



REVIEW OF THE INTERNAL PRE-TRIBUNAL STAGE APPEAL MECHANISMS AVAILABLE TO STAFF OF THE UNITED NATIONS SYSTEM ORGANIZATIONS

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Background

What is understood by "internal pre-tribunal stage appeal mechanisms"?

These mechanisms generally refer to the internal stage of the formal process of employment-related dispute resolution. It is a procedural precondition under the rules of the United Nations system organizations and required to be exhausted as a mandatory first step before staff can challenge administrative decisions before an external administrative tribunal. Internal pre-tribunal appeal mechanisms are thus a core element of the internal justice system of international organizations.

Why did the JIU undertake this review?

The set-up and functioning of internal pre-tribunal stage appeal mechanisms in the United Nations system organizations have not been at the center of attention of internal and external oversight functions to date. It is therefore the first time that a JIU review maps the diversity of approaches across the United Nations system available to their staff to formally challenge administrative decisions on employment-related matters internally before resorting to external tribunals.



Objectives & Purpose

The main objectives of the review are to:

1. Map the diversity of pre-tribunal appeal mechanisms available to staff of the United Nations system organizations
2. Compare strengths and weaknesses of the prevailing models of formal internal appeal mechanisms across the system;
3. Highlight good practices and, where possible, opportunities for increased effectiveness and efficiency through adjustment of existing mechanisms and procedures. Based on the findings of the present review, the Inspectors provide recommendations aimed at

improving those mechanisms.

The purpose of the review is to inform legislative bodies and executive heads whether the prevailing models of internal appeals mechanism across the United Nations system organizations provide adequate recourse, due process safeguards and confidence as regards their capacity to deliver on the objectives set out by their legislative bodies in the applicable regulatory frameworks according to parameters such as fairness, integrity, transparency, impartiality, effectiveness and efficiency.



What the JIU found

Substantial changes since 2009. Many United Nations system organizations have made substantial changes towards upgrading their system of internal justice over the past decade and beyond, in particular with regard to the set-up and functioning of their mechanisms of internal appeal. Today, two main but equally valid models of internal justice exist in the United Nations system. The review found that notwithstanding the diversity of the landscape, both systems generally work well in providing sufficient avenues of recourse for their staff without significant lacunae identified. However, each has its advantages and disadvantages, and both may need improvement in certain aspects of their functioning.

Two models of internal justice in the United Nations system:

- **A fully professionalized, two-tier judicial system.** One part of the system, namely the United Nations Secretariat, its departments and offices such as the JIU participating organizations UNCTAD, UNODC, UNEP, UN-Habitat and ITC and its separately administered funds and programmes, have created a fully professionalized system whereby internal appeals are handled entirely by legally trained officials and judges. The pre-tribunal stage of this model is a "management evaluation" which is followed by a two-tier tribunal stage process.

- **Peer review.** The other part of the system, in particular the specialized agencies, continue to use versions of the peer review model, which was retired by the United Nations Secretariat in 2009. The peer review model is based on peers who review internal appeals and make recommendations to the respective executive heads on how to respond to such appeals. This model includes partially professionalized and hybrid forms that closely resemble judicial processes, while retaining an element of staff participation in their set-up. As a result, and in contrast to the relative uniformity of the fully professionalized model of internal justice, the regulatory frameworks of the specialized agencies concerning peer review are marked by considerable diversity.
- **Judicial stage.** For the judicial stage, United Nations system organizations adhere to one of the two tribunal systems. Those organizations under the two-tier judicial system fall under the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT), while the other United Nations system organizations adhere to the statute of the International Labour Organization Administrative Tribunal (ILOAT).
- **Special cases.** There are a few special cases of organizations whose internal appeal mechanisms function differently. For example, UNRWA has not adopted the full “package of the 2009 reform and, among others, instituted its own dispute tribunal for its first judicial step (UNRWA Dispute Tribunal). WMO is the only specialized agency that decided to subscribe to the entirety of the two-tier judicial system of the United Nations and abandoned the peer-review model all together. IMO also differs from the other organizations by introducing a four-step approach under the peer review model by establishing an initial mandatory informal dialogue before an appeal is reviewed.

What are management evaluation and peer review?

1. Management evaluation.

The initial step of internal appeals performed by – or on behalf of – the original decision-maker in the United Nations Secretariat, its departments and offices (including JIU participating organizations UNCTAD, UNEP, UN-Habitat, UNODC and ITC), and its separately administered funds and programmes, is called management evaluation. It is followed by a two-step judicial review. Management evaluations are conducted by units with functional independence from the author of the contested decision. The two-fold role of management evaluation is, on the one hand, providing an early opportunity for the administration to self-reflect on its decisions and rectify potential mistakes or irregularities internally with a view to avoiding further escalation and thus litigation and additional costs before the tribunals; and on the other hand, to seek enhanced managerial accountability for administrative decision-making.

