



INTERNAL JUSTICE SYSTEMS OF INTERNATIONAL ORGANISATIONS
LEGITIMACY INDEX 2017

2017

CONTENT

- 3. Organisations and their acronyms
- 4. Number of Employees Per Organisation
- 5. Final Ranking Overview
- 6. Individual Factor Rankings
 - Factor 1 (Structure of the internal justice system)
 - Factor 2 (Applicable law and clarity thereof)
 - Factor 3 (First instance of litigation)
 - Factor 4 (Second Instance of litigation)
- 7. Legitimacy Index Report
- 17. Annex 1 – Model Questionnaire

Three international organisations have been added to the 2017 edition of the Legitimacy Index: the WFP, UPU and Council of Europe, bringing the total number of organisations in the Index to 33. The questionnaires of 7 international organisations have been revised this year on account of various amendments to their internal laws (i.e., EPO, ICO, IMO, OECD, UNIDO, WHO, WIPO)



ORGANISATIONS AND THEIR ACRONYMS

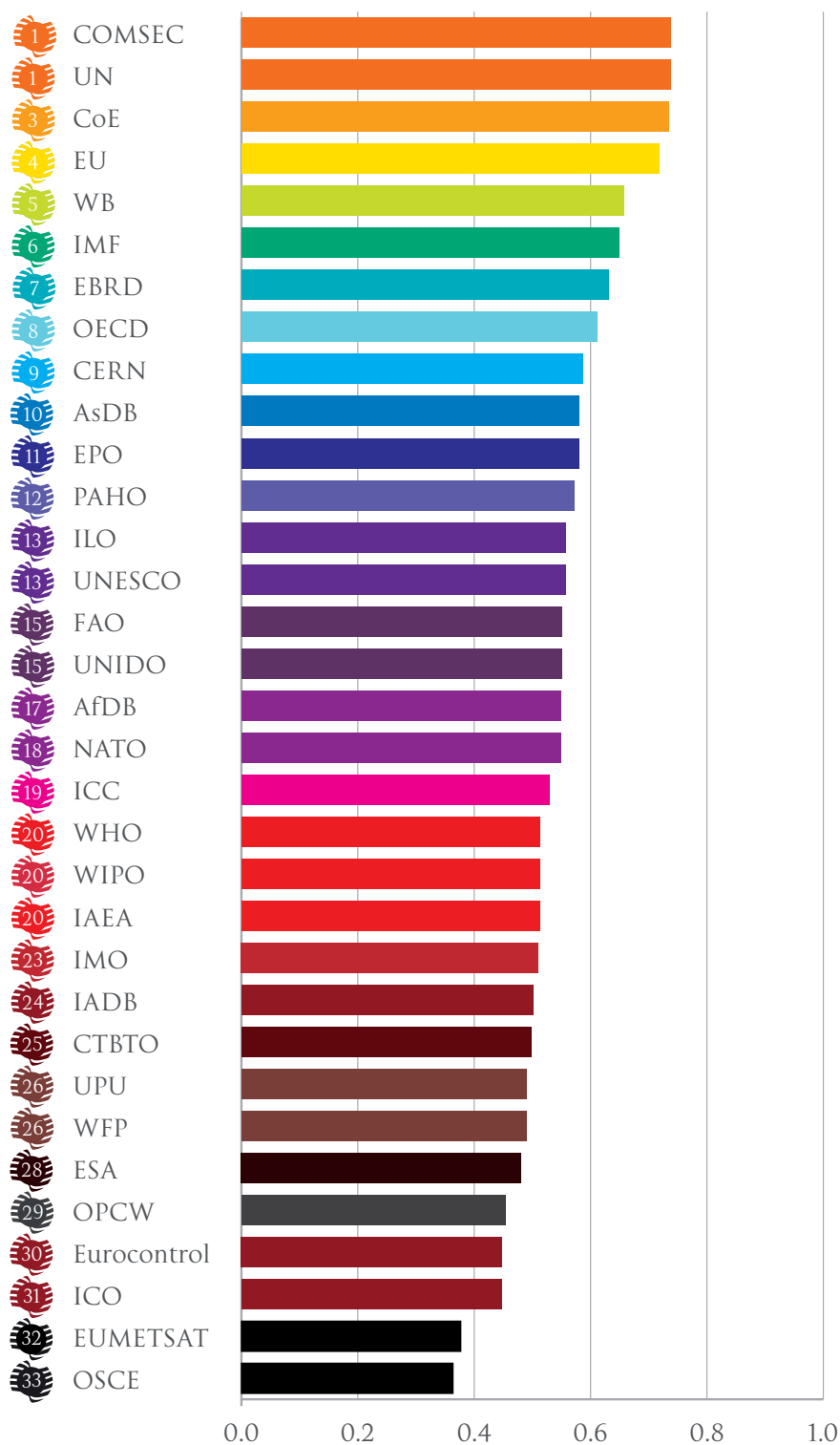
AsDB	Asian Development Bank
AfDB	African Development Bank
CERN	European Organization for Nuclear Research
CoE	Council of Europe
COMSEC	The Commonwealth Secretariat
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
EBRD	European Bank for Reconstruction and Development
EPO	European Patent Office
ESA	European Space Agency
EU	European Union
EUMESAT	European Organisation for the Exploitation of Meteorological Satellites
Eurocontrol	European Organisation for the Safety of Air Navigation
FAO	Food and Agriculture Organization of the United Nations
IADB	Inter-American Development Bank
IAEA	International Atomic Energy Agency
ICC	International Criminal Court
ICO	International Coffee Organization
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
NATO	North Atlantic Treaty Organization
OECD	The Organisation for Economic Co-operation and Development
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Co-operation in Europe
PAHO	Pan American Health Organization
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UPU	Universal Postal Union
WB	World Bank
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization

