leadership with overarching objectives, thereby increasing accountability. A rigorous selection process by the Council would ensure that the chosen candidates meet the high standards necessary for effective judiciary management.

20. Above all, the President of each Tribunal bears critical responsibilities, serving as the initial reviewer who determines whether complaints against judges warrant further action under the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and 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. In addition, in accordance with paragraph 15 of the mechanism, the President appoints a panel of experts to investigate allegations of misconduct; in accordance with paragraph 16, the President establishes the terms of reference for the panel; and, in accordance with paragraph 19 (b) and (d), in cases where the majority of the judges are of the opinion that the complaint is well founded, whether or not the removal of the judge concerned is warranted, the President has the authority to take such corrective action as he or she deems appropriate.

21. On one occasion in the past, a consolidated complaint was filed against a judge. The complaint was based on clearly abusive conduct of the judge. The complaint was rejected, the case was closed and there were no consequences for the judge. The judge's conduct created challenges and inefficiencies.

22. Given the substantial powers vested in the President, maintaining complete independence and impartiality is essential. A system in which the President is elected

by fellow judges on a rotating annual basis does not provide the President with the necessary independence and authority to make unbiased decisions, in particular in sensitive cases involving misconduct among judges. In most international administrative tribunals, the President of the tribunal is appointed directly by the Organization.

23. The Council stresses that the proposed changes would be budget-neutral, increasing neither the Tribunals' costs nor the number of judges. Extending the tenure of Presidents, rather than rotating the position, and modifying the selection process would effectively leverage existing resources without necessitating additional funding or enlarging the Tribunals' structure.

Measures against unnecessary, vexatious and/or frivolous litigation

24. In accordance with paragraph 11 of the report of the Advisory Committee on Administrative and Budgetary Questions on administration of justice at the United Nations and activities of the Office of the United Nations Ombudsman and Mediation Services (A/78/580), regarding existing tools and mechanisms aimed at minimizing the risk of unnecessary, vexatious, and/or frivolous litigation, the Council has reviewed, in consultation with the stakeholders, the frequency of such cases and their impact on the Tribunals. The Council has been informed that the Tribunals do not routinely encounter applications and motions that would justify extraordinary measures. Furthermore, it is important to differentiate between unnecessary, vexatious and/or frivolous litigation and non-receivable applications, which encompass a broader range of issues and generally do not fall into the former category.

25. The Council emphasizes that existing mechanisms, most notably the Tribunals' authority to award costs against the applicant or appellant for abuse of process and the possibility of filing motions for summary judgment, adequately address such cases. For the Tribunals, these mechanisms are crucial and effective tools that, when applied judiciously, significantly mitigate the impact and frequency of unnecessary, vexatious and/or frivolous litigation.

26. The Council recognizes a prevailing hesitancy among many staff members to engage with the system of administration of justice. The imposition of additional measures to curtail unnecessary litigation could inadvertently exacerbate this hesitancy, potentially compromising access to justice and diminishing procedural fairness. Consequently, the Council does not endorse the establishment of any additional measures to prevent the risk of unnecessary, vexatious and/or frivolous litigation.

27. However, the Council notes the importance of ensuring that the existing measures remain effective and enforceable. As highlighted in Judgment No. 2023-UNAT-1379, *Leopold Camille Yodjeu Ntemde v. Secretary-General of the United Nations*, the Appeals Tribunal dealt with multiple appeals and numerous filings by an individual who had no standing in the system. The Appeals Tribunal's decision in Order No. 496 to award costs against Mr. Ntemde for his vexatious filings was appropriate; however, the subsequent handling of the payment highlighted deficiencies within the Organization's accounting system, which could not process payments from non-staff members.

