

A guide to resolving disputes



Administration
of Justice
in the United Nations

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I. Introduction

In 2007, the General Assembly decided to introduce a new system for handling internal disputes and disciplinary matters in the United Nations. This came as a result of extensive discussions on the issue of administration of justice, and a keen recognition by both management and staff that the existing system no longer met the needs of the Organization.

The General Assembly acted on a proposal made by the Secretary-General. This proposal was based on the recommendations of an external panel of experts, the “Panel on the Redesign of the UN system of administration of justice”, and on consultations with staff through the Staff-Management Coordination Committee. The goal was to have a system that was independent, professionalized, expedient, transparent and decentralized. Also, there should be a stronger emphasis on resolving disputes through informal means, before resorting to formal litigation.

The new system of administration of justice becomes operational on 1 July 2009. The purpose of this booklet is to explain the basic elements of the new system, and provide practical information and guidance to staff.

II. Why do we need an internal justice system?

Securing a harmonious working environment

In any large organization, a harmonious working environment is essential in order to be productive. To this end, you need systems, rules, and procedures that set a common standard for behaviour and actions, and that ensure that the work conducted by each and every employee contributes to the common objectives or goals. For the United Nations, these goals are global and lofty. As international civil servants, we work for peace and security, development, and human rights. Still, the work-related disputes that arise are not that different to what might occur in any workplace, relating to issues such as contract renewals, equity of treatment, promotion, discrimination, harassment, or the imposition of disciplinary measures. But in the UN, there is the added dimension of cultural diversity and geographical dispersion. Moreover, staff members are unable to file employment-related claims against the

Organization in national courts, in view of the United Nations' status as an international organization.

Acting in accordance with the rules

In the United Nations, we have rules that govern both behaviour and actions of employees, and that also set out basic rights of staff. The UN Charter itself sets out fundamental principles. There are Staff Regulations and Rules, and Financial Regulations and Rules. Other rules governing ethics, gender equality, work-place harassment, human resources-related policies and other numerous topics are contained in Secretary-General's Bulletins and other administrative issuances.

These all form part of our rules framework. Taken together, the purpose is to ensure integrity, fairness, and equality, while providing for efficient ways for the Organization to conduct its day-to-day work.

The internal justice system exists to address situations where staff members feel that their rights have been violated and the rules of the Organization have not been respected. It is a fundamental right of staff at all levels to have recourse to an internal justice system.

The internal justice system is also a pillar in the overall effort to strengthen accountability and ensure responsible decision-making.

III. Informal resolution of disputes

Staff members are strongly encouraged to first try and solve a dispute through informal channels, and avoid unnecessary litigation. Resolving disputes through negotiation, mediation and other alternative means is usually quicker, and often proves to be a less stressful and less cumbersome process than litigation.

Pursuing informal resolution of a dispute does not prevent a staff member from also bringing a matter to the formal system of justice.

Ombudsman and Mediation Services

The Office of the Ombudsman provides confidential, off-the-record and impartial assistance to help arrive at informal resolution of concerns and

disputes related to employment with the United Nations. For the first time, as a result of the reform of the system of administration of justice, it also includes a Mediation Division.

Mr. Johnston Barkat heads the Ombudsman and Mediation services. He is independent and neutral, and reports directly to the Secretary-General. The ombudsmen and mediators serve all staff of the Secretariat, including peace operations, and UNDP, UNICEF, UNOPS, UNFPA and UNHCR. In addition to New York Headquarters, ombudsman and mediation services are provided through branch offices in Vienna, Geneva, Bangkok, Santiago, Nairobi, Kinshasa and Khartoum.

- An ombudsman works through persuasion and by using his or her good offices.
- An ombudsman has no management functions
- Consultations with an ombudsman are completely confidential

Mediation is an informal and confidential process in which a trained mediator can assist parties in working towards a negotiated settlement of a dispute. The mediator does not impose a solution, but acts as a facilitator. Both parties have to agree to mediation; it is a voluntary process.

In the course of an informal resolution process, an ombudsman may propose mediation as an option to the staff member. A staff member can also contact the Mediation Division directly.