NUMBER OF EMPLOYEES PER ORGANISATION



FINAL RANKING OVERVIEW

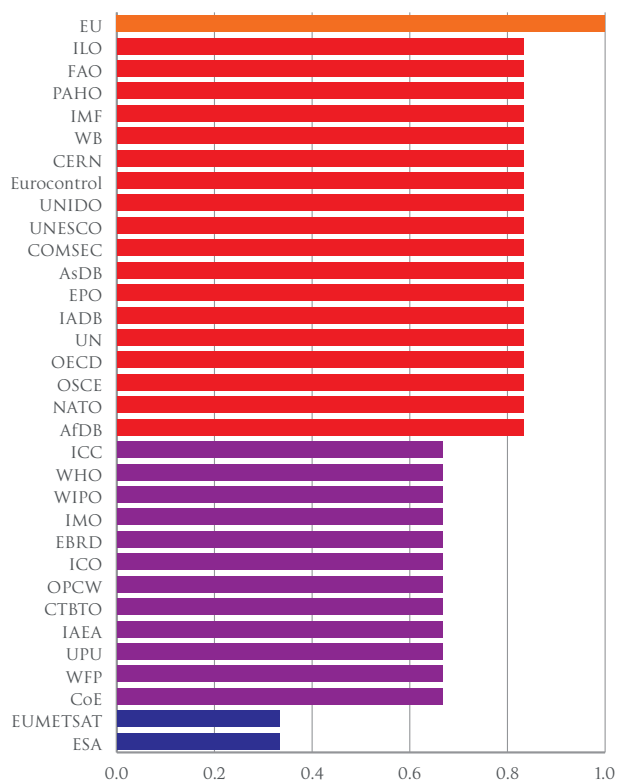
Taking into account of the weighting (Factors 1 and 2 have equal weights of 1, Factor 3 has a weight of 2 and Factor 4 has a weight of 1.5)