28. The Council, therefore, recommends that the Organization be mandated to enhance its capacity to enforce the Tribunals' decisions on cost awards in cases involving unfounded or frivolous applications, to ensure compliance with article 10 (6) of the statute of the United Nations Dispute Tribunal and article 9 (2) of the statute of the United Nations Appeals Tribunal. Such enhancement will support the integrity and efficiency of the Tribunals, thereby safeguarding against the

undermining of procedural fairness and ensuring that the administration of justice remains robust and unimpeded.

Pilot programme on judicial mediation

29. The Council, acknowledging the successful implementation of judicial mediation in various national and some international jurisdictions, hereby reiterates its recommendation from 2021 and 2023 for the development and implementation of an 18-month pilot programme focused on judicial mediation within the system of administration of justice.

30. **Training and voluntary participation.** Judges participating in the pilot programme would complete a mandatory three-day training course designed to equip them with essential mediation skills. This training would ensure that judges are well prepared to conduct mediations. Serving in the role of mediator would be strictly voluntary; this would ensure that only interested and committed judges are involved, which is critical for the integrity and success of the mediation process.

31. **Efficacy and resolution rates.** Statistical evidence from national tribunals that have adopted judicial mediation shows promising outcomes, with approximately 70 per cent of all pending cases being resolved in a single session, which typically lasts four to six hours. This efficiency is largely due to the moral authority of the tribunal, which significantly influences the mediation process.

32. **Procedural safeguards.** To maintain the impartiality of the Tribunals and uphold the integrity of the judicial process, any judge who acted as a mediator and did not reach a resolution in a case would be recused from hearing the same case as a member of the Tribunal panel. In addition, the mediation process would be consensual in nature and all proceedings would be confidential, which would ensure that the mediation discussions were not disclosed or used in subsequent legal processes.

33. **Cost efficiency.** A significant advantage of integrating judicial mediation into the system of administration of justice is the potential for substantial cost reduction. Mediation is in essence less procedurally intensive and time-consuming than traditional court proceedings and would therefore reduce the overall expenditure on legal processes. The streamlined approach of mediation reduces the need for extensive legal documentation and lengthy court sessions, and thus reduces the associated administrative and operational costs. In addition, the reduction in the duration and complexity of cases handled through traditional judicial means can lead to decreased workloads and less strain on judicial resources, further contributing to financial efficiency, prudent resource management and budgetary accountability.

Reinstatement versus compensation

34. Reinstatement is widely recognized as the most equitable remedy for wrongful terminations, as it aims to restore the staff member to the status quo ante. However, owing to various practical challenges, the default administrative practice is to pay compensation. This approach, while practical, may not always meet the standards of justice owing to the incomplete redressal of staff members' grievances.

35. Article 10 (5) (a) of the statute of the United Nations Dispute Tribunal states that "the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph". Under article 10 (5) (b), the Dispute Tribunal may order compensation for harm, which shall normally not exceed the equivalent of two years' net base salary of the applicant. It may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and providing

the reasons for that decision. Nonetheless, the Council emphasizes that this level of compensation may be insufficient in instances in which the staff member struggles to secure comparable employment after being wrongfully terminated. In such situations, the inadequacy of the compensation can exacerbate the injustice suffered by the affected staff member.

36. In accordance with the Council's prior recommendations, the present report underscores the critical need to restrict the use of compensation in lieu of reinstatement, owing to its potentially detrimental and irreversible effects on wrongfully terminated staff members. The option of compensation in lieu should not become the default means of resolution for all cases of wrongful termination. The alleged challenges in implementing reinstatement should not preclude its consideration, in particular when it is a remedy explicitly provided for in the statute of the United Nations Dispute Tribunal. The mere existence of difficulties in implementation does not justify a blanket avoidance of reinstatement, which remains a fundamental aspect of justice under the legal framework of the United Nations.

37. An amendment to article 10 (5) of the statute of the United Nations Dispute Tribunal is, therefore, essential to allow the Tribunal to order reinstatement in cases in which the respondent cannot provide conclusive evidence that reinstatement would require such substantial efforts from the Organization that it would not be feasible in the specific case at hand. The purpose of such an amendment would be to establish a rigorous, evidence-based decision-making process in instances in which reinstatement is deemed unfeasible. Accordingly, each decision to opt for compensation over reinstatement would need to be thoroughly justified, maintaining transparency and adherence to the principles of justice.

Mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

38. In accordance with 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 Presidents of the Dispute Tribunal and the Appeals Tribunal shall submit an annual report to the General Assembly on the disposition of complaints through the Internal Justice Council. A review of historical data reveals that compliance with these reporting standards has been inconsistent since their establishment by the General Assembly in its resolution [70/112](#).

39. The inconsistent reporting by the judges of both the Dispute Tribunal and the Appeals Tribunal undermines the transparency and accountability that the mechanism is intended to achieve. Therefore, it is essential that the General Assembly reassert the importance of these standards, mandating the Tribunals to consistently meet these reporting obligations to uphold the integrity of the system of administration of justice.

Recommendation 1

The Council recommends that, to address the ongoing personnel shortages, which deviate from the standards established by the General Assembly in resolution [61/261](#), the system of administration of justice should be exempt from certain budgetary constraints. This exemption should enable the system to fill the necessary posts required to maintain its proper functioning, ensuring that it can continue to operate in strict adherence to international law and the principles of the rule of law and due process.

Recommendation 2

The Council recommends that the General Assembly consider amending article 4 (7) of the statute of the United Nations Dispute Tribunal and article 1 of the rules of procedure of the United Nations Dispute Tribunal, along with article 3 (7) of the statute of the United Nations Appeals Tribunal and article 1 of the rules of procedure of the United Nations Appeals Tribunal. The amendments should aim to establish a new framework wherein the President of each Tribunal is appointed by the Assembly, based on the Council's recommendation, for a non-renewable term of seven years, without increasing the size of the Tribunals.

Recommendation 3

The Council recommends that the Organization be mandated to enhance its capacity to enforce the Tribunals' decisions on cost awards in cases involving unfounded or frivolous applications, to ensure compliance with article 10 (6) of the statute of the United Nations Dispute Tribunal and article 9 (2) of the statute of the United Nations Appeals Tribunal.

Recommendation 4

The Council recommends the initiation of an 18-month pilot programme on judicial mediation, led by the Dispute Tribunal and the Appeals Tribunal, with support from the Internal Justice Council and the Office of Administration of Justice, to seamlessly integrate judicial mediation into the formal justice system, thereby enhancing both efficiency and cost-effectiveness.

Recommendation 5

The Council recommends that the Tribunals be mandated to assess and, where feasible, order reinstatement in appropriate cases, contingent upon the respondent's inability to provide conclusive evidence that reinstatement would require such substantial efforts from the Organization that it would not be feasible in the specific case at hand.

Recommendation 6

The Council recommends that the Tribunals be mandated to comply with the reporting standards established in 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, reporting annually to the General Assembly on the disposition of complaints through the Internal Justice Council.

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

40. The Council commends the Office of the United Nations Ombudsman and Mediation Services for its proactive dissemination of communications and the "Informal First Champions" toolkit to all heads of entity, with the aim of encouraging informal means of conflict resolution, including mediation. The Council supports the continuation of such initiatives, recognizing their positive impact on organizational efficiency and on work relations between the staff and the Organization and between individual personnel.

41. The Council, with reference to the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/78/170), alongside the 2023 statistical data provided, notes a commendable increase in cases handled by the Office, from 1,560 in 2022 to 2,163 in 2023.

42. Despite this increase, the number of mediation requests addressed by the Office remains comparatively low, at only 100 in 2022 and 124 in 2023, which is concerning given the size and scope of the Organization.

43. In addition, in 2023, out of the total number of cases scheduled to be brought before the Dispute Tribunal, 10 were settled through informal negotiations between the parties and their counsel and 5 through formal mediation. This demonstrates the underutilization of mediation.