It is also possible for a case in the formal system to be referred to the Mediation Division by a judge of the UN Dispute Tribunal, with the agreement of the parties. If no settlement is arrived at through mediation, the case will go back to the formal process.

IV. Administration of justice – the formal system

If a staff member considers that there has been an administrative decision that violates his or her rights as an employee of the Organization, and is unable to resolve the matter informally if such methods are pursued, the staff member can contest such a decision through the formal mechanism.

Contesting a decision involves a number of steps, with specific deadlines. It is important for anyone wishing to contest a decision to be aware of these steps and deadlines.

Management Evaluation

As a first step in the formal system, a staff member who wishes to contest an administrative decision will have to request a management evaluation. This has to occur no more than 60 days after the staff member was notified of the contested decision. This initial review, which normally should be concluded within 45 days (30 days for New York Headquarters), will assess whether the contested decision was made in accordance with the rules. If it is determined that an improper decision has been made, Management will ensure that the decision is changed or that an appropriate remedy is provided. In some cases, alternative means of arriving at a settlement, such as mediation, may be found. In the Secretariat, management evaluations are to be carried out by a new Management Evaluation Unit in the Office of the Under-Secretary-General for Management. The Funds and Programmes carry out the management evaluation function through their own administrative structures.

The purpose of this step is to give management a chance to correct itself or provide acceptable remedies in cases where there has been flawed decision-making, and to reduce the number of cases that need to proceed to formal litigation.

A management evaluation is not required if the contested decision concerns the imposition of a disciplinary measure, or if it was taken by the administration based on the advice of an expert or advisory board, such as the Advisory Board on Compensation Claims or a medical board. In such cases, an application can be made directly to the UN Dispute Tribunal.

The UN Dispute Tribunal

When no resolution through informal means can be arrived at, and when the result of the management evaluation is not to the satisfaction of the staff member, the staff member can file an application to the United Nations Dispute Tribunal, as a court of first instance. The UN Dispute Tribunal

operates on a full-time basis and is comprised of five professional judges, three full-time and two half-time. It has registries in New York, Geneva and Nairobi. For its first year of existence, the General Assembly decided that the Dispute Tribunal shall also have three *ad litem* — or temporary — judges in order to strengthen its capacity to handle the large number of cases expected to be transferred from the old system.

The UN Dispute Tribunal will examine the facts of the case, and will conduct, where necessary, oral proceedings. These will normally be held in public. Cases before the Dispute Tribunal will usually be considered by a single judge, but in cases that are particularly complex or important a three-judge panel may be convened.

The judgements of the Dispute Tribunal are binding. Both the staff member and the Secretary-General have the right to appeal a judgement rendered by the UN Dispute Tribunal to the UN Appeals Tribunal, in accordance with that Tribunal's statute.

The full Statute of the UN Dispute Tribunal can be found in the annex to General Assembly resolution A/63/253 of 24 December 2008.

On 3 March 2009 the General Assembly elected the first judges of the UN Dispute Tribunal. They are:

Geneva: Mr. Thomas Laker (Germany) — *seven-year term*

Nairobi: Mr. Vinod Boolell (Mauritius) — *seven-year term*

New York: Ms. Memooda Ebrahim-Carstens (Botswana) — *three-year term*

Half-time: Mr. Goolam Hoosen Kader-Meeran (United Kingdom) — *three-year term*

Ms. Coral Shaw (New Zealand) — *seven-year term*

The UN Appeals Tribunal

Decisions by the Dispute Tribunal may be appealed, either by staff or the administration, to the United Nations Appeals Tribunal. The Statute of the Appeals Tribunal allow for appeals in cases where it is alleged that the UN

Dispute Tribunal has either exceeded its jurisdiction or failed to exercise it; or that it has erred on question of fact or law or procedure.

The Appeals Tribunal is composed of seven judges, and its Registry is based in New York. It will normally hold two sessions a year, with one of them always being in New York.

The full Statute of the UN Appeals Tribunal can be found in the annex to General Assembly resolution A/63/253 of 24 December 2008.