INDIVIDUAL FACTOR RANKINGS

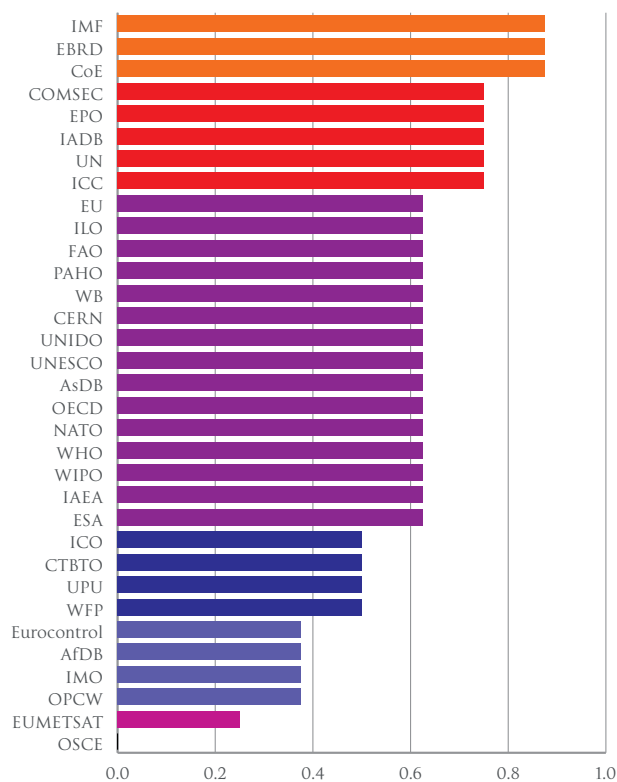
FACTOR 1

STRUCTURE OF THE INTERNAL JUSTICE SYSTEM



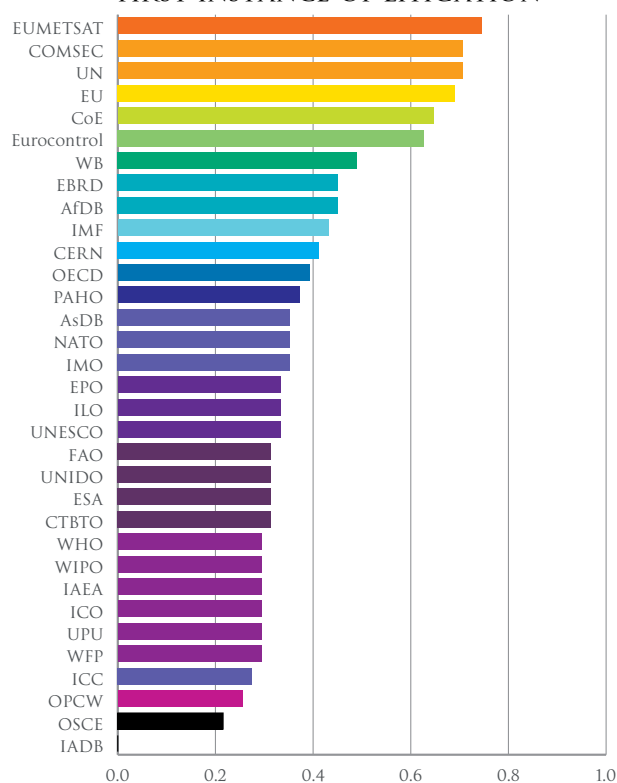
FACTOR 2

APPLICABLE LAW AND CLARITY THEREOF



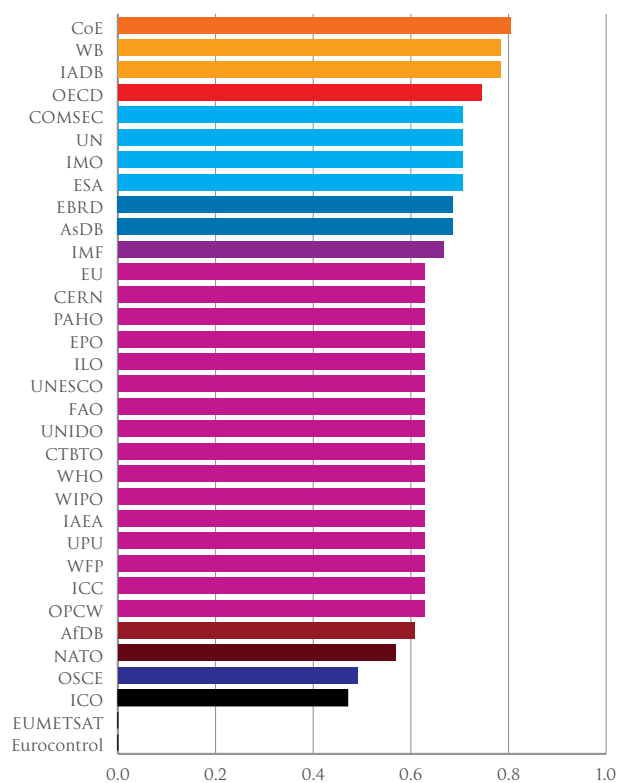
FACTOR 3

FIRST INSTANCE OF LITIGATION



FACTOR 4

SECOND INSTANCE OF LITIGATION





INTRODUCTION

International organisations enjoy a number of privileges and immunities¹ conferred upon them by their constituent agreements² or a general treaty (such as the General Convention on the Privileges and Immunities of the United Nations³ and the associated Specialised Agency Convention⁴). They are said to enjoy functional immunity, including the immunity from the jurisdiction of a State and a general immunity from legal suit in national courts, so as to ensure their independent functioning.⁵ This normally precludes employees of international organisations (commonly referred to as international civil servants) from suing their respective employers in national courts or tribunals. Providing an alternative mechanism to litigate the employment related disputes of international civil servants is therefore imperative for international organisations.⁶ This is based on the right of access to justice, which is contained implicitly in the international law prohibition of denial of justice and explicitly in contemporary human rights law, both conventional and customary.⁷

¹ See generally A. Reinisch, *International Organisations before National Courts*, (Cambridge University Press, Cambridge, 2000), p. 206 et seq, C. F. Amerasinghe, *Principles of the Institutional Law of International Organisations*, (Cambridge University Press, Cambridge, 2005), pp. 315–351; See also A. Reinisch, “The Immunity of International Organisations and the Jurisdictions of their Administrative Tribunals”, 7 *Chinese Journal of International Law* (2008) p. 285, A. Reinisch, U. A. Weber, “The Jurisdictional Immunity of International Organisations, the Individual’s Right of Access to the Courts and Administrative Tribunals as Alternative Means of Dispute Settlement”, 1 *International Organisations Law Review* (2004) p. 59 .

² See, for instance, Article VIII, paragraph 2 of the Agreement Establishing the World Trade Organisation, 15 April 1994, 1867 United Nations Treaty Series 154. A number of international organisations enjoy functional immunity which is defined in subsidiary instruments, such as multilateral agreements on privileges and immunities and bilateral headquarters agreements. See, for instance, Article VIII, Section 16 of the Agreement regarding the Headquarters of the FAO, 31 October 1950, 1409 United Nations Treaty Series 521.

³ Convention on the Privileges and Immunities of the United Nations, 13 February 1946, 1 United Nations Treaty Series 15 (hereinafter “General Convention”).

⁴ Convention on the Privileges and Immunities of the Specialised Agencies, 21 November 1947, 33 United Nations Treaty Series 261 (hereinafter “Specialised Agencies Convention”).

⁵ For instance, Article 105, United Nations Charter, provides: “The Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.” See also Restatement (Third) of the Foreign Relations Law of the United States (1986) § 467, para. 1: “Under international law, an international organisation generally enjoys such privileges and immunities from the jurisdiction of a member state as are necessary for the fulfilment of the purposes of the organisation, including immunity from legal process, and from financial controls, taxes, and duties.” For cases before national courts involving the immunity of international organisations, see A. Reinisch, *International Organisations before National Courts*, *supra* note 1, p. 158.

⁶ The International Court of Justice, as early as 1954, held that it would “[...] hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals [...] that [the United Nations] should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.” *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, 13 July 1954, International Court of Justice, (1954) ICJ Reports, p. 47. See also, for instance, Art. VIII Section 29(a) of the General Convention (*supra* note 2).

⁷ Article 10, Universal Declaration of Human Rights, 10 December 1948, General Assembly Resolution 217A (III), U.N. Doc A/810, p. 71 (hereinafter “UDHR”); Article 6, European Convention on Human Rights, 4 November 1950, 213 United Nations Treaty Series 221 (hereinafter “ECHR”); Article 14, International Covenant on Civil and Political Rights, 16 December 1966, 999 United Nations Treaty Series 171 (hereinafter “ICCPR”); Article 25, American Convention on Human Rights, 22 November 1969, 1144 United Nations Treaty Series 123 (hereinafter “American Convention”); Article 7, African Charter on Human and Peoples’ Rights, 27 June 1981, 1520 United Nations Treaty Series 217 (hereinafter “African Charter”). See also, Memorandum to the Executive Directors from the President of the World Bank, 14 January 1980, Doc. R80-8, 1 et seq., cited in C.F. Amerasinghe, *The Law of the International Civil Service*



Most international organisations have created an alternative system for the administration of justice in their employment related disputes (hereinafter “internal justice system” or “IJS”). This normally includes the establishment of an administrative tribunal⁸ or submission to the jurisdiction of an existing international administrative tribunal for the litigation of such disputes.⁹ The resolution of disputes in a principled manner plays an important role in legitimating the internal justice system of an international organisation. The legitimacy of an internal justice system and the adequacy of legal protection accorded by it will be judged by the criteria laid down by customary international human rights law.¹⁰ Non-compliance with accepted international human rights standards may result in the system being struck down by national courts and the organisation’s immunity being lifted.¹¹

The COE-IJS Legitimacy Index is an innovative quantitative assessment tool designed to offer a comprehensive picture of the internal justice systems of international organisations around the world. It scores and ranks international organisations based on how compliant their internal justice systems are with the criteria set by customary international human rights law. The Index provides new data on four crucial factors in the administration of justice: structure of the system; applicable law and clarity thereof; forum of first instance and forum of second instance. These four aggregate factors are further disaggregated into fourteen specific sub-factors.