44. The Council emphasizes the need for enhanced utilization of mediation to expedite and ameliorate the conflict resolution process within the Organization. The Council considers that the current operational structure of the Office of the United Nations Ombudsman and Mediation Services may be affecting its efficiency and effectiveness in fostering mediation.

45. There is an inherent incompatibility between the role of an ombudsman and the role of a mediator that affects credibility and reliability in mediation services. The two roles, while both aimed at conflict resolution, require different approaches, and are perceived differently in an organizational context. An ombudsman typically investigates complaints and makes recommendations based on his or her findings, often requiring a high level of transparency and accountability to the complainants. In contrast, mediation requires confidentiality and neutrality and is focused on facilitating a mutually acceptable resolution between disputing parties without the issuance of judgments or the enforcement of accountability. This duality can create conflicts of interest and reduce the effectiveness of both functions when they are housed within the same office.

46. To enhance both impartiality and effectiveness, the Council respectfully reiterates its recommendation from 2021 that the Mediation Services be established as an independent office, separate from existing institutional structures. This approach would be aligned with prevailing international trends observed in comparable organizations, wherein mediation services are structurally independent from ombudsman offices. Such separation not only elevates the importance of mediation but also serves to mitigate litigation costs effectively.

47. The Council further acknowledges the potential advantages of establishing a panel of on-call mediators for an independent office, as opposed to continuing to engage full-time staff members. This would ensure immediate availability of mediators and responsiveness to emerging conflicts, thereby facilitating timely and effective resolution. Such a panel would provide a diverse range of expertise and mediation styles, allowing for approaches that are tailored to the specific nuances of each dispute.

48. Furthermore, using external mediators would enhance the perceived neutrality of the mediation process, increasing trust among parties and potentially leading to higher resolution rates. This set-up would also promote flexibility and scalability, allowing the Organization to handle fluctuations in dispute volume without the fixed costs associated with full-time staff. Overall, a panel of on-call mediators administered by an independent office would contribute to a more dynamic, efficient and cost-effective informal dispute resolution system within the Organization.

Recommendation 7

The Council recommends that the General Assembly consider establishing an independent Mediation Office, distinct from the Office of the United Nations Ombudsman and Mediation Services, equipped with a panel of on-call experts. By focusing exclusively on mediation, this independent office would efficiently manage and resolve conflicts, ensuring impartiality and promoting the best interests of both staff and the Organization.

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

49. Further to item (b) of the Council's programme of work for the period 2023–2024 (A/78/121, para. 57), stakeholders have provided updates on the reviews of protection against retaliation. In the context of the ongoing consultations and reviews, the Council is of the view that it would not be appropriate to propose specific recommendations for the consideration of Member States at this time.

50. The Council takes note of the agreements reached between staff representatives and the Secretary-General and looks forward to the promulgation of updated administrative issuances on this theme. In that regard, the Council supports efforts to revise the scope of protection against retaliation in cases of institutional whistleblowing and recommends that retaliation in the context of prohibited conduct be dealt with under the framework set out in the Secretary-General's bulletin on addressing discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2019/8). The Council also notes that retaliation may rise to the level of misconduct in accordance with the administrative instruction on unsatisfactory conduct, investigations and the disciplinary process (ST/AI/2017/1), or if it amounts to harassment or abuse of authority. This approach to retaliation, together with the related agreements on the role of the Ethics Office, notification procedures and conflicts of interest, is likely to reduce fear of retaliation in the justice system.

51. On item (c) of the Council's programme of work, namely, providing recommendations to reduce the number of unfounded applications, the Council benefited from several detailed stakeholder submissions. On examination of the matter, it has emerged that such a diversity of views exists on this important topic that further consensus-building and discussion are needed before the Council makes specific recommendations for the consideration of Member States. The Council therefore recommends that the matter continue to be monitored by the next Council, subject to the determination of the programme of work.

III. Acknowledgements

52. 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.

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

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