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Human resources management

Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 January to 31 December 2020

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 January to 31 December 2020 ([A/76/602](#)). During its consideration of the report, the Advisory Committee received additional information and clarification, concluding with written responses dated 22 February 2022.

2. The report of the Secretary-General was submitted in response to General Assembly resolution [59/287](#), in which the Assembly requested the Secretary-General to ensure that Member States be informed on an annual basis about all actions taken in cases of proven misconduct and/or criminal behaviour and of the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. The report covers the period from 1 January to 31 December 2020. The report contains an overview of the administrative framework in disciplinary matters; a summary of disciplinary cases; data on the disposition of cases; and information on the practice of the Secretary-General in cases of possible criminal behaviour ([A/76/602](#), paras. 1 to 3).

II. Report of the Secretary-General

Overview of the administrative framework

3. In the report, the Secretary-General sets out the relevant provisions contained in the Charter of the United Nations, the Staff Regulations and Staff Rules, Secretary-General's bulletins and administrative instructions. The Secretary-General indicates that [ST/SGB/2019/8](#) brought the formal process with respect to conduct amounting



to discrimination, harassment, including sexual harassment, and abuse of authority (collectively referred to as “prohibited conduct”) in line with that applicable under administrative instruction [ST/AI/2017/1](#). He states that [ST/SGB/2019/8](#) contains support and information-sharing provisions that are applicable during an investigation and any subsequent disciplinary process in addition to the provisions contained [ST/AI/2017/1](#). He also states that [ST/SGB/2019/8](#) notes that the Organization and other entities that are members of the United Nations System Chief Executives Board for Coordination (CEB) collect information on established cases of sexual harassment in an application called ClearCheck, to which CEB entities may gain access for checking related to recruitment (*ibid.*, paras. 5 to 10).

4. Upon enquiry, the Advisory Committee was informed that ClearCheck had been made available to all 31 CEB member organizations, of which 28 had accepted the invitation to participate in ClearCheck and 22 had been actively using it. The Committee was also informed that there were currently 543 subjects recorded in the ClearCheck database: 412 were related to sexual exploitation and abuse and 131 to sexual harassment. The 543 records were created among 15 United Nations entities. **The Advisory Committee notes the number of entities using ClearCheck and trusts that the use of the application will be mainstreamed further across the United Nations system, and that an update will be provided in the next report, as well as in the next reports of the Secretary-General on accountability and on sexual exploitation and abuse.**

5. In the report, the Secretary-General states that administrative instruction [ST/AI/2017/1](#) was promulgated on 26 October 2017. In accordance with the transitional arrangements, investigations initiated before that date shall continue to be governed by administrative instruction [ST/AI/371](#) and [ST/AI/371/Amend.1](#), as shall any subsequent disciplinary processes. He notes that, as at the date of submission of his report, very few matters continue to be governed by administrative instruction [ST/AI/371](#) and [ST/AI/371/Amend.1](#). He also states that, under administrative instruction [ST/AI/2017/1](#), all reports of possible unsatisfactory conduct shall be brought to the attention of the Office of Internal Oversight Services (OIOS). After receiving such a report, OIOS may decide either to consider it for investigation or closure or to refer it to management for assessment and possible investigation by an investigative panel established by the relevant head of entity. He further states that administrative instruction [ST/AI/2017/1](#) contains minimum standards for the conduct of investigations and procedures relating to staff members who are the subject of an investigation (*ibid.*, paras. 11 to 13).

6. Upon enquiry, the Advisory Committee was informed that the investigative process, including rights and obligations of all parties involved in an investigation, were the same, whether undertaken by OIOS or by an investigative panel. The key difference between OIOS and investigative panels was that OIOS is a permanent entity composed of professional full-time investigators, with established administrative and logistical support, infrastructure and processes already in place, whereas investigative panels are ad hoc arrangements of a limited duration and of limited resources. The time required for the completion of the investigation and the quality of the investigation undertaken by an investigative panel depended on the exposure to and prior experience of the investigative panel’s members and on the level of support provided to the investigative panel. The Committee was also provided with the table below, showing the statistics regarding cases handled by OIOS and investigation panels for the past five years.