The Index looks at an internal justice system’s adherence de jure to the criteria found in customary international human rights law. It examines the law applicable to the employment related disputes of an international organisation and the law relating to the internal justice system of such organisation, both substantial and procedural, so as to determine whether it fulfils those criteria. Findings are based on data derived from a detailed questionnaire which is answered based on the abovementioned laws of an international organisation. The IJS Legitimacy Index introduces scores and rankings for 33 international organisations.¹²

(as Applied by International Administrative Tribunals), vol. I, (Cambridge University Press, Cambridge, 2nd ed., 1994), p. 41

⁸ Such as the United Nations Dispute Tribunal and United Nations Appeals Tribunal, the Administrative Tribunal of the International Monetary Fund, the World Bank Administrative Tribunal, the Administrative Tribunal of the Asian Development Bank and the European Civil Service Tribunal

⁹ Such as the Administrative Tribunal of the International Labour Organisation

¹⁰ It is now mainstream belief that international organisations, as products of public international law, are undoubtedly bound by the fundamental principles of that law, including customary international human rights law. See, for instance, the decisions of the ICJ in *Reparations for injuries suffered in the service of the United Nations*, Advisory Opinion, 11 April 1949, International Court of Justice, (1949) *ICJ Reports*, p. 174 and *Interpretation of the Agreement of March 25, 1951 between the WHO and Egypt*, Advisory Opinion, 20 December 1980, International Court of Justice, (1980) *ICJ Reports*, p. 73. For scholarly debate see, H. Schermers and N. Blokker, *International Institutional law* (Martinus Nijhoff Publications, Leiden, 2003), p. 1002; S. Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish Publications, London-Sydney, 2001).

¹¹ See, for instance, the European Court of Human Rights’ decision in *Beer and Regan*, Application No. 28934/95, 18 February 1999, European Court of Human Rights (1999) *ECHR*, p. 6; *Waite and Kennedy*, Application No. 26083/94, 18 February 1999, European Court of Human Rights, (1999) *ECHR*, p. 13; *Siedler v. Western European Union*, 17 September 2003, Brussels Labour Court of Appeal (4th chamber), (2004) *Journal des Tribunaux*, p. 617.

¹² The international organisations included in the index at this stage present a balanced mix of size, type and geography. This is an organic process and there is no final list as such, as every revised COE-IJS Legitimacy Index may see an increase in the number of IOs being included. The UNDP uses the same internal rules as the UN and has thus not been included in the Index to avoid duplication of results.

DEFINING “LEGITIMACY OF AN INTERNAL JUSTICE SYSTEM”

The design of the index began with the effort to formulate a set of principles (or criteria) that would determine the legitimacy of an internal justice system. These criteria were derived to the extent possible from customary international human rights law, informed by a review of scholarly literature and decisions of international and regional tribunals, including that of international administrative tribunals. The principles have been refined to ensure, among other things, the avoidance of Western or other biases.

Any effort to define the legitimacy of an internal justice system must keep in mind that there is no fully developed theory on international procedural law and hence no universally accepted doctrine of international procedural principles. In the absence of such a fully developed theory, fundamental principles of international law, including customary international human rights law (treated so, *inter alia*, by virtue of their homogenous presence in international and regional conventions) and the statutes and decisions of international tribunals, particularly that of the ICJ, serve as a foundation for this exercise.

The universal principles that emerged from our deliberations are as follows:

1. Access to Justice.

The right of access to justice, based on the international law prohibition on denial of justice and contained in the UDHR, ECHR, ICCPR, American Convention and the African Charter, can be said to form part of customary international human rights law with reasonable certainty.¹³ It posits that everyone has a right of access to justice, in the form of a right to have access to a court or a mechanism of independent and impartial dispute settlement. While there is no international instrument codifying the elements which constitute the right of access to justice,¹⁴ the following can be extracted from the instruments listed above and from customary international human rights law:

- (a) the right to standing before a court or tribunal,¹⁵
- (b) the right to a competent, independent and impartial court or tribunal in the determination of a person's rights (reflecting the principle *nemo iudex in propria sua causa* – no one shall be a judge in his own cause),¹⁶

¹³ See *supra* note 7. See also the Report of the Redesign panel on the United Nations system of administration of justice, United Nations General Assembly, A/61/2015, p. 5.

¹⁴ Article 7 of the African Charter provides a list, albeit non-exhaustive, of the elements contained in the right of access to justice – see *supra* note 7.

¹⁵ It is interesting to note that international administrative tribunals have interpreted the scope of their jurisdiction in a broad sense so as to avoid the creation of a legal vacuum with respect to enforcing a claimant's rights. For an analysis of these decisions, see A. Reinisch, “The Immunity of International Organisations and the Jurisdictions of their Administrative Tribunals”, *supra* note 1.

¹⁶ See, for instance, Article 2 of the Statute of the International Court of Justice (hereinafter “ICJ Statute”) which provides that “the Court shall be composed of a body of *independent* judges elected regardless of their nationality from among persons of *highly moral character* who possess the qualifications required in their respective countries for appointment to the highest judicial offices or are juriconsults of recognised competence in international law.” Statute of the International Court of Justice, 26 June 26 1945, 33 United Nations Treaty Series 993. Their independence is protected by a nine-year term during which they are prohibited from exercising any political or administrative function or engage in any other occupation of a professional nature. This was also listed as one of the “Standards of Justice” under Article 1 of the points of negotiation propounded to the International Labour Office by the Staff Union as part of the ILOAT Reform Project. A court or a tribunal is understood to be of a judicial instance capable of rendering binding decisions (see, for instance, *Belilos v. Switzerland*, Application No. 10328/83, 29 April 1988, European Court of Human Rights, (1988) ECHR, p. 466)

- (c) the right to be heard in a fair and public trial with due process ¹⁷
- (d) the right to a reasoned and public decision.¹⁸

The right to a public hearing, especially, is contained in international and regional conventions alike – such as Articles 10 and 14 of the UDHR and ICCPR respectively, and Articles 6 and 8 of the European and American Convention on Human Rights respectively. ¹⁹

2. Right to Appeal

The right to appeal, while not being included explicitly in an international convention, is now considered to be a fundamental right under customary international human rights law. For instance, the report of the Redesign Panel of the United Nations administration of justice pointed out that “[W]hen in the determination of ... his rights and obligations in a suit at law an individual is deprived of the right to appeal, this severely weakens the fairness of the procedure”.²⁰ It cited the right to an appeal as part of the existing international standards of justice, which is reflected in Articles 6, 7 and 8 of the ECHR, the African Charter and the American Convention respectively.