- **Introduction of a unified timeframe for the administrations’ response to all requests.** Management evaluation was assessed positively overall. Reliability and an accelerated response time were considered key accomplishments of this process when compared with the prior set-up of this internal justice stage. However, the legal differentiation of field vs. headquarters deadlines for responding to requests for

management evaluation was found to be obsolete. The review concluded that a 45-day and a maximum of 60 calendar days unified timeframe for the administrations’ response to all requests would be more realistic and manageable while still remaining sufficiently short in the interest of procedural efficiency.

- **The systematic collection of data and regular reporting thereon indispensable to help remove formal obstacles and, therefore, to improve the effectiveness of the management evaluation set-up.** Although official case statistics on requests for management evaluation dismissed on the grounds of receivability (an important indicator of possible procedural barriers to access to justice) are not routinely collected and reported, the review found that significant numbers of such requests were being rejected on those grounds, i.e., for failure to comply with formal procedural requirements. The systematic collection of data and regular reporting thereon are thus considered indispensable to help remove formal obstacles and, therefore, to improve the effectiveness of the management evaluation set-up.

2. Peer review.

In organizations that apply the peer review model, the initial stage of the process is an administrative review (usually conducted by human resources departments) instead of management evaluation. In contrast to those organizations that apply the fully professionalized, two-tier judicial system, the second procedural step remains internal to the organization and involves an element of peer review conducted by “joint bodies” composed of members of the workforce (“peers”) who are designated jointly by management and staff. That process of peer review is normally advisory in nature and culminates in a recommendation to the executive head. It could be considered the administrative equivalent of the judicial first instance process of appeal performed by UNDT in the two-tier justice system, although peer review bodies are not tribunals, and their members are not judges or lawyers, but rather persons without legal training, albeit with a good knowledge of the organization at hand. Most organizations maintaining it today are unequivocal about its benefits and the intention to retain it in principle.

- **The traditional format of advisory, fully internal peer review has evolved over the years.** As some of its shortcomings became more evident over time, some organizations using peer review have gradually introduced changes to its traditional setup to improve it. As a result, there are **three main models of peer review across the UN system organizations today:**

a) **The “traditional” format of completely internal peer review in an advisory capacity to the executive head** of the organization applied by IAEA, ITU, UNIDO, and UNWTO. The review found three main challenges associated with the traditional setup of peer review. These are the duration of proceedings, the high risk of conflicts of interest with a fully internal membership, particularly in smaller organizations, and the lack of professionalization as the service as a peer review body member is not normally tied to any specific qualification requirements nor necessarily supported by legal or procedural guidance.

b) A more progressive category of semi-professionalized peer review mechanisms exists in FAO, WFP, ILO, UNESCO, WHO, UNAIDS, and WIPO which introduced adjustments to their set-up, resulting in a degree of professionalization without eliminating the lay element of staff participation from the review process completely. In this type of peer review mechanism, a legally trained external chair or secretariat indicates the semi-professionalization of the peer review body, with the remaining members hailing from among the staff, irrespective of their professional background.

c) The third category of peer review mechanisms, referred to for the purposes of this review as **“hybrid” mechanisms**, is applied by ICAO, IMO and UPU. Here the respective joint body has been transformed into a quasi-judicial instance rendering judgment-like final determinations that are binding on the executive head of an organization and become directly appealable by both the staff member and the administration. The feature that distinguishes the hybrid form of peer review from its other forms is its binding character, as expressed through the decision-making power bestowed upon the body performing the review. For the three organizations that introduced hybrid peer review, the need to adjust their internal appeal procedures was precipitated by the jurisprudence developed in 2019 by their sole judicial instance, UNAT.

What are specialized recourse mechanisms?

The majority of UN system organizations also have specialized recourse mechanisms, including processes to challenge performance appraisals, which are not considered to amount to administrative decisions. Other specialized recourse mechanisms exist in most organizations for job (re-)classification, appeals involving medical determinations, disciplinary matters, pension-related claims and recourse mechanisms to challenge the determination of non-prima facie cases of retaliation in the context of whistle-blower protection policies.

Case management capacity and performance

Based on the information provided by the organizations reviewed regarding the estimated number of cases received, disposed of and any accumulated backlog under their internal appeal mechanisms (including standard and specialized processes), and the number of staff members working in appeal-related functions either full- or part-time, the review aimed to assess the resource capacity and performance of internal appeal mechanisms across JIU participating organizations. Across organizations, one half of an equivalent full-time staff member at the P-4 level per one thousand staff members was assigned to support internal appeals processes on average, with an average yearly cost of almost USD 482,318 per organization and of \$8,545 for each case file processed.

Gauging the average yearly caseload of participating organizations across standard and specialized mechanisms, the review found that the vast majority of them had less than 30 cases per year to process, of which 10 organizations received fewer than 8 on average, with two outliers: the United Nations Secretariat and UNRWA (with more than 700 and 150 cases respectively). However, the tracking of organizations’ case management was found to be uneven and, in many parts of the system, of limited reliability, especially on average case processing times, which are not routinely tracked, and regarding the peer review process, where systematic data collection and reporting is the exception.