Table 1
Number of cases handled by OIOS and investigation panels from 2016 to 2021

	2016	2017	2018	2019	2020	2021	Total
Cases closed (OIOS and investigation panel)	63	72	61	106	79	132	513
Cases closed with no measure/not pursued as a disciplinary matter	9	13	12	17	13	17	81
Cases closed with no measure/not pursued as a disciplinary matter (%)	14	18	20	16	16	13	16

7. The Advisory Committee reiterates that, instead of being referred to the relevant head of entity, cases of prohibited conduct, in particular by managers, should be handled by OIOS, to ensure the independence and integrity of investigations. The Committee trusts that the next report of the Secretary-General will include more data on the handling of these cases by OIOS and heads of entities (A/75/776, para. 15), including separate tables with disaggregated data on cases handled by OIOS and investigative panels. The Committee also recommends that the General Assembly request the Secretary-General to provide an update on the backlog and processing of cases in his next report.

8. In paragraphs 17 and 18 of the report, the Secretary-General indicates that staff rule 10.2 (a) provides for the following disciplinary measures: (a) written censure; (b) loss of one or more steps in grade; (c) deferment, for a specified period, of eligibility for salary increment; (d) suspension without pay for a specified period; (e) fine; (f) deferment, for a specified period, of eligibility for consideration for promotion; (g) demotion, with deferment, for a specified period, of eligibility for consideration for promotion; (h) separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity; and (i) dismissal. The Secretary-General states that each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances.

9. Upon enquiry, the Advisory Committee was informed that, in disciplinary cases, the Secretary-General had broad discretion in determining the applicable mitigating and aggravating circumstances or factors. The coronavirus disease (COVID-19) had been recognized as a mitigating factor in a very limited number of cases, which were closed at the beginning and during the height of the COVID-19 pandemic, and only in respect of cases where staff members were being separated from service. Specifically, in cases completed during the pandemic where the Secretary-General would have otherwise imposed the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, the Secretary-General decided to award partial termination indemnity to staff members that were being separated, to counterbalance some of the effects of the pandemic on former staff members. That mitigating factor was not used to mitigate the established misconduct, but only to mitigate the level of the financial severity of the imposed sanction. As the pandemic stabilized and/or vaccination efforts were rolled out, the Secretary-General discontinued the use of that mitigating factor. **The Advisory Committee is concerned that the application of COVID-19 as a mitigating factor could have resulted in cases of similar misconduct being treated differently depending on the time of the closure of the cases. The Committee notes that the use of this mitigating factor has been discontinued and trusts that its use will not be resumed.**

10. The Advisory Committee was also informed, upon enquiry, that a staff member's contribution to the work of the Organization with long positive service (10 years or longer for field duty stations, 15 years for headquarters) was usually taken in mitigation of the staff member's misconduct. However, long service would not be considered in mitigation of misconduct cases where a position of authority or

responsibility was essential for the established misconduct, and where such a position was attained as a result of the long service.

11. While recognizing the discretion of the Secretary-General in determining mitigating and aggravating circumstances, the Advisory Committee recommends that the General Assembly request the Secretary-General to ensure transparency, proportionality and consistency in the exercise of this discretion, and to include in his next report detailed information on the criteria applied in the determination of mitigating and aggravating circumstances (see also para. 20 below).

