



# General Assembly

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Agenda item 146

### Human resources management

## **Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 January to 31 December 2019**

### **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 2019 ([A/75/648](#)). During its consideration of the report, the Committee met online with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses dated 17 February 2021.

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 were informed on an annual basis about all actions taken in cases of proven misconduct and/or criminal behaviour in accordance with the established procedures and regulations. The report provides an overview of the administrative framework in disciplinary matters; a summary of the cases of established misconduct during the 12-month reporting period from January to December 2019; data reflecting the disposition of cases, as well as comparative data for the reporting period and the previous four calendar years; and information on the practice of the Secretary-General in cases of possible criminal behaviour (see [A/75/648](#), paras. 1–3).



## II. Report of the Secretary-General

### A. New administrative framework

3. In his report, the Secretary-General indicates that Secretary-General's bulletin [ST/SGB/2019/8](#), which was issued during the reporting period, provides that the formal process with respect to conduct amounting to discrimination, harassment, including sexual harassment, and abuse of authority (collectively referred to as "prohibited conduct") would be governed by administrative instruction [ST/AI/2017/1](#). Examples of conduct for which disciplinary measures may be imposed are listed in section 3.5 of that administrative instruction, which 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. As at the date of submission of the present report, very few matters continue to be governed by administrative instruction [ST/AI/371](#) and [ST/AI/371/Amend.1](#). 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. OIOS shall be apprised of decisions made by managers in relation to such reports (see [A/75/648](#), paras. 9–12).

4. Upon enquiry, the Advisory Committee was informed that, under the new administrative framework, OIOS acted as the first reviewer of a report of possible prohibited conduct and had the right to determine which cases it would investigate. According to the Secretariat, that approach guaranteed that all reports of possible misconduct were given a first independent review by professional investigators. The change was designed to encourage staff to bring issues of possible misconduct to the attention of the Organization, and to give staff trust and assurance that their reports of misconduct were not being ignored or mishandled. The Committee was further informed that the new policy also added significant clarifications with regard to investigations and enforcement matters that had not been stipulated previously, in particular, clarifying that [ST/AI/2017/1](#) applied to all misconduct, including prohibited conduct. It also stressed preventive and remedial measures with respect to discrimination, harassment, including sexual harassment, and abuse of authority. While the disciplinary process continued to be centralized at the Office of Human Resources within the Department of Management Strategy, Policy and Compliance, heads of entities were now clearly given the role of conducting assessment of the matters referred to their attention and the authority to address the matters through informal resolution and by interim measures. The Committee was informed of the measures taken to raise the awareness of staff as to the types of misconduct falling under that framework. As [ST/SGB/2019/8](#) took effect on 10 September 2019, it is stated that it is premature at the present stage to provide concrete analysis on its practical impact.

**5. The Advisory Committee notes the changes to the administrative framework for the review and disposition of cases, and the role of OIOS as first reviewer. The Committee recommends that the General Assembly request the Secretary-General to provide an update on the framework, including its practical impact, in his next report.**

## B. Data on cases handled during the reporting period

6. Table 1 of the report shows that a total of 146 cases were completed during the reporting period, compared with 129 in the previous period. The 146 cases included 37 cases relating to misrepresentation and false certification, 35 cases of alleged abuse of authority/harassment/discrimination, 18 cases concerning unauthorized outside activities and conflict of interest and 9 cases of possible theft and misappropriation. Of the 146 cases completed during the reporting period, 19 (or 13 per cent) were not pursued as disciplinary matters, representing a decrease compared with the previous period. The average time taken during the reporting period to dispose of cases after their referral to the Office of Human Resources was 7.9 months, representing an increase compared with the time taken as reported for the period ending 31 December 2018 (7.4 months) (see [A/75/648](#), paras. 95 and 96 and table 4).