On 3 March 2009 the General Assembly elected the first judges of the UN Appeals Tribunal. They are:

Ms. Sophia Adinyira (Ghana) — *seven-year term*

Ms. Rose Boyko (Canada) — *seven-year term*

Mr. Jean Courtial (France) — *three-year term*

Mr. Kamaljit Singh Garewal (India) — *three-year term*

Mr. Mark Painter (United States) — *three-year term*

Mr. Luis Maria Simón (Uruguay) — *seven-year term*

Ms. Inés Weinberg de Roca (Argentina) — *seven-year term*

Legal assistance to staff

It has been a long-standing principle of the Organization that staff members who wish to appeal an administrative decision, or who are subject to disciplinary action, should have access to legal advice and representation. For this purpose, there is an Office of Staff Legal Assistance, staffed by full-time legal officers at Headquarters, as well as in Geneva, Nairobi, Addis Ababa and Beirut. This Office replaces the Panels of Counsel.

At any stage of a dispute, or even in anticipation of a dispute, a staff member may seek advice and assistance from legal officers in the Office of Staff Legal Assistance. The legal officers can advise on the legal merits of a case and what options the staff member might have. If a staff member chooses to proceed with a case in the formal system, the Office of Staff Legal Assistance will assist throughout the process.

The Office of Staff Legal Assistance, while based at UN Headquarters in New York, has one legal officer each in Addis Ababa, Beirut, Geneva and Nairobi. It is also expected that, similar to what was the practice under the Panels of Counsel, the Office of Staff Legal Assistance will rely on staff members or former staff members with legal experience to volunteer their services so as to augment the capacity of the Office.

Office of Administration of Justice

A hallmark of the new system is that it be independent. A new Office of Administration of Justice, headed by an Executive Director appointed by the Secretary-General, is responsible for coordinating the functioning of the new system. The Executive Director of the Office of Administration of Justice is Mr. Andrei Terekhov.

The Office of Staff Legal Assistance and the Registries for the Dispute Tribunal and the Appeals Tribunal are part of the Office of Administration of Justice. With its headquarters in New York, the Office of Administration of Justice will also have a presence — through the UNDT registries and the branch offices of the Office of Staff Legal Assistance — in Geneva, Nairobi, Addis Ababa, and Beirut.

V. The Internal Justice Council

The Internal Justice Council is a new body with an important role relating to the system of administration of justice. It is composed of three external experts and two staff members. Two of the members of the Internal Justice Council are nominated by management and two by staff, and a fifth member, serving as Chair, is selected by the initial four members.

The Internal Justice Council's main task is to provide its views and recommendations to the General Assembly on candidates for judges to be appointed by the General Assembly to the UN Dispute Tribunal and the UN Appeals Tribunal. The Council's mandate also includes preparing a Code of Conduct for the judges, and providing its views to the General Assembly on the implementation of the new system.

The members of the Internal Justice Council are:

Justice Kate O'Regan, Chairperson (*external expert nominated by the other four members*)

Justice Geoffrey Robertson (*external expert nominated by staff*)

Mr. Sinha Basnayake (*external expert nominated by management*)

Ms. Maria Vicien-Milburn (*staff member nominated by management*)

Ms. Jenny Clift (*staff member nominated by staff*)

VI. Dealing with work-related disputes: Step-by-step guide

What do I do first?

- As a first step, every effort should be made to resolve a dispute informally at the working level in your own office or Department. Familiarize yourself with the rules governing the particular matter you believe has been handled in a manner that violates your rights. Speak to your colleagues, supervisor, Executive Officer, or another manager whom you trust.
- If no resolution is found within your office or department, or if you would like confidential advice, contact the Ombudsman's Office to seek their assistance or possible intervention.
- Remember, resolving a dispute through informal mechanisms is usually quicker and less cumbersome than litigation.
- Identify the specific administrative decision that you are objecting to, and when the decision was made, or when you were effectively notified of the decision. This is very important for the timelines, should you decide to proceed with contesting the decision through the internal justice system.
- Contact the Office of Staff Legal Assistance. They will provide advice on what options you may have in the formal system, or whether your case may be better resolved through informal processes.