12. The Advisory Committee was also informed, upon enquiry, that senior staff members, particularly those with managerial responsibilities, were expected to act as role models for other staff members. Consequently, when senior staff members with managerial responsibilities were involved in cases of misconduct, their roles as managers and their failure to act as role models was taken into account in assessing the gravity of the misconduct and in determining an appropriate disciplinary measure. **The Advisory Committee considers that managers have the specific responsibility to lead by example and emphasizes the importance of ensuring increased transparency of managers' conduct with enhanced accountability (see also A/75/776, para. 13).**

13. In paragraph 19 of the report, the Secretary-General describes other non-disciplinary measures, which include written or oral reprimands, recovery of moneys owed to the Organization and administrative leave, with or without pay. Upon enquiry, the Advisory Committee was informed that the degree of recovery could be enhanced by identifying early on the extent of the loss and the extent to which it might be treated as an overpayment, such as an overpayment of an entitlement, as opposed to a loss (e.g. damaged property), and by beginning the recovery before a staff member resigns or is separated for misconduct. Also, the early identification of possible misconduct when a staff member resigns unexpectedly, and thus the withholding of final entitlements pending the conclusion of any investigative and/or disciplinary processes, could be another means of effecting more recoveries. Both would require action by heads of entities and their human resources and finance staff. The Committee was also provided with the table below on the amount of recovery of losses arising from the misconduct of staff members.

Table 2

Amount of recovery of losses arising from the misconduct of staff members

(United States dollars)

	<i>Amount requested to be recovered</i>	<i>Confirmed amount recovered</i>
2014	20 700.00	177.97
2015	21 373.12	2 363.82
2016	26 324.42	21 673.70
2017	162 606.23	79 875.04
2018	152 593.10	115 119.53
2019	78 691.17	15 222.47
2020	149 381.40	149 381.40
2021	183 712.46	44 939.39
Total	611 669.44	383 813.93

14. The Advisory Committee again notes the modest rate of recovery of losses from staff in some years and encourages the Secretary-General to strengthen his

efforts to fully recoup these losses, including by early identification of possible misconduct when a staff member resigns unexpectedly and by taking action to begin recovery before a staff member resigns or is separated for misconduct. The Committee reiterates that the next report of the Secretary-General should provide an update on losses recovered from staff arising from misconduct, as well as on measures to improve the rate of recovery of losses (A/75/776, para. 17).

15. The Advisory Committee also trusts that the Secretary-General will take appropriate measures to counter the risks highlighted by oversight bodies, including the Board of Auditors, and will provide data in future reports on disciplinary matters resulting from the findings of oversight bodies and on the related measures taken.

Data on cases handled during the reporting period

16. In the report, the Secretary-General provides a summary of cases in which disciplinary measures were imposed, and the related data, during the reporting period. Figure II of the report shows that 105 cases were completed during the reporting period, as compared with 145 cases in 2019. The number of disciplinary measures imposed in the current reporting period (46) was significantly lower than the average number of disciplinary measures imposed in the previous four annual periods (63.5). The average time taken during the reporting period to dispose of cases after their referral to the Office of Human Resources was 11.2 months, which is a significant increase relative to the time taken as reported for the period ended 31 December 2019 (7.9 months). The increase is attributed to the increased number of disciplinary cases reported, an increase in the volume of submissions to the United Nations Dispute Tribunal and the remote working arrangements related to the COVID-19 pandemic, which had an adverse impact on the productivity of officials handling disciplinary matters (A/76/602, paras. 78 and 81).

17. In paragraph 83 of the report, the Secretary-General indicates that the action taken to address these challenges included the onboarding in 2021 of two new staff members in the Appeals and Accountability Section of the Administrative Law Division. One mission, in which a number of staff members are implicated in improper medical insurance claims, contributed a temporary P-3 post in 2021. In addition, he also indicates that the Office of Human Resources has requested a new general temporary assistance-funded post at the P-4 level in the programme budget for 2022, which was approved by the General Assembly for 4.5 months.

18. Upon enquiry, the Advisory Committee was informed that the transition to remote working arrangements due to the COVID-19 pandemic had affected Legal Officers' access to the fundamental requirements for the disposition of their cases at the same rate as when working from the office. The Committee was also informed that the most important lesson learned from the COVID-19 pandemic was that remote working could contribute to achieving a healthy work-life balance, when done in an organized, voluntary way. The Committee was further informed that no specific timelines were set for the Administration to process a case file; however, in an ideal scenario, it would be possible to dispose of a case within 3 to 4 months, although this timeline is not currently being followed.