Legal advice and representation services

An important aspect of the adequate functioning of internal appeal mechanisms is the ability of staff members to access legal advice before engaging formally with their employer on a contentious matter and the opportunity to have their rights and interests represented effectively when seeking recourse through formal internal appeal mechanisms. While for the staff subject to management review and the two-tier judicial setup, free legal advice and representation services are provided by OSLA and LOSA (UNRWA), legal support for staff of specialized agencies is disparate and multifariously restricted. The accessibility of legal support for the staff of United Nations system organizations can thus be described as uneven and requires adjustments.

System-wide aspects of internal appeal mechanisms

There is currently no formal system-wide inter-agency mechanism dedicated specifically to the administration of justice, although in light of the availability of several, informal vehicles for consultation, exchange and debate thereon, the review found no need for establishing a formal inter-agency mechanism dedicated to pre-tribunal appeals as such. In any event, providing for increased opportunities for cross-functional exchanges in an inter-agency setting can benefit the United Nations system as a whole, but prove particularly helpful for smaller, less well-resourced organizations, as well as those that have more limited access to communities of practice in the absence of other organizations headquartered or present in the same duty station.



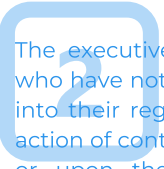


What the JIU recommends

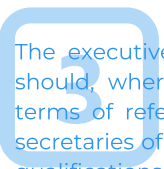
The review contains seven recommendations, of which five are addressed to the executive heads and two to the legislative organs and governing bodies of the United Nations system organizations for action. These are complemented by 23 informal recommendations.



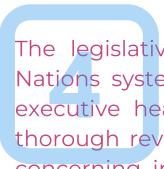
The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, harmonize the time limits for their administrations' response to requests for management evaluation or administrative review to a minimum of 45 calendar days and a maximum of 60 calendar days, irrespective of whether the request originates from a staff member at headquarters or in a field location; or propose this harmonization for decision by their legislative organs or governing bodies.



The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, introduce into their regulatory frameworks a provision for suspension of action of contested decisions at the pre-tribunal stage, ex officio or upon the appellant's request, in cases of prima facie unlawfulness of the decision, error of fact, particular urgency or when implementation of the decision could cause irreparable damage; or propose the introduction of this provision for decision to their legislative organs or governing bodies.



The executive heads of United Nations system organizations should, where applicable and by the end of 2025, establish terms of reference or similar instruments for the Chairs and secretaries of their peer review bodies that set out the required qualifications, including legal expertise, their functions and reporting lines, in order to provide the safeguards necessary for their structural independence and impartiality.



The legislative organs and governing bodies of the United Nations system organizations should request their respective executive heads who have not yet done so to undertake a thorough review of their regulatory frameworks and practices concerning internal specialized recourse mechanisms, with a view to assessing their continued utility and adequate functioning within the broader framework of internal appeal mechanisms, including eliminating duplicative or ambiguous process paths in the interest of procedural efficiency, and to report to them thereon, no later than 2025.



The legislative organs and governing bodies of the United Nations system organizations should request their respective executive heads who have not yet done so to report to them annually, starting in 2025, on the functioning of their formal internal appeal mechanisms, including the specialized recourse mechanisms. The reports should include details on the number, subject matter and outcome of appeals, including cases deemed irreceivable, information on the demographics of applicants and information on whether the appealed decisions were upheld or revised, disaggregated by type of procedure, as applica



The executive heads of United Nations system organizations who have not yet done so should, by the end of 2025, review the procedural rules governing formal internal appeal mechanisms regarding the time limits applicable to the administrations' responses at different stages of the internal appeal processes, and specify the conditions for extending the time limits, with a view to reducing associated delays and fostering legal certainty and accountability.



The executive heads of the United Nations system organizations who have not yet done so should, by the end of 2025, adjust the regulatory frameworks of their organizations and remove all restrictions regarding legal representation of their staff in internal justice processes, with the aim of allowing staff to choose their legal counsel freely and without restriction.



Approach & Methodology



A two-step approach: (a) an analysis of the current set-up of internal pre-tribunal appeal mechanisms subsequent to the 2009 reform of the administration of justice system in the United Nations organizations; and (b) an analysis of the 2021/2022 situation against criteria such as objectivity, due process, competence, accessibility, transparency, confidentiality, effectiveness and efficiency.



Ethical safeguards: Due consideration was given to protecting the confidentiality of stakeholders who engaged in responses to corporate questionnaires and interviews and to the professional independence of the Inspectors.



Documentation: an extensive desk review and in-depth analysis of policies and procedures related to internal appeal mechanisms, such as staff rules and regulations of JIU participating organizations, reports to the legislative organs and governing bodies of the participating organizations, in particular the annual reports of the United Nations Secretary-General to the General Assembly on the administration of justice, governing body decisions, other pertinent reports, and administrative instructions and other issuances. Furthermore, data from the documentation and other information received and collected were analyzed in detail.



Corporate questionnaire to 27 participating organizations.



Interviews: 100 +follow-up interviews (based on the results of the desk review and the analysis of the responses to the corporate questionnaire), held in-person and remotely with officials of JIU participating organizations and with officials of the system of administration of justice.



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