How do I appeal a decision?

Management Evaluation

- Should you decide to formally contest a decision, the first step is to request a management evaluation. This should be done in a letter addressed to the Under-Secretary-General for Management, with a copy to the head of department or office where you work. If you work in a separately administered Fund or Programme, the letter should be addressed to the Executive Head of the Fund or Programme.
- **Timeline: The request for a management evaluation must be done within 60 calendar days of the time you received notification of the administrative decision you are contesting.**
- In your letter, explain clearly the decision you wish to contest, who made the decision and when, how it violates your rights and why you believe the decision was improper or unlawful.
- You will receive a reasoned response within 30 days, if you work at New York Headquarters, and within 45 days, if you work at an office away from Headquarters. If you do not receive a response within these time limits, you may still proceed with your appeal within 90 days of the date when you should have received a response to your request for a management evaluation.
- If the decision you wish to contest concerns the imposition of a disciplinary measure, or if it is a decision taken by the administration based on the advice of an expert or advisory board, such as the Advisory Board on Compensation Claims or a medical board, a management evaluation is not required. In such cases, the decision can be appealed directly to the UN Dispute Tribunal.

UN Dispute Tribunal

- If you are not satisfied with the outcome of the management evaluation, or with a decision based on the recommendation of an expert or advisory board, you may contest the decision by filing an application to the United Nations Dispute Tribunal (UNDT).

- If the decision you wish to contest concerns the imposition of a disciplinary measure, you can file an application directly to the UN Dispute Tribunal.
- **Timeline: An application to the UN Dispute Tribunal must be filed within 90 calendar days of receipt of the management evaluation outcome. If you wish to contest the imposition of a disciplinary measure, or a decision taken by the administration based on the advice of an expert or advisory board, the application should be filed within 90 days of when you were notified of the decision.**
- The application should be filed directly with the Registry of the UNDT. You should direct your application to the UNDT Registry that is closest to your duty station, either New York, Geneva or Nairobi.
- If you are unsure to which UNDT Registry you should send your application, contact the Principal Registrar in the Office of Administration of Justice in New York for guidance.
- The UN Dispute Tribunal will examine the facts of the case, conduct oral hearings as necessary, and take a decision on the matter. Judgements of the UN Dispute Tribunal are binding.

UN Appeals Tribunal

- A judgement by the UN Dispute Tribunal can be appealed to the UN Appeals Tribunal by either the staff member or the administration.
- **Timeline: An appeal to the UN Appeals Tribunal must be filed within 90 calendar days of the judgement of the UN Dispute Tribunal. It should be directed to the Registry of the UN Appeals Tribunal in New York.**

Can I still try mediation or other informal methods even if I have filed an appeal?

- At any time, the option of seeking a solution through informal means remains open, but it is important to remember that informal resolution is more effective at an early stage.
- The deadlines applicable to filing applications with the United Nations Dispute Tribunal may be extended to allow for informal dispute resolution, including mediation.

VII. Transitional measures

Transitioning from “old to “new”

The joint appeals boards and joint disciplinary committees and disciplinary committees within the Funds and Programmes will be abolished when the new internal justice system begins on 1 July 2009. The Administrative Tribunal will be abolished on 31 December 2009. It is expected that a large number of pending cases will be transferred from these bodies to the UN Dispute Tribunal. Pending cases from the old internal justice system will be divided among the three locations of the UN Dispute Tribunal: Geneva, Nairobi and New York. For this purpose, one *ad litem* judge will be assigned to each UNDT location to strengthen its capacity during the first year of operation.

On 3 March 2009 the General Assembly elected three *ad litem* judges to serve on the UN Dispute Tribunal for its first year. They are:

Geneva: Mr. Jean-François Cousin (France)

Nairobi: Ms. Nkemdilim Amelia Izuako (Nigeria)

New York: Mr. Michael Adams (Australia)

Disciplinary measures

Before 1 July 2009, the Secretary-General or the Executive Head of a UN Fund or Programme needed to receive the advice of a joint disciplinary committee or a disciplinary committee before imposing a disciplinary measure on a staff member, except in cases of summary dismissal. As of 1 July 2009, disciplinary measures can be imposed upon a staff member without the advice of a joint body. Such measures can be appealed by the staff member directly to the UN Dispute Tribunal.

