



4 October 2022

Dear Secretary-General,

The undersigned Presidents of all the United Nations Secretariat Staff Unions and Associations represented at the Staff Management Committee (SMC) wish to place on record our deepest alarm and firm objection to the narrative and proposed amendment to the Statute of the Dispute Tribunal contained in paras. 121-128 of report [A/77/156](#) on Administration of Justice at the United Nations. Our objections are both of a procedural and substantive nature.

In terms of process, while the UNDT is empowered to convey their own proposals directly to the General Assembly, proposals from the Secretary-General in the area of Administration of Justice remain subject to the mandate of prior consultation. To introduce a proposed amendment to the Statute of the Dispute Tribunal into a report to the General Assembly without prior consultation with the Staff Unions is a direct breach of Article VIII of the Staff Regulations and Rules¹ and of [ST/SGB/2011/6](#) on the Staff-Management Committee². It is beyond debate that matters pertaining to the integrity, impartiality, and credibility of investigations of misconduct and due process in disciplinary proceedings are issues that fall under the scope of Article VIII. Likewise, proposed changes to the normative underpinning of the system of administration of justice should have been reviewed by the Internal Justice Council prior to their submission to the General Assembly, which to our knowledge was not done in due form. Thus, the General Assembly now has before it an *ex parte* amendment heavily biased in your favour as Respondent to Tribunal cases, introduced in a report that you control in your capacity as Chief Administrative Officer of the organization. Absent the checks and balances that would come with prior consultation with the Administration of Justice system's various stakeholders, the conflict of interest is self-evident.

In this regard, we wish to bring to your attention that the SMC Staff Unions explicitly requested a briefing from our Management counterparts in the SMC Working Group on Administration of Justice on any normative initiatives that were being considered on your behalf for inclusion in the Administration of Justice report to the 77th Session. A meeting was held on 29 June 2022, timed intentionally so that Management representatives would have a clear sense of the elements expected to be contained in the Administration of Justice report. However, at that meeting no mention was made by management representatives of any initiative on the part of the Secretary-General (see meeting minutes attached). While we have no reason to suspect our counterparts on the SMC WG of prevarication, the fact remains that Management breached its obligations to inform us or consult on proposed changes to the normative framework, whether due to

¹ Staff Regulation 8.1 (a): The Secretary-General shall establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies; Staff Rule 8.1 (f): The staff representative bodies shall be entitled to effective participation, through their duly elected executive committees, in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, and shall be entitled to make proposals to the Secretary-General on behalf of the staff;

² ST/STB/2011/6 Sect. 1.2: The Staff-Management Committee shall identify, examine and resolve issues through consensus relating to staff welfare, in particular such issues as conditions of work, general conditions of life and other personnel policies, as provided for in staff regulation 8.1(a).;

ST/STB/2011/6 Sect. 1.2: 1.4: [...] In all their negotiations, the Staff-Management Committee participants shall observe the highest standards of integrity, which includes probity, impartiality, fairness, honesty and truthfulness.

rushed timing or discoordination between the various offices. The Administration must assume responsibility for this breach, which we are obligated to bring to the attention of the General Assembly, as the report is already in the public domain.

On the substance of the issue, please be assured that the Staff Unions are fully supportive of a zero-tolerance policy against sexual harassment, sexual abuse and other forms of grave misconduct. We acknowledge and are personally grateful to you and your senior management team for the firm stance you have taken on various recent cases, including some at the highest level. However, a strict response to misconduct does not exempt the organization from ensuring the integrity of investigative and disciplinary procedures and from guaranteeing due process to the alleged perpetrator. None of us at the UN should need reminding of these principles, including the fact that integrity and accountability require being open to independent external scrutiny.

The Staff Unions are grateful to the Appeals Tribunal judges for setting out, in paras 50 – 68 of [2022-UNAT-1187](#), a clear, articulate and comprehensive model of evidentiary standards and applicable due process in the context of the United Nations internal justice system, presenting key concepts in a way that is sound and consistent with the existing normative framework, namely the Tribunals' Statutes and Rules of Procedure. We hope that these paragraphs will serve to guide a proper and credible administration of justice on disciplinary matters under the Tribunals' purview for years to come. By the same token, the Staff Unions are alarmed and disappointed by the Administrations defensive response to this constructive development of jurisprudence.