3. Equality of arms

The principle of ensuring equality of arms in an adversarial proceeding has been recognized universally, especially as an element of the broader concept of fair trial. ²¹ It requires that each party be afforded

¹⁷ See *supra* note 13. In its Report, the Redesign panel state as follows: “These international standards include the right to a competent, independent and impartial tribunal in the determination of a person’s rights, the right to appeal and the right to legal representation.” It stated that “[H]earings, too, are a clear requirement in international standards whenever there are disputed issues of fact.” This was also listed as one of the “Standards of Justice”, under the principle of *audi alteram partem* under Article 1 of the points of negotiation propounded to the International Labour Office by the Staff Union as part of the ILOAT Reform Project.

¹⁸ Apart from being an element of the broader concept of fair trial, this is also essential to implement the principle of *stare decisis* – that a court or tribunal shall adhere to all prior legal precedents set out in its previously decided cases unless it demonstrates in written judgment that the prior precedent is distinguishable in law or in fact from the present case and therefore not applicable, or that the prior precedent was patently incorrect, or is now contrary to the generally accepted principles of international law.

¹⁹ In General Comment No. 13, on article 14 of the ICCPR, the Human Rights Committee emphasized that “the publicity of hearings is an important safeguard in the interest of the individual and of society at large.” United Nations Compilation of General Comments, pp. 123-124. This right is also reflected in Article 46 of the ICJ Statute which provides that hearings shall be public unless otherwise decided by the Court or the parties (see *supra* note 16).

²⁰ See *supra* note 13. This was contained in Article 34 of the points of negotiation propounded to the International Labour Office by the Staff Union as part of the ILOAT Reform Project under the title “Establishment of a Procedure for Appellate Review of ILOAT Decisions”.

²¹ See, for instance, the fair trial provisions in the international and regional conventions listed in *supra* note 7. With regard to the concept of “fair trial” in Article 14(1) of the ICCPR, the Human Rights Committee has explained that it “must be interpreted as requiring a number of conditions, such as equality of arms and respect for the principle of adversary proceedings”. *D. Wolf v. Panama*, Views adopted on 26 March 1992, Human Rights Committee, Communication No. 289/1988, pp. 289-290, para. 6.6. The African Commission on Human and Peoples’ Rights has held that “the right to fair trial involves fulfilment of certain objective criteria, including the right to equal treatment, the right to defence by a lawyer, especially where this is called for by the interests of justice, as well as the obligation on the part of courts and tribunals to conform to international standards in order to guarantee a fair trial to all”. *Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) v. Burundi*, Decision adopted during the 28th Ordinary session, 23 October – 6 November 2000, African Commission on Human and Peoples’ Rights, Communication No. 231/99 paras. 26-27. The European Court of Human Rights has explained the principle of equality of arms as “one of the features of the wider concept of a fair trial” as understood by article 6(1) of the European Convention, which implies that “each party must be afforded



a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent. This includes, inter alia, the following elements:

- (a) right to legal representation, including access to legal services.²²
- (b) the right to disclosure, i.e., the opportunity for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed, and
- (c) the right to summon, examine and cross-examine witnesses.

4. Clarity of law

It is also a universally accepted principle that laws must be clear, in written form wherever possible, stable and accessible to those whom it is meant to be applicable. Clear, stable and publicized laws play a crucial role in a claimant's exercise of his or her right of access to justice as well as ensuring equality of arms.²³ As the Report of the External Panel on the Review of the International Monetary Fund's Dispute Resolution System pointed out, "[L]aws and rules are respected and effective if those who are governed by them have full knowledge of them, are able to independently assess not only their content and applicability to their situation but also their reliability and fairness, and are able to pursue their working lives in expectation of fair treatment under them. Employees cannot be expected to conform to unknown requirements. Access, in the sense that we are using the term, has several aspects. It means that the rules are clearly written; that all relevant information is kept up to date; that the information is organized and readily available; and that employees can easily obtain it when needed."²⁴

THE IJS LEGITIMACY INDEX

The IJS legitimacy index refers to the adherence to the principles of customary international human rights law (identified above) by the internal justice systems of international organisations. This is done through marking each system against a comprehensive set of weighted indicators (or factors) that reveal the extent to which these principles are observed. The Index comprises four aggregate factors. The factors are broken down into fourteen specific sub-factors and each sub-factor (or factor, where there is no sub-factor) is further broken down into a set of questions reflecting the various elements of such sub-factor. These indicators are presented here and described in the section below.

a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent"; in this context, "importance is attached to appearances as well as to the increased sensitivity to the fair administration of justice". *Bulut v. Austria*, 22 February 1996, European Court of Human Rights, (1996) *ECHR*, p. 359.

²² This element was identified by the Redesign Panel on the United Nations administration of justice as being required to guarantee equality before courts and tribunals - see *supra* note 13 - and as one of the "Standards of Justice" under Article 1 of the points of negotiation propounded to the International Labour Office by the Staff Union as part of the ILOAT Reform Project. This was also highlighted by the Report of the External Panel on the Review of the International Monetary Fund's Dispute Resolution System dated 27 November 2001.

²³ As is evident from one of the four universal principles on which the World Justice Project's Rule of Law Index is based. The World Justice Project Rule of Law Index, 2012-2013, available at: http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf.

²⁴ Report of the External Panel on the Review of the International Monetary Fund's Dispute Resolution System dated 27 November 2001, paragraph 64.