19. The Advisory Committee notes the significant increase in the average time taken to dispose of cases after their referral. The Committee is not convinced that remote working should have such a detrimental impact on productivity and considers that the performance of document-driven functions should be particularly adaptable to remote working. The Committee recommends that the General Assembly request the Secretary-General to take appropriate measures to enhance the rate of disposal of cases, including by applying a benchmark that

takes into account the ideal scenario of 3 to 4 months for the processing of a case, and to provide an update in his next report. The Committee also trusts that the Secretary-General will gather and apply the lessons learned and best practices from the COVID-19 pandemic.

Appeals against disciplinary measures

20. With respect to appeals, the Secretary-General indicates that, during the current reporting period, there were appeals in 11 cases, or 24 per cent of the measures imposed, as compared with 18 cases, or 23 per cent of the measures imposed in 2019. He states that the Dispute Tribunal has given greater scrutiny to the proportionality of the sanction imposed and, as a result, has decided in some cases that a different measure should have been imposed (*ibid.*, paras. 84 and 85). Upon enquiry, the Advisory Committee was informed that only 9 cases had been decided, in whole or in part, in favour of the staff member, representing 9.6 per cent of the total cases. Pursuant to settled jurisprudence by the United Nations Appeals Tribunal, it was not within the authority of the Dispute Tribunal to second-guess which of the disciplinary measures available to the Secretary-General should have been used in each case. The Administration has consistently filed appeals against any judgments of the Dispute Tribunal that go against the settled jurisprudence and has been successful in almost all such cases. **The Advisory Committee notes the scrutiny that the United Nations Dispute Tribunal has given to the proportionality of the disciplinary measures imposed by the Secretary-General and the related jurisprudence of the United Nations Appeals Tribunal. Given the increase in percentage of such cases, the Committee emphasizes the importance of the transparent, proportionate and consistent application of disciplinary measures by the Secretary-General (see also para. 11 above).**

Cases received by the Office of Human Resources

21. Regarding cases received by the Office of Human Resources, figure VI of the report shows that 183 cases were received during the reporting period, as compared with 146 cases in 2019. Figure VII indicates that the proportion of cases concerning field staff received during the reporting period was 66.7 per cent, as compared with 57.5 per cent cases in 2019. Upon enquiry, the Advisory Committee was provided with the tables below showing data on cases received, disaggregated by mission and non-mission staff.

Table 3
Cases received in 2020 by mission and non-mission staff

<i>Misconduct</i>	<i>Mission</i>		<i>Non-mission</i>		<i>Total</i>	
	<i>Cases</i>	<i>Percentage</i>	<i>Cases</i>	<i>Percentage</i>	<i>Cases</i>	<i>Percentage</i>
Abuse of authority, harassment and discrimination	13	37	22	63	35	100
Assault and abusive conduct	5	83	1	17	6	100
Failure to report	1	100			1	100
Inappropriate or disruptive behaviour	7	50	7	50	14	100
Misrepresentation and false certification	64	80	16	20	80	100
Misuse of ICT resources/computer-related misconduct	5	71	2	29	7	100
Misuse of United Nations property	1	100			1	100
Others	6	67	3	33	9	100
Procurement irregularities	2	50	2	50	4	100
Sexual exploitation and abuse	10	83	2	17	12	100

<i>Misconduct</i>	<i>Mission</i>		<i>Non-mission</i>		<i>Total</i>	
	<i>Cases</i>	<i>Percentage</i>	<i>Cases</i>	<i>Percentage</i>	<i>Cases</i>	<i>Percentage</i>
Theft/taking without authorization	4	100			4	100
Unauthorized outside activities	3	33	6	67	9	100
Violation of local laws	1	100			1	100
Total	122	67	61	33	183	100

Abbreviation: ICT, information and communications technology.