7. Upon enquiry, the Advisory Committee was provided with data on cases from 2015 to 2020, which showed an increase in cases handled (from 227 in 2015 to 278 in 2020), cases received (from 144 in 2015 to 182 in 2020) and cases carried over (from 83 in 2015 to 96 in 2020), while cases closed reflected a decrease (from 123 in 2015 to 103 in 2020). With respect to the increase in the average case disposal time, the Committee was informed that there had been more cases to handle in 2019 owing to cases being carried over from and new referrals being made in 2018 and 2019, in addition to there having been one fewer legal officer working on disciplinary cases in 2019. Regarding the time taken by investigation panels to complete an investigation, the Committee was informed that the investigators were not professional full-time investigators; they were hired on a case-by-case basis and tended to have limited resources or support. The investigative panels were typically appointed to conduct investigations regarding alleged prohibited conduct, such as harassment, discrimination and abuse of authority; those types of cases required a longer period of time to complete.

**8. The Advisory Committee notes the increase in the average time taken to dispose of cases after their referral. The Committee recommends that the General Assembly request the Secretary-General to conduct a further assessment of the causes and to identify solutions to enhance the rate of disposal of cases.**

9. In his report, the Secretary-General indicates that the number of disciplinary measures imposed in the current reporting period (78) was significantly higher than the average number of disciplinary measures imposed in the previous four annual periods (57) (see [A/75/648](#), para. 98). The Advisory Committee was provided, upon enquiry, with a breakdown by nationality and gender, showing disciplinary measures involving 41 nationalities, with 66 measures related to male staff and 12 to female staff. The Committee was also provided with a chart showing the cases and types of fines imposed as a disciplinary measure in 2018 and 2019, and was informed that the disciplinary measure of a fine was typically considered when the subject staff member had had a financial motivation or had gained monetarily as a result of the misconduct.

10. In paragraph 104 of his report, the Secretary-General indicates that the proportion of cases received concerning field staff was 57.5 per cent. Upon enquiry, the Advisory Committee was provided with the two tables below showing, respectively: (a) the proportion of cases concerning mission staff and non-mission staff, by grade level, from 2015 to 2019; and (b) the proportion of cases concerning mission staff and non-mission staff, by type of misconduct.

Table 1  
**Proportion of cases concerning mission staff and non-mission staff, by grade level, 2015–2019**

<i>Staff category</i>	<i>2015</i>			<i>2016</i>			<i>2017</i>			<i>2018</i>			<i>2019</i>			<i>Grand total</i>
	<i>Mission</i>	<i>Non-mission</i>	<i>Total</i>													
D-1 and above	1	4	5	5	5	10	1	6	7	4	4	8	5	9	14	<b>44</b>
Professional staff	12	14	26	10	17	27	17	12	29	16	13	29	12	27	39	<b>150</b>
Field Service	9	1	10	18	1	19	10	–	10	23	1	24	24	1	25	<b>88</b>
National staff	–	1	1	10	–	10	5	–	5	1	–	1	4	1	5	<b>22</b>
General Service	72	9	81	76	18	94	42	19	61	52	15	67	43	18	61	<b>364</b>
Intern	–	–	–	–	1	1	–	–	–	–	–	–	–	1	1	<b>2</b>
<b>Total</b>	<b>94</b>	<b>29</b>	<b>123</b>	<b>119</b>	<b>42</b>	<b>161</b>	<b>75</b>	<b>37</b>	<b>112</b>	<b>96</b>	<b>33</b>	<b>129</b>	<b>88</b>	<b>57</b>	<b>145</b>	<b>670</b>

Table 2  
**Proportion of cases concerning mission staff and non-mission staff by type of misconduct**