Fine-tuning our young internal justice system through jurisprudence is appropriate and necessary. The employment relationship between the United Nations and its staff is unique in its depth and complexity. For the duration of our careers, staff become wholly reliant on our employer not only for our income, but also for residency status, healthcare and health insurance, children's education, physical safety and protection, amongst others. We build a reputation around the expertise we develop within the system, based on skills that are not always transferrable outside the UN. On the other hand, the UN's immunities imply that the organisation takes it upon itself to investigate forms of misconduct that, under any national jurisdiction, would be referred to the criminal justice authorities and investigated according to criminal standards. We find the UNAT's analysis of our *sui generis* context to be accurate and fully pertinent. Whilst acknowledging that "disciplinary cases are not criminal, and liberty is not usually at stake"³, the UNAT recognises that "a judicial or quasi-judicial finding that a person has committed sexual misconduct often will have consequences far worse than a criminal finding. In the present day, such a finding may very well result in the staff member becoming unemployable and the destruction of his or her reputation, financial security, standing and family life"⁴ and therefore demands that ensuing administrative sanctions be substantiated on the basis of a higher evidentiary standard and due process guarantees. The Staff Unions fully concur with the UNAT's clear-sighted conclusions in this area and regret that our Secretary-General seems willing to disregard these concerns for the sake of expediency.

The alternative scenario to that proposed by the UNAT is one where the OIOS is exempted from any form of external scrutiny or review of their decisions by the Tribunals. As stated in 2022-UNAT-1187, paras 53 and 54:

³ 2022-UNAT-1187, para. 58.

⁴ 2022-UNAT-1187, para. 57.

53. In disciplinary cases, the UNDT is required to consider the evidence adduced and to determine whether the facts on which the sanction is based have been established on clear and convincing evidence, whether the established facts qualify as misconduct under the Staff Regulations and Rules, and whether the sanction is proportionate to the offence.

54. The first requirement obliges the UNDT to engage in a process of fact-finding. The purpose of the fact-finding to be undertaken by the UNDT is to obtain detailed knowledge of the relevant facts underlying a contested administrative decision in order to exercise effectively the function of discipline in the workplace.

The seven brief paragraphs in your report fail to explain how this is to be achieved if the UNDT is barred from engaging in fact-finding and is compelled to accept the OIOS indictment at face value. As staff members and staff representatives we cannot endorse an initiative aimed at curtailing the judicial scrutiny of adherence to due process in the critical area of disciplinary proceedings.

Sir,

Those who advised you on the drafting of paragraphs 121-128 of report [A/77/156](#) seem to believe that preserving the organization's reputation can only be achieved by shielding the OIOS and the disciplinary process from independent scrutiny, and have encouraged you to bypass mandatory consultation to achieve that goal. The Staff Unions and the constituents we represent believe the opposite to be true. The organization's credibility is best served by demonstrating that we are confident enough in the integrity of our disciplinary process that we do not shy away from scrutiny. If weakness in the process are identified, as our own practical experience indicates and recent Tribunal findings confirm, the correct response should be to engage in an honest, in-depth analysis of the flaws with a view to correcting them; not to shut down the criticism by restricting independent oversight.

We therefore respectfully request that you withdraw your proposal under para. 128 of A/77/156 and instruct all relevant stakeholders to engage in a serious analysis of the underlying issues identified by the Tribunals. The Staff Unions are available to engage in consultation on all matters related to the integrity, effectiveness and credibility of disciplinary proceedings, through the channels established under Chapter VIII of the Staff Regulations and Rules, as well as in a manner that is inclusive of all non-Secretariat organizations that also come under UNDT/UNAT jurisdiction⁵. Our shared aim should be to achieve the fairest, most consistent and credible mechanism possible to root out misconduct from our organization. Such a system should be strong enough to withstand judicial oversight – should indeed welcome it.

Yours respectfully,

Aitor Arauz, President, United Nations Staff Union (NY)
Mahamadou Nassirou Ba, President, UNECA Staff Union
Stefan Brezina, President, UNOV /UNODC Staff Council
Saranya Chuenvichitr, Chairperson, ESCAP Staff Council
Mona Fattah, Chairperson, ESCWA Staff Council
Nathalie Meynet, Chairperson, Global Staff Council, UNHCR

Pamela Odhiambo, President, Nairobi Staff Union
Noma Owens-Ibie, Chairperson, UNICEF Global Staff Assoc.
Mark Polane, President, United Nations Field Staff Union
Ian Richards, President, UNOG Staff Council
Pamela Villalobos, President, ECLAC Staff Council

⁵ Presidents of the three Staff Federations are copied to this letter for information and have expressed their availability to further discuss these issues.