The rules relating to disciplinary matters are explained further in Chapter XI of the Staff Rules.

VIII. Useful references

Roles and responsibilities of different offices and officials

The main part of this booklet has described the roles of the Office of the Ombudsman and the Office of Administration of Justice, and how staff members can avail themselves of the informal and formal system of settling disputes.

There are also other offices that have functions that may relate to advising staff or addressing instances of improper conduct. Below is a brief description that is meant to be indicative rather than exhaustive.

Heads of department, office or mission

Programme managers are accountable to the Secretary-General for ensuring the proper management of the departments, offices and missions they lead. This includes maintaining a workplace free of any form of discrimination, harassment, including sexual harassment, and abuse of authority. When informal resolution is not possible or appropriate, prohibited behaviour should be reported to the head of department, office or mission, who will be responsible for investigating such allegations. In peace operations, it should be reported to the Conduct and Discipline Units. Further details are contained in the SGBs mentioned below.

Relevant documents:

ST/SGB/2008/5 — Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority

ST/SGB/2008/14 — Joint Harassment Prevention Boards

ST/SGB/2003/13 — Special Measures for Protection from Sexual Exploitation and Sexual Abuse

Office of Internal Oversight Services (OIOS)

OIOS is an autonomous and independent office reporting to the Secretary-General and the General Assembly. It is responsible for investigating the most serious and high-risk issues, such as fraud, waste of substantial

resources and cases of gross mismanagement or negligence. The Investigation Division may receive reports from staff and other persons engaged in activities under the authority of the Organization concerning perceived cases of possible violations of UN Regulations and Rules. It conducts administrative investigations into reports of possible misconduct and transmits to the Secretary-General the results of those investigations together with appropriate recommendations.

Relevant documents:

A/RES/48/218B — General Assembly resolution establishing the OIOS

ST/SGB/273 — Description of establishment and role of OIOS

The OIOS Investigations Manual can be found at: http://www.un.org/Depts/oios/pages/id_manual_mar2009.pdf

Ethics Office

The Ethics Office assists the Secretary-General in ensuring that all staff members observe and perform their functions consistent with the highest standards of integrity. It administers the financial disclosure programme. The Ethics Office serves as a resource for staff who seek advice and guidance regarding situations that may present a conflict of interest. The Ethics Office also provides protection against retaliation for staff who have reported wrongdoing or cooperated with a duly authorized investigation.

Relevant documents:

ST/SGB/2005/21 — Protection against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations

ST/SGB/2005/22 — Ethics Office : Establishment and Terms of Reference

ST/SGB/2006/6 — Financial Disclosure and Declaration of Interest Statements

ST/SGB/2002/13 — Status, Basic Right and Duties of United Nations Staff Members

Staff Counsellor's Office

The Staff Counsellor's Office, under the Office of Human Resources Management in the Department of Management, provides support, guidance and professional help to staff members who may be facing a crisis or personal concerns. The goal is to improve mental health and overall wellness for UN staff members. The Office also provides assistance on practical, work-related issues such as visas and other host country matters, mission-readiness, child care and retirement.

UN Focal Point for Women

The UN Focal Point for Women, in addition to monitoring and advocating for gender balance, also provides counseling and guidance for women staff who contact the Office. There are also departmental focal points for women, whose task is to support the head of department/office/mission in achieving gender balance. The departmental focal points for women may counsel, advise and assist women on issues affecting their career development or methods to resolve situations involving harassment, including sexual harassment, discrimination or abuse.

Relevant documents:

ST/SGB/2008/12 — Departmental focal points for women in the Secretariat

Relevant GA documents:

A/63/253 Resolution adopted by the General Assembly on administration of justice in the United Nations. The statutes of the UN Dispute Tribunal and the UN Appeals Tribunal are contained in Annex I and II of the resolution.