<i>Misconduct</i>	<i>Mission</i>		<i>Non-mission<sup>a</sup></i>		<i>Total</i>
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	
Abuse of authority/harassment/discrimination	12	29.3	29	70.7	<b>41</b>
Assault (verbal and physical abuse)	2	40.0	3	60.0	<b>5</b>
Fraud, misrepresentation and false certification	34	81.0	8	19.0	<b>42</b>
Fraud and unauthorized outside activity	–	–	1	100.0	<b>1</b>
Inappropriate or disruptive behaviour, including unauthorized absence from work	1	50.0	1	50.0	<b>2</b>
Misuse of United Nations property	–	–	1	100.0	<b>1</b>
Other	7	100.0	–	–	<b>7</b>
Procurement irregularities	3	50.0	3	50.0	<b>6</b>
Retaliation	1	50.0	1	50.0	<b>2</b>
Sexual exploitation and abuse	4	80.0	1	20.0	<b>5</b>
Theft and misappropriation	15	88.2	2	11.8	<b>17</b>
Unauthorized outside activities and conflict of interest	8	53.3	7	46.7	<b>15</b>
Violation of local laws	1	100.0	–	–	<b>1</b>
<b>Total</b>	<b>88</b>		<b>57</b>		<b>145</b>

<sup>a</sup> One non-mission staff member is involved in three cases of alleged abuse of authority/harassment/discrimination.

11. The Advisory Committee notes from table 1 that, during the period from 2015 to 2019, the proportion of cases concerning mission staff and non-mission staff, respectively, was as follows: 94 cases (or 76 per cent) as compared with 29 cases (24 per cent) in 2015; 119 cases (or 74 per cent) as compared with 42 cases (or 26 per cent) in 2016; 75 cases (or 67 per cent) as compared with 37 cases (or 33 per cent) in 2017; 96 cases (or 74 per cent) as compared with 33 cases (or 26 per cent) in 2018; and 88 cases (or 61 per cent) as compared with 57 cases (or 39 per cent) in 2019, a 13 per cent decrease in the number of cases involving mission staff from 2018 to 2019. The Committee further notes from table 2 that the proportion of cases differs between mission and non-mission staff depending on the type of misconduct. The Committee notes in particular that, under “Abuse of authority/harassment/discrimination”, there were 29 cases involving non-mission staff as compared with 12 involving mission staff, while under “Fraud, misrepresentation and false certification”, there were 34 cases involving mission staff as compared with 8 involving non-mission staff.

**12. The Advisory Committee recommends 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.**

13. Upon enquiry as to cases involving staff members with managerial responsibilities, the Advisory Committee was informed that, owing to power imbalances in the workplace, individuals aggrieved by inappropriate conduct from managers or superiors felt afraid about or uncomfortable in voicing their concerns directly with the managers or superiors or reporting the matter early for redress, which often contributed to aggravating the situation and generating frustration and

animosity among the involved individuals, making early, amicable resolution of the matter difficult. While there was no set standard as to whether and how to consider the managerial position of the offender in disciplinary cases, in some cases the subject staff member being in a position of authority or seniority could serve as an aggravating factor. The Committee was also informed that section 1.7 of [ST/SGB/2019/8](#) specifically recognized that the role of a supervisor or senior official and the underlying power imbalance might be taken into account as an aggravating factor in cases concerning sexual harassment. **The Advisory Committee considers that increased transparency of managers' conduct, with enhanced accountability and stronger protections for staff coming forward with complaints, is necessary to create a more conducive environment. The Committee recommends that the General Assembly request the Secretary-General to provide more detailed information thereon, as well as measures to address this issue, in his next report.**

14. Upon enquiry, the Advisory Committee was informed that sexual harassment was defined as any unwelcome conduct of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interfered with work, was made a condition of employment or created an intimidating, hostile or offensive work environment. The definition required a certain nexus to the work or work environment. The definition of sexual exploitation and abuse did not require a nexus to the work or work environment, was more broadly defined and applied to sexual misconduct against non-United Nations personnel, for example, a member of the local population. For that reason, cases of sexual harassment had been reported as part of prohibited conduct, while sexual exploitation and abuse cases had been reported separately. The Organization's response to sexual exploitation and abuse was spearheaded by the Office of the Special Coordinator on Improving the United Nations Response to Sexual Exploitation and Abuse, together with the Victims' Rights Advocate. In addition, OIOS treated sexual exploitation and abuse investigations as a priority, and the Department of Management Strategy, Policy and Compliance handled those OIOS reports on a priority basis.