Table 4
Cases received from January to September 2021 by mission and non-mission staff

<i>Misconduct</i>	<i>Mission</i>		<i>Non-mission</i>		<i>Total</i>	
	<i>Cases</i>	<i>Percentage</i>	<i>Cases</i>	<i>Percentage</i>	<i>Cases</i>	<i>Percentage</i>
Abuse of authority, harassment and discrimination	11	48	12	52	23	100
Assault and abusive conduct	5	83	1	17	6	100
Failure to honour private obligations			1	100	1	100
Failure to report			1	100	1	100
Inappropriate or disruptive behaviour	7	78	2	22	9	100
Misrepresentation and false certification	39	87	6	13	45	100
Misuse of ICT resources/computer-related misconduct			1	100	1	100
Misuse of United Nations property	3	100			3	100
Others	5	100			5	100
Procurement irregularities	4	80	1	20	5	100
Sexual exploitation and abuse	9	100			9	100
Theft/taking without authorization	1	100			1	100
Unauthorized outside activities	4	36	7	64	11	100
Violation of local laws	1	100			1	100
Total	89	74	32	26	121	100

Abbreviation: ICT, information and communications technology.

Table 5
Cases concerning mission and non-mission staff by staff category from 2016 to 2021

Cases received	2016		2017		2018		2019		2020		2021		Total cases
	Cases	Percentage	Cases	Percentage	Cases	Percentage	Cases	Percentage	Cases	Percentage	Cases	Percentage	
Mission													
D1 and above	3	4	3	3	3	3	6	7	3	2	5	4	23
Field Service	14	18	16	18	19	21	26	31	16	13	21	17	112
General Service	45	56	48	55	52	57	31	37	78	64	66	52	320
National Staff	8	10	4	5	1	1	7	8	5	4	5	4	30
Professional Staff	10	13	17	19	17	18	13	16	20	16	29	23	106
Subtotal	80	100	88	100	92	100	83	100	122	100	126	100	591

Cases received	2016		2017		2018		2019		2020		2021		Total cases
	Cases	Percentage	Cases	Percentage	Cases	Percentage	Cases	Percentage	Cases	Percentage	Cases	Percentage	
Non-mission													
Intern									1	2			1
D1 and above	4	9	8	29	7	12	5	8	13	21	5	11	42
Field Service			1	4	1	2	1	2					3
General Service	27	59	9	32	18	31	23	37	19	31	17	36	113
Intern	1	2					1	2					2
National Staff							2	3	1	2	1	2	4
Professional Staff	14	30	10	36	33	56	31	49	27	44	24	51	139
Subtotal	46	100	28	100	59	100	63	100	61	100	47	100	304
Total	126		116		151		146		183		173		895

22. The Advisory Committee notes from table 4 above that, from January to September 2021, the proportion of cases concerning field staff received during the reporting period is 74 per cent, as compared with 67 per cent cases in 2020, reflecting an upward trend. Table 5 shows that, for the past five years, most cases with respect to mission staff were received under the General Service category, while for non-mission staff, most cases were received under the Professional Staff category.

23. **The Advisory Committee reiterates its recommendation that the General Assembly request the Secretary-General to conduct further analysis of the data on misconduct cases, including comparisons between cases involving mission staff and those involving non-mission staff, and to provide analysis and explanations for any trends shown by the data in his next report (A/75/776, para. 12).**

24. Table 4 of the report sets out the cases received during the reporting period by type of misconduct, with most cases relating to misrepresentation and false certification (82), abuse of authority/harassment and discrimination (36), inappropriate or disruptive behaviour (16), sexual exploitation and abuse (12) and unauthorized outside activities (10). Upon enquiry, the Advisory Committee was provided with the table below showing, for the past five years, the number of cases where separation from service or dismissal had been the disciplinary measure imposed and the types of misconduct that had led to such measures.