A/62/288 Resolution adopted by the General Assembly on administration of justice in the United Nations.

A/61/261 Resolution adopted by the General Assembly on administration of justice in the United Nations.

A/63/489 Report of the Internal Justice Council. This report makes recommendations to the General Assembly on the

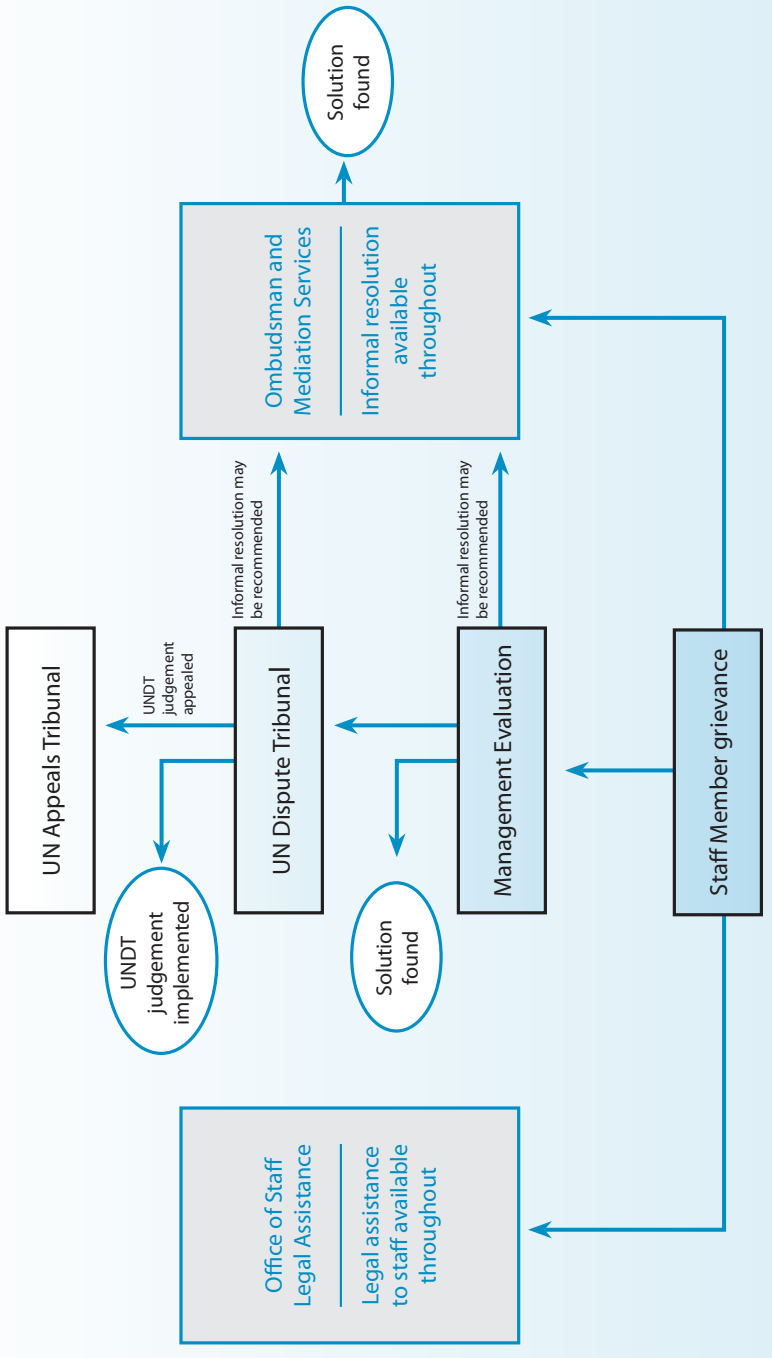
appointment of judges to the UN Dispute Tribunal and the UN Appeals Tribunal.