15. The Advisory Committee was also informed upon enquiry that, while OIOS investigated allegations of sexual harassment, owing to limited resources it could not investigate all cases of prohibited conduct under [ST/SGB/2019/8](#); it therefore often referred cases to the responsible official, i.e. the relevant head of entity, for appropriate action. **The Advisory Committee is of the view 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.**

16. In paragraph 23 of his report, the Secretary-General indicates that, by its resolution [68/252](#), the General Assembly requested him to take appropriate measures to mitigate and recoup any losses arising from misconduct by staff members and to report thereon. Upon enquiry, the Advisory Committee was provided with table 3, which shows the following: (a) the total amount of losses that were decided to be recovered from staff each year from 2014 to 2020; and (b) the total amount that the Office of Human Resources has been able to confirm with the implementing entities as having been actually recovered from staff.

Table 3  
**Recovery of losses arising from misconduct by 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
<b>Total</b>	<b>611 669.44</b>	<b>383 813.93</b>

*Note:* For the purpose of the above table, an amount in a currency other than United States dollars is converted into United States dollars using the applicable rate of 3 February 2021.

17. **The Advisory Committee 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. The Committee trusts that the next report of the Secretary-General will provide an update on losses recovered from staff arising from misconduct, as well as measures to improve the rate of recovery of losses.**

18. With respect to the United Nations Dispute and Appeals Tribunals, the Secretary-General states that in recent years approximately a quarter of the measures imposed during an annual period have been appealed. During the previous reporting period, ending 31 December 2018, there were appeals in 14 cases, or 23 per cent. He also states that the Tribunals continue to give considerable scrutiny to whether the facts on which disciplinary measures are based are established to the requisite standard. Recently, 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 (see [A/75/648](#), paras. 100 and 101). Table 3 of the report of the Secretary-General provides data on the disposition of appeals, indicating that, in 69.1 per cent of the cases, the final ruling was in favour of the respondent in whole; 11.1 per cent of the cases were withdrawn by the staff member; 4.9 per cent were ruled in favour of the staff member in whole; 3.7 per cent were ruled in favour in the staff member in part; and 11.1 per cent were settled.

19. In its previous report, the Advisory Committee noted the backlog of appeals cases against disciplinary sanctions since 2015, trusted that all efforts would be undertaken to reduce that backlog and recommended that the General Assembly request the Secretary-General to report thereon in his next report (see [A/74/558](#), para. 7). Upon enquiry, the Committee was informed that the number of appeals handled by the Office of Human Resources had increased, from 36 disciplinary matters in 2018 to 49 in 2020. **The Advisory Committee trusts that updated information on the backlog of appeals cases will be provided in future reports.**

20. In his report, the Secretary-General indicates that the Organization and other entities that are members of the United Nations System Chief Executives Board for Coordination collect information about established cases of sexual harassment and sexual exploitation and abuse in an application called ClearCheck, which may be accessed by Board entities for recruitment checking (see [A/75/648](#), para. 10). Upon enquiry, the Advisory Committee was informed that the initial and annual costs

associated with ClearCheck comprised \$213,000 for the initial development cost and \$42,600 for recurrent annual maintenance costs since the launch of the system. While the initial development cost and current annual costs had been absorbed by the Office of Information and Communications Technology, any additional changes to the system would be addressed as a part of a new project and therefore would be costed based on the requirements.