Table 6
Cases of separation from service or dismissal by type of misconduct, from 2016 to 2021

<i>Disposition – misconduct</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
Dismissal							
Abuse of authority, harassment and discrimination				1			1
Assault and abusive conduct	2		1		1		4
Failure to report						1	1
Misrepresentation and false certification	2	3	2				7
Misuse of United Nations property	2						2
Sexual exploitation and abuse	1	1	3	2	2	1	10
Theft/taking without authorization	3	1					4
Subtotal	10	5	6	3	3	2	29

<i>Disposition – misconduct</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
Separation from service, with compensation in lieu of notice and with or without termination indemnity							
Abuse of authority, harassment and discrimination	1	3	3	12	4	5	28
Assault and abusive conduct	11	3	5	1	2	1	23
Failure to report			1		1		2
Inappropriate or disruptive behaviour		1	1			2	4
Misrepresentation and false certification	12	10	10	12	8	38	90
Misuse of ICT resources/computer-related misconduct					1	2	3
Misuse of United Nations property	1	1	1	1			4
Others	3	2		1		3	9
Procurement irregularities					1		1
Sexual exploitation and abuse	1	2	1	2	2	3	11
Theft/taking without authorization	10	1	4	15	2	3	35
Unauthorized outside activities	1		3		3	4	11
Violation of local laws					1		1
Subtotal	40	23	29	44	25	61	222
Total	50	28	35	47	28	63	251

Abbreviation: ICT, information and communications technology.

25. In paragraph 82 of the report, the Secretary-General indicates that the Office of Human Resources has also been involved in working groups and committees that develop policies relating to conduct issues, including the task force on racism. Upon enquiry, the Advisory Committee was informed that, while discrimination based on the grounds of race was considered prohibited conduct, the Organization's norms did not sufficiently define "racism" or indicate how such behaviour might manifest itself in the workplaces of the Organization. This omission was a key finding of the Secretary-General's Task Force on Addressing Racism and Promoting Dignity for All in the United Nations. The Secretariat will therefore embark on reviewing the Secretary-General's bulletin [ST/SGB/2019/8](#) to address racism and racial discrimination, enhance accountability and promote diversity, equality, inclusion and equity. The Task Force was mandated to assess staff perceptions on the extent of racism and racial discrimination in the Organization, guide the awareness and action campaign and develop a long-term strategic action plan that would transform the Organization to a dignified and inclusive workplace for all, where racism is actively addressed and there is accountability for racist conduct. The Task Force concluded its mandate in January 2022 with the release of its report and a strategic action plan. The findings and recommendations of the report apply to the United Nations Secretariat, but the Secretary-General intends to bring the issue of racism to CEB. The Committee was also informed that the implementation of the report's recommendations was a key management priority that required pertinent resources, both financial and human, to actualize its operationalization, implementation and mainstreaming throughout the global Secretariat. The Committee was provided, upon enquiry, with a copy of the report and strategic action plan of the Task Force.

26. **The Advisory Committee recommends that the General Assembly request the Secretary-General to expedite the work on addressing racism and discrimination on the basis of race and to provide an update in his next report, including information on the work of CEB, as well as any related, including resource, proposals for consideration by the General Assembly.**

Possible criminal behaviour

27. Pursuant to General Assembly resolution [59/287](#), the Secretary-General indicates in paragraph 90 of the report that, during the reporting period, 24 cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States. Upon enquiry, the Advisory Committee was informed that five cases were currently under review by the Office of Human Resources; 1 case had been closed with the disciplinary measure of dismissal; 13 had been closed with the disciplinary measure of separation from service; 1 case had been closed with the disciplinary measure of censure, loss of steps and deferment of promotion; 2 cases had not been pursued; and 2 had been closed with the placement of a note to the official status file of the former staff members. **The Advisory Committee trusts that more detailed information on these cases and their outcomes will be included in the next report of the Secretary-General.**

III. Conclusion

28. The General Assembly is requested to take note of the present report ([A/76/602](#), para. 91). **Subject to its observations and recommendations above, the Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General.**