FACTORS OF THE IJS LEGITIMACY INDEX

FACTOR 1: Structure of the internal justice system

FACTOR 2 - Applicable law and clarity thereof

FACTOR 3 – First instance of litigation

3.1 Locus Standi

3.2 Cause of Action

3.3 Form of Decision

3.4 Nature and Powers

3.5 Constitution, Membership and Functioning

3.6 Practice and Procedure

3.7 Equality of Arms

FACTOR 4 –Second Instance of litigation

4.1 Locus Standi

4.2 Cause of Action

4.3 Form of Decision

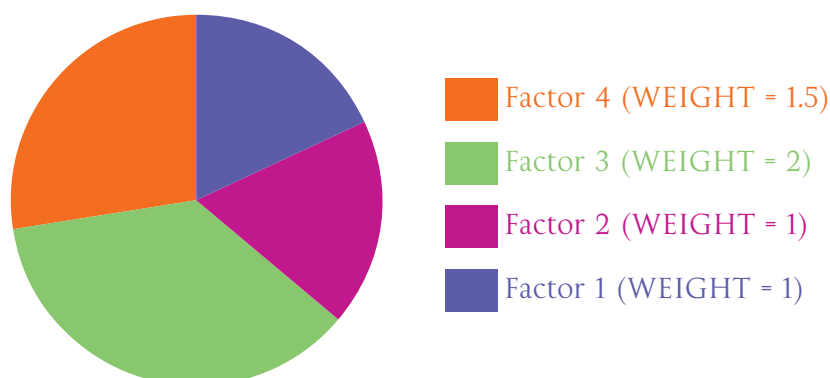
4.4 Nature and Powers

4.5 Constitution, Membership and Functioning

4.6 Practice and Procedure

4.7 Equality of Arms

WEIGHT OF FACTORS





FACTOR 1 – Structure of the internal justice system

Factor 1 addresses the basic structure and design of an internal justice system, i.e., whether it is a one-tier justice system with no room for appeal or provides for a two-tier justice system. In cases of an apparent two-tier justice system, this factor also seeks to determine whether the system provides for an independent judicial review of administrative action at both instances. As the Redesign Panel on the United Nations administration of justice pointed out, where a body in which the formal processes of the internal justice system are initiated does not have the power to take binding decisions, it leaves the next instance (if there is one) as a one-tier justice system with no right of appeal.

FACTOR 2 – Applicable law and clarity thereof

This factor analyses the law applicable to employment relationships in an international organisation so as to determine, inter alia, whether the organisation is bound by general principles of international law and customary international human rights law.²⁵ It also measures the clarity and accessibility of the applicable law to all those concerned. This is measured based on the existence of an obligation on the organization to have clearly written laws, keeping all relevant information up to date and readily available.

FACTORS 3 and 4 - First and second instances of litigation

These factors analyse the scope, jurisdiction, nature, powers, practice, procedure, constitution and functioning of the first and second instances of litigation respectively.

The first three sub-factors measure the extent to which the right of access to justice is guaranteed. They analyse the inclusiveness of the justice system with respect to those who can have full access to it, the jurisdiction of the fora for litigation and the scope of the matters which can be litigated before them. The next four factors analyse the nature, powers and practice of these fora. They also measure the extent to which the right to equality of arms is guaranteed at both these instances.

The first sub-factor (in both instances) measures the provision of right of access to justice to

- (a) Anyone who enters into or seeks to enter into an employment relationship with an international organisation, irrespective of the nature or duration of such relationship,
- (b) Anyone who enters into or seeks to enter into a contract with an international organisation to perform personal services
- (c) Survivors-in-title to the above and
- (d) Staff associations on behalf of its members

Considering the fact that persons or entities who enter into an employment relationship with an international organisation, irrespective of the nature or duration of such relationship, do not have access to national courts, it is important that they ought to have access to the organisation's internal justice system. Restricting such access to "staff members", where an interpretation of the term "staff member" does not include persons employed on special or short service agreements and individual contractors,

²⁵ For references, see *supra* note 10.



is in violation of an individual's right of access to justice. As the Redesign Panel on the United Nations administration of justice observed, because staff members are sometimes reluctant to enter the formal justice system for fear of reprisals, it is necessary to give staff associations an independent right to bring action.²⁶

The second sub-factor addresses the jurisdiction of the fora before which employment related disputes of the international organisation are to be litigated.

The third sub-factor addresses the scope of the claims which can be brought before such fora. They address the questions, viz., whether such fora can hear claims based on violations of fundamental human rights and general principles of international law or if they are restricted to claims based on the employment contract and the internal laws of the organisation. The importance of these sub-factors lies in the fact that while it is mainstream belief that international organisations are bound by customary international human rights law, enforcement of their obligations under the same would only be possible when claims based thereof can be litigated in the internal justice system.²⁷ The third sub-factor also addresses the question of whether the system allows for an affected party to approach it even in the absence of a formal decision.

The fourth sub-factor seeks to determine, inter alia, whether these are indeed judicial fora capable of making binding decisions and ordering appropriate relief. A forum of judicial instance is one which, inter alia, has the power to decide legal disputes with binding effect on the parties and accord appropriate relief.

The fifth sub-factor addresses the constitution, membership and functioning of the forum. It concerns the professional qualifications, independence and impartiality of its members, appointment and removal of the members.

The sixth sub-factor deals with the various elements of due process and fair trial. It measures the extent to which the practice and procedure of the forum guarantees the basic elements of due process and fair trial – such as oral hearings, access to documentation relating to the case, summoning, examination and cross-examination of witnesses, reasoned decisions and respect for time limits.

The seventh sub-factor deals with equality of arms. This sub-factor measures the extent to which the internal justice system guarantees equality of arms. It assesses the system's guarantee of the right to legal representation and the provision of qualified legal aid where required. It also measures the extent to which an appellant's due process rights are guaranteed – such as the right to an oral hearing, access to documentation relating to the case, summoning, examination and cross-examination of witnesses. While these also appear in the earlier sub-factor, the difference lies in the fact that while analysis in the former is from the perspective of the forum's power/duties, the analysis in the latter is from the perspective of a claimant's rights.

²⁶ It is important to note that some international administrative tribunals allow members of a Staff Committee or Association to bring a representative action, though not the Staff Committee or Association in its own right.

²⁷ See *supra* note 10.

METHODOLOGY



²⁸ It must be noted that these questionnaires are filled on the basis of the core internal laws of international organisations that are made available publicly. The answers are based, predominantly, on the constituent instruments, staff regulations and staff rules (where available) of an international organisation and not based on the jurisprudence of appellate bodies to whose jurisdiction the organisation is subject to. These answers may be at variance with detailed administrative instructions, other forms of internal laws or the interpretation of such laws by the appellate bodies.



