



Realizing Refugee Rights  
in the Global South

June 14, 2006

## Redesign Panel on Internal Justice

United Nations

Via electronic mail: [redesignpanel@un.org](mailto:redesignpanel@un.org)

### COMMENT AND SUBMISSION

1. We are pleased to submit the following comments to the UN's Redesign Panel on Internal Justice. We applaud the UN's efforts to improve its system of internal administrative justice for resolving disputes involving UN staff.
2. As set out in G.A. Res. 59/283, the Panel's purpose is to "propose a model for a new system for resolving staff grievances in the United Nations." Though essential, this mandate neglects the wider issue of *external* administrative justice. In most systems, administrative justice and administrative law center on means by which private individuals may hold accountable the executive agencies of a government. This form of accountability and good government is missing at the United Nations. We urge the Redesign Panel to include in its final report a clear recommendation that the United Nations establish mechanisms of external administrative justice as well as internal justice.
3. The Redesign Panel has been asked only to propose a system of adjudication for the UN's own staff. Yet the principles of administrative justice articulated by the General Assembly are much broader. In Resolution 59/283, the General Assembly stressed that "the system of justice in the United Nations as a whole should be independent, transparent, effective, efficient and fair." This goal will not be met if the UN's form of administrative justice is restricted solely to those employed by the UN.
4. Around the world and especially in Latin America, Africa and Asia, hundreds of thousands if not millions of people depend on UN agencies to carry out mandates established by the General Assembly and other main bodies of the UN. Democratic governments have developed sophisticated systems of administrative justice to provide safeguards against error and arbitrariness by executive agencies in carrying out such mandates. Yet after more than six decades, the UN has few mechanisms by which people who depend on its executive agencies can challenge decisions or hold them accountable to their own mandates.
5. Asylum Access ([www.asylumaccess.org](http://www.asylumaccess.org)) is the only US-based organization devoted to setting up rights-based legal advocacy programs for refugees in the global south. Founded in 2005, Asylum Access was established by some of the world's leading authorities on refugee protection, and by veterans of frontline

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#### About Asylum Access

refugee protection work in the Middle East, Africa, and Latin America. Through partnerships and contacts with local NGOs, Asylum Access is currently concerned primarily with expanding the availability of legal aid to refugees who must apply to the UN High Commissioner for Refugees (UNHCR) for refugee status determination (RSD).

6. Our interest in UNHCR's RSD operations is the root of our interest in administrative justice at the UN. UNHCR has a mandate to supervise the implementation of refugee law and has, in communications to governments, promoted admirable standards of fairness to refugees. Yet its own procedures often fail to live up to the most basic benchmarks of due process, including the standards that UNHCR itself advocates.
7. As when governments adjudicate asylum applications, the stakes in UNHCR RSD could not be higher; wrong decisions can lead refugees to be detained or deported to countries where their lives may be in danger. Yet UNHCR has not yet established any institutionally independent mechanism for appealing its RSD decisions. UNHCR does not provide refugee applicants access to the evidence considered in their own cases, including transcripts of their own interviews, reports of medical examinations of their own bodies and mental states, statements by other witnesses, and evidence of country of origin conditions relied on by UNHCR decision-makers. UNHCR recommends, but does not require, that its field offices give specific written explanations when they reject refugee applications, and most offices do not do so. UNHCR only last year embraced the principle that refugees have a right to counsel in its RSD procedures, a rule still not consistently implemented in all UNHCR field offices.<sup>1</sup>
8. The gaps in UNHCR's RSD procedures affect tens of thousands of people in around 80 countries every year. Asylum Access and other organizations are engaged in a continuing dialogue with UNHCR about its RSD procedures. We summarize this issue because it illustrates the need for the UN to establish mechanisms for administrative justice not just for its own staff but also for vulnerable people who depend on UN agencies and who can suffer severely when administrative errors go unchecked.

### The accountability gap

9. Administrative justice is a basic institutional gap within the UN, long overdue for reform. The gap has its roots in the foundation of the UN as an inter-governmental organization. The 1946 Convention on the Privileges and Immunities of the United Nations<sup>2</sup> provided the UN with "immunity from every form of legal process" in national courts.<sup>3</sup> This was essential to ensure the UN's independence, but it also insulated the UN from judicial accountability. It should be noted, though, that the Convention on Privileges and Immunities mandated the UN to create its own dispute resolution mechanisms to fill the gaps left by its broad immunity.<sup>4</sup>
10. The UN includes several bodies that are essentially legislative in their function, such as the General Assembly and the Security Council. It also includes executive agencies that carry out mandates

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<sup>1</sup> For more information about these issues, please refer to [www.rsdwatch.org](http://www.rsdwatch.org).

<sup>2</sup> 1 U.N.T.S. 15, 13 February 1946

<sup>3</sup> *Id.* art. 2(2).

<sup>4</sup> *Id.* art. 29.

formulated by the legislative bodies. These agencies include the High Commissioner for Refugees, the World Food Programme, UNICEF, UNESCO, and others.

11. The UN also has a judiciary arm, the International Court of Justice, but the ICJ's primary role is to adjudicate disputes between states. Human rights law provides rights to individuals, not only sovereign states, and UN humanitarian agencies hold substantial power over individuals in many places. The UN has no judicial mechanism to allow these individuals to hold UN agencies accountable to their mandates or to general principles of human rights law.

#### Potential reforms

12. There are many steps that the UN can take to begin to fill this accountability gap. One of the first would be to establish an expert panel, similar to the Redesign Panel, that would propose mechanisms for external administrative justice, including a judicial tribunal and ombudsman systems. There should be similar consideration of enacting a Freedom of Information Act for the UN, in keeping with the General Assembly's commitment to transparent decision-making.
13. The Redesign Panel should begin this process by noting that administrative justice must be open to all who depend on the UN, and should not be limited to UN staff. We would ask that the Panel be clear in its report that the limits of its mandate are not the limits of the need for administrative justice reform at the UN. The Panel should recommend clearly that *internal* justice alone must only be the beginning of administrative justice reform at the UN, and that external justice by which UN agencies may be held accountable to the many people who depend on them is an even greater need.

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