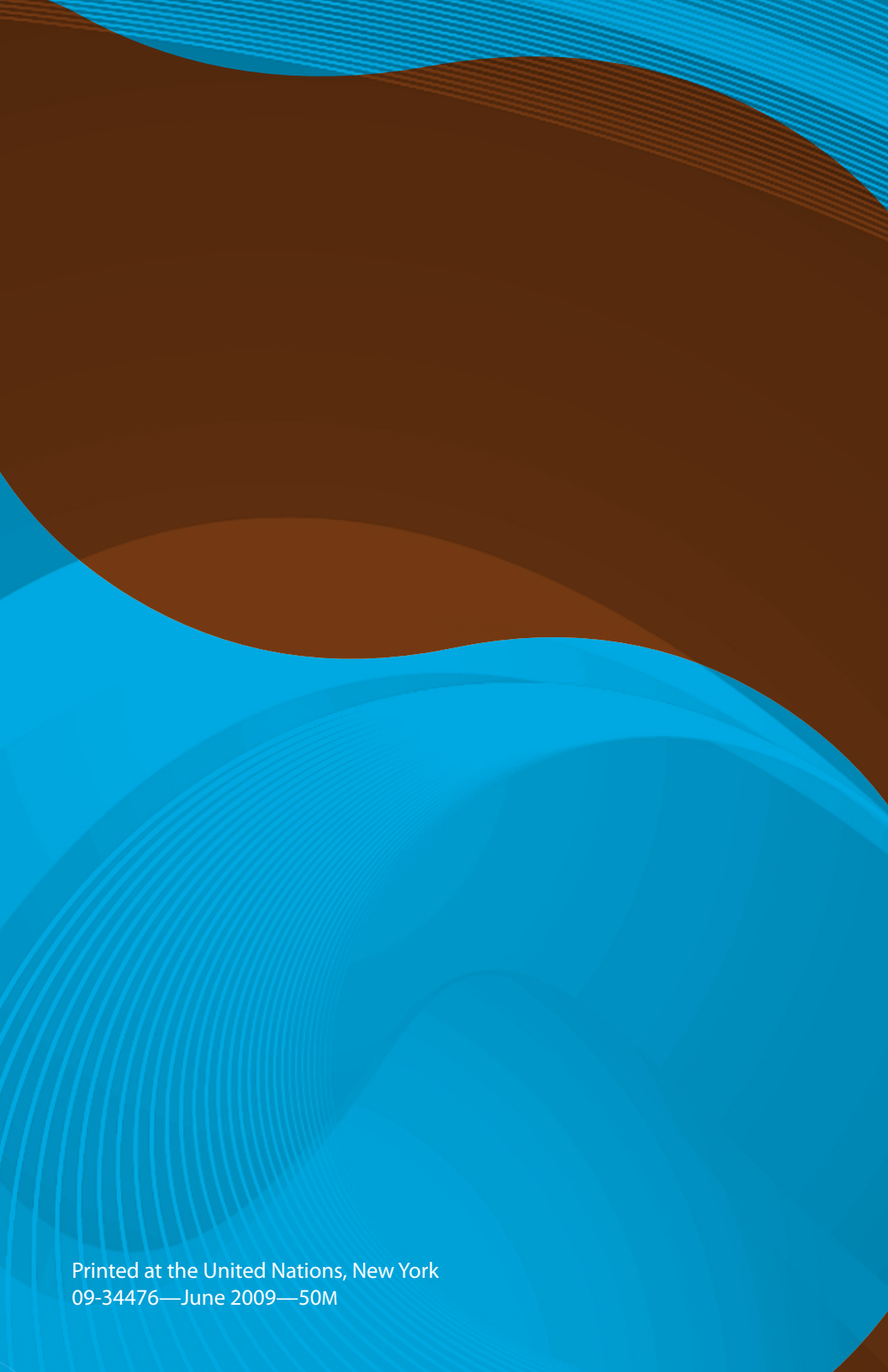
A/63/489/Add.1

Report of the Internal Justice Council. This report makes recommendations to the General Assembly on the appointment of three *ad litem* judges to serve for one year on the UN Dispute Tribunal.

At the time of print, telephone numbers and office location for the Office of Administration of Justice and registries were not yet available. For any queries, please write to the following e-mail address: OAJ@un.org

Administration of Justice process





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