MEASURING THE LEGITIMACY OF INTERNAL JUSTICE SYSTEMS

The index seeks to quantify comprehensively the legitimacy of an international organisation's internal justice system and the adequacy of the legal protection it accords by linking these concepts to concrete questions. These questions are answered with reference to the law applicable to the employment related disputes of an international organisation and the law relating to the internal justice system of such organisation, both substantial and procedural, where available. They do not, however, include any interpretation of such laws by the appropriate appellate bodies. These are then analysed based on the methodology described above. The result of this exercise is a comprehensive data set on the compliance of the internal justice system of an international organisation with the criteria laid down in public international law, including customary international human rights law. Our aim is to provide a picture where international organisations stand with respect to the said principles and standards.

USES OF THE IJS LEGITIMACY INDEX

The IJS Legitimacy Index is an instrument to provide the status of compliance with customary international human rights law standards with the internal justice systems of international organisations. It is intended for multiple audiences. It offers reliable and independent information for employees and staff representatives of international organisations, member states of international organisations, policy making organs of international organisations, national, regional and international tribunals to:

- Assess adherence to the principles and standards of customary international human rights law by the internal justice systems of international organisations;
- Identify the strength and weaknesses of the internal justice system of an international organisation in comparison to other international organisations;
- Identify the areas of non-conformity requiring reform;
- Track changes over time.



INTERNAL JUSTICE SYSTEMS OF INTERNATIONAL ORGANISATIONS – LEGITIMACY INDEX QUESTIONNAIRE

FACTOR 1: STRUCTURE OF THE INTERNAL JUSTICE SYSTEM			
Question No.	Question	Yes	No
1	Is there, at least, one instance of appeal?		
2	Is there more than one instance of appeal (two-tier)?		
3	Is the final deciding authority in the first instance of appeal different from that which made the original decision?		
4	Is the final deciding authority in the second instance of appeal different from that which made the decision at the first instance of appeal and/or the original decision?		
5	Is the exhaustion of remedies before the first instance a prerequisite for an appeal to lie before the second instance?		
6	If yes, are there any exceptions to the rule?		

FACTOR 2: APPLICABLE LAW AND CLARITY THEREOF			
Question No.	Question	Yes	No
1	Is there a codification of all the laws, both substantive and procedural, applicable to the employment relationships in the Organization?		
2	Is this available and accessible to all those who enter into an employment relationship with the Organization?		
3	Is this regularly updated and notification of the same made to all concerned?		
4	Does the applicable law include general principles of international law, including customary international human rights law?		
5	Does the applicable law explicitly include the jurisprudence of all the appellate bodies?		
6	Is the jurisprudence of the first appellate body made available to those who enter into an employment relationship with the Organization?		
7	Is the jurisprudence of the second appellate body made available to those who enter into an employment relationship with the Organization?		
8	Does the Organisation promulgate its internal law regarding appeals to its staff members, including notification of amendments?		

Question No. 1

Answered on the basis of

- a) Requirement in the internal laws regarding such a codification.
- b) Availability of the relevant laws in the public domain (or within the organisation), comment it.

Question No. 2

Answered on the basis of

- a) Requirement in the internal laws regarding such a codification.
- b) Availability of the relevant laws in the public domain (or within the organisation), comment it.

Question No. 3

Answered on the basis of an express obligation in the internal laws to make such updates and notifications.

Question Nos. 4 & 5

Answered on the basis of the Statute and Rules of procedure of the first and second appellate bodies (as well as Staff Regulations & Rules of the IO).

Question No. 5 is answered "Yes" only if the applicable law explicitly includes the jurisprudence of all appellate bodies.

Question No. 6

Answered on the basis of an express obligation in the internal laws to make such jurisprudence available to staff members.

Question No. 7

Answered on the basis of the Statute and Rules of procedure of the second appellate body.

Question No. 8

Answered on the basis of an express obligation in the internal laws to make such notifications.

FACTOR 3: FIRST INSTANCE OF APPEAL

3.1 Locus Standi

Question No.	Question	Yes	No
1	Can current staff members file an appeal?		
2	Can former staff members file an appeal?		
3	Can a successor-in-title to the above file an appeal?		
4	Can a short-term employee file an appeal?		
5	Can an individual contractor file an appeal?		
6	Can job applicants file an appeal?		
7	Can a staff association/union/committee file an appeal in its own right?		

3.2. Cause of Action

Question No.	Question	Yes	No
1	Can an appeal lie against the non-observance of terms of the employment contract?		
2	Can an appeal lie against the non-observance of Staff Regulations and Rules?		
3	Can an appeal lie against the violation of general principles of international civil service law?		
4	Can an appeal lie against the violation of fundamental human rights guaranteed under international law?		
5	Can an appeal lie against inappropriate or criminal behavior?		
6	Can an appeal lie with respect to a request to lift the immunity of the Organization or that of its official(s)?		

3.3. Form of decision

Question No.	Question	Yes	No
1	Can an appeal lie against a formal administrative decision?		
2	Can an appeal lie against an implied decision?		
3	Can an appeal lie against a general decision of the Organization?		
4	Can an appeal lie against informal practices of the Organization?		
5	Can an appeal lie against the failure of the Organization to act when there exists a duty to act?		

3.4 Nature and Powers

Question No.	Question	Yes	No
1	Is the first instance of appeal a judicial review?		
2	Does the appellate body have the power to make binding decisions?		
3	Does it have the power to order specific performance?		
4	Does it have the power to order appropriate relief, without limitations?		
5	Does it have the power to issue interlocutory orders?		
6	Does it have the power to order costs?		
7	Does it have the power to order interest?		
8	Does it have the power to grant a request for the execution of its decision?		
9	Does it have the power to determine its own jurisdiction (in the first place, to actually hear a case)?		
10	Does it have the power to establish its own rules of procedure?		