21. The Advisory Committee was also informed that another database managed by the Department of Management Strategy, Policy and Compliance, the Misconduct Tracking System, had been put in place in 2008 in response to a recommendation by the General Assembly ([A/59/19/Rev.1](#), as endorsed by the Assembly in its resolution [59/300](#)) that the database be a management tool that would also ensure that prior offenders would not be rehired. The Misconduct Tracking System had since been expanded to the entire Secretariat, and included vetting against records of prior misconduct contained in the System. The Committee was further informed that the following databases were used as part of recruitment in entities of the Secretariat and other members of the United Nations System Chief Executives Board for Coordination: (a) ClearCheck; (b) the public most wanted list of the International Criminal Police Organization; and (iii) the Security Council Sanctions Committee public list. **The Advisory Committee looks forward to more detailed information in the next report on the usage of the databases, as well as the costs and funding sources of the databases.**

### C. Possible criminal behaviour

22. By its resolution [59/287](#), the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. In paragraph 106 of his report, the Secretary-General indicates that, during the reporting period, 29 cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States. The Advisory Committee was informed upon enquiry that the most recent report of the Secretary-General on the criminal accountability of United Nations officials and experts on mission ([A/75/217](#)) provided detailed information about each of those 29 Secretariat cases, as well as information on 219 cases of credible allegations of criminal conduct referred to national authorities since July 2007. **The Advisory Committee trusts that more information on these cases and any related financial recovery will be included in the next report of the Secretary-General.**

## III. Other matters

### A. Impact of flexible work arrangements and reform processes

23. Upon enquiry as to the impact of the coronavirus disease (COVID-19) pandemic and the related flexible work arrangements, the Advisory Committee was informed that the Secretariat had not detected a meaningful correlation between the flexible work arrangements and the number of disciplinary cases received or noticed any change to the type of misconduct referred, although a record-high number of cases had been received in 2020. The Committee was further informed that the Secretariat considered the current accountability framework to be equipped to address possible misconduct arising from the new flexible working arrangements in place, and that therefore new instructions were not needed at present.

24. The Advisory Committee was further informed that many of the matters referred to the Office of Human Resources since mid-March 2020 related to conduct that had occurred prior to telecommuting arrangements being put in place, but that the telecommuting arrangements had not as yet had any noticeable impact on the type of misconduct or the treatment of cases at any stage of the process. However, because of the time lag between the conduct occurring and investigations taking place, it may be during 2021, or even 2022, that the COVID-19 telecommuting arrangements could be said to have had a discernible impact on the type of misconduct or its treatment. Nonetheless, it could be highlighted that, since March 2020, the COVID-19 pandemic had been taken into account as a possible mitigating factor when considering the disciplinary measures to be imposed.

25. In relation to the impact of management and other reform processes on disciplinary matters, the Advisory Committee was informed that oversight of conduct and discipline management and related matters had been consolidated within the Office of Human Resources, which allowed a streamlining of its ability to manage human resources risks, including a renewed focus on strengthening accountability and integrity. According to the Secretariat, the emphasis placed on accountability by the Secretary-General and the updating of three of the main conduct-related policies (ST/AI/2017/1, ST/SGB/2017/2.Rev.1 and ST/SGB/2019/8) had resulted in more reports of misconduct being received by OIOS and more matters being referred to the Office of Human Resources for possible disciplinary action.

**26. The Advisory Committee trusts that an assessment will be provided in the next report on the potential impact of management and other reforms, as well as the impact of the COVID-19 pandemic and the related flexible work arrangements, on disciplinary matters and the resulting caseload.**

## **B. Reporting period**

27. Regarding the reporting period for disciplinary matters, the Advisory Committee notes that the current report covers the period from 1 January to 31 December 2019 and is submitted for the consideration of the General Assembly during the first resumed session in 2021. **The Advisory Committee trusts that subsequent reports of the Secretary-General will include data collected more recently to the time of the consideration of the report of the Secretary-General, where available.**

## **IV. Conclusion**

28. The General Assembly is requested to take note of the present report (see [A/75/648](#), para. 107). **Subject to its comments and recommendations above, the Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General.**