



**Coordinating Committee of International Staff Unions and Associations**

**Submission on legal matters**

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### **Human resources deficiencies are root cause for litigation**

Since its redesign, the administration of justice has brought about positive developments in the organization. There is still room for improvement. Much attention on strengthening the system further has focused on reducing the number of cases before the UN tribunals and the level of compensation awarded to the winning applicants.

What is overlooked however are the root causes driving litigation by staff. One of the underlying causes relate to the fragmented, contradictory, inconsistent and frequently changing human resources policies, which are defined by the myriad of staff regulations, rules, bulletins, administrative instructions and information circulars. When staff are faced with the issues of the inconsistent application or ambiguous interpretation of those policies, the only avenue for redress is to seek adjudication at the tribunals. And even when the tribunal decide on emblematic cases, the system-wide inconsistency or ambiguity of the policy remains unaddressed, leading to further litigation and new cases. Much litigation could be avoided, if there were a mechanism to address policy gaps, inconsistencies and contradictions as identified by the tribunal judgements.

Staff unions are calling for a comprehensive review of human resource policies in the UN in the context of the upcoming management reforms by the Secretary-General, including ways to follow up on the policy implications from the tribunal decisions.

### **Manifestly unlawful cases are not rescinded**

The UN has invariably applied a policy of “no rescission and no reinstatement” irrespective of the tribunal ruling in favour of staff or the degree of manager misconduct or dereliction of duty determined by the tribunal. In nearly all cases, the administration has elected to pay compensation as an alternative to rescinding the contested decision. While in some cases there may be valid justifications for the decision not to reinstate but rather pay money, rigid application of the policy does not serve justice in every instance, especially when termination of employment is manifestly unlawful.

Staff unions recommend that the tribunals are mandated to order, in appropriate cases, restoration where the complainant staff has prevailed. At the same time, for cases when the judge provides the two options of reinstatement or monetary compensation, management should have clearly established criteria for their choice.

## **Referrals for accountability are not functioning**

The General Assembly has repeatedly emphasized the importance of real and effective accountability at all levels and requested the Secretary-General to take all measures to ensure that staff, in particular senior managers, are held accountable for their actions. Both tribunals may refer appropriate cases to the Secretary-General or the executive heads of separately administered UN funds and programmes for possible action to enforce accountability. Such referrals serve as a tool to help management ensure that staff members are held accountable for their action or inaction.

Nevertheless, the system of referrals for accountability is not functioning. There is an information gap on follow up to the referrals and no feedback is conveyed to the tribunals or affected staff members. Failures to investigate referred cases from the tribunal and impose sanctions relating to misconduct, and to be seen doing it, create a sense of impunity.

To instill the accountability imperative in the Organization, staff unions urge establishing procedures to trigger follow-up action by management on the referrals for accountability by the tribunals.

## **No protection from retaliation in the internal justice system**

Protection of parties and witnesses before the courts is essential to access to justice. Despite this, staff members filing a case before the tribunals or appearing as witnesses continue to be insufficiently protected under the existing policies and procedures. There is no express provision or prescribed procedure to protect staff members from retaliation in the internal justice system. There is widespread fear of retaliation among staff, seriously undermining the overall administration of justice.

Staff unions have pointed out examples when protective measures ordered by a judge had not been carried out by the Administration. This sends a chilling message that seeking to rectify unlawful decisions before the tribunals could lead to grave consequences for staff, such as the termination or non-renewal of their contracts under other pretexts.

Staff unions strongly encourage to develop an explicit system-wide policy and clear procedures to protect both parties and witnesses before the tribunals from retaliation.