3.5 Constitution

Question No.	Question	Yes	No
1	Is there an independent body responsible for the appointment of the members of the appellate body?		
2	Are there procedures for the appointment and removal of the members of the appellate body?		
3	Are there minimum qualifications (legal – education and experience) to become its members?		
4	Are the members required to be independent (i.e., not belonging to or have any affiliation with the organization)?		

3.6 Practice and Procedure			
Question No.	Question	Yes	No
1	Is the appellate body required to hold oral proceedings?		
2	Is the appellate body required to provide an explanation for not holding an oral proceeding?		
3	Does the appellate body have the power to summon and hear witnesses?		
4	Does the appellate body have the power to order discovery of documents and disclosure of information?		
5	Is there an enforceable mechanism to ensure production of documents?		
6	Is the appellate body required to provide reasoned decisions?		
7	Is the principle of stare decisis applicable to its decisions?		
8	Are the decisions of the appellate body published?		
9	Are there time-limits for filing an appeal?		
10	Is there a time limit within which an appeal has to be concluded?		

3.7 Equality of arms			
Question No.	Question	Yes	No
1	Does an appellant have the right to representation?		
2	Does this right extend to being represented by a lawyer?		
3	Does an appellant have the right to legal aid?		
4	Is there any defense service offered by the Organization?		
5	Does such service have sufficient full-time, properly qualified staff?		
6	Does an appellant have the right to demand an oral proceeding?		
7	Does an appellant have the right to summon witnesses?		
8	Does an appellant have the right to cross-examine the evidence presented by the respondent?		
9	Does an appellant have the right to the production of documents in the respondent's possession?		



EXPLANATORY NOTES

3.3:

Question Nos. 2 – 5:

These are answered based on the explicit provisions in the internal law of an IO and the Statute of the first instance of appeal (including rules of procedure where applicable/available), without any interpretation of such provisions (either by BWL or the appellate body) or reference to the jurisprudence of the appellate body.

3.5:

Question No. 1:

This question is answered “No” if the appointment is by the Executive Head of the Organisation and is answered “Yes” if the appointment is made by the governing body of the Organization.

3.6:

Question No. 1:

In some cases this is not explicit. Oral proceedings are mentioned and are allowed mostly at the discretion of the appellate body. Cross reference with 3.7 – Question Nos. 6&7.

Question No. 4:

This is answered “Yes”, if the appellate body has absolute power to require the production of documents, including confidential documents (in which case it should at least have the power to review it in camera). If the relevant law leaves such production to the discretion of the IO, it is answered “No”.

Question No. 7:

This question is answered “Yes” when the relevant internal laws provide for the principle of stare decisis to be applicable to its decisions. Also to be seen in conjunction with Factor 2 (question 6).

3.7

Question Nos. 6 and 7:

This question is answered “Yes” if there is a right to demand an oral proceeding and summon witnesses (and not at the discretion of the appellate bod

Question No. 8:

This is answered “Yes”, as long as the appellant has an opportunity to review the evidence (orally or through written submissions).

Question No. 9:

This is answered “Yes”, if the appellate body has absolute power to require the production of documents, including confidential documents (in which case it should at least have the power to review it in camera). If the relevant law leaves such production to the discretion of the IO, it is answered “No”.

FACTOR 4: SECOND INSTANCE OF APPEAL

4.1 Locus Standi

Question No.	Question	Yes	No
1	Can current staff members file an appeal?		
2	Can former staff members file an appeal?		
3	Can a successor-in-title to the above file an appeal?		
4	Can a short-term employee file an appeal?		
5	Can an individual contractor file an appeal?		
6	Can job applicants file an appeal?		
7	Can a staff association/union/committee file an appeal in its own right?		

4.2. Cause of Action

Question No.	Question	Yes	No
1	Can an appeal lie against the non-observance of terms of the employment contract?		
2	Can an appeal lie against the non-observance of Staff Regulations and Rules?		
3	Can an appeal lie against the violation of general principles of international civil service law?		
4	Can an appeal lie against the violation of fundamental human rights guaranteed under international law?		
5	Can an appeal lie against inappropriate or criminal behavior?		
6	Can an appeal lie with respect to a request to lift the immunity of the Organization or that of its official(s)?		

4.3. Form of decision

Question No.	Question	Yes	No
1	Can an appeal lie against a formal administrative decision?		
2	Can an appeal lie against an implied decision?		
3	Can an appeal lie against a general decision of the Organization?		
4	Can an appeal lie against informal practices of the Organization?		
5	Can an appeal lie against the failure of the Organization to act when there exists a duty to act?		

4.4. Nature and Powers			
Question No.	Question	Yes	No
1	Is the second instance of appeal a judicial review?		
2	Does the appellate body have the power to make binding decisions?		
3	Does it have the power to order specific performance?		
4	Does it have the power to order appropriate relief, without limitations?		
5	Does it have the power to issue interlocutory orders?		
6	Does it have the power to order costs?		
7	Does it have the power to order interest?		
8	Does it have the power to grant a request for the execution of its decision?		
9	Does it have the power to establish its own rules of procedure?		
10	Does it have the power to engage in fact-finding?		

4.5 Constitution			
Question No.	Question	Yes	No
1	Is there an independent body responsible for the appointment of the members of the appellate body?		
2	Are there procedures for the appointment and removal of the members of the appellate body?		
3	Are there minimum qualifications (legal – education and experience) to become its members?		
4	Are the members required to be independent (i.e., not belonging to or have any affiliation with the organization)?		

4.6 Practice and Procedure			
Question No.	Question	Yes	No
1	Can the appellate body hold oral proceedings?		
2	Is the appellate body required to provide an explanation for not holding an oral proceeding?		
3	Does the appellate body have the power to summon and hear witnesses?		
4	Does the appellate body have the power to order discovery of documents and disclosure of information?		
5	Is there an enforceable mechanism to ensure production of documents?		
6	Is the appellate body required to provide reasoned decisions?		
7	Is the principle of stare decisis applicable to its decisions?		
8	Are the decisions of the appellate body published?		
9	Are there time-limits for filing an appeal?		
10	Is there a time limit within which an appeal has to be concluded?		

4.7 Equality of arms			
Question No.	Question	Yes	No
1	Does an appellant have the right to representation?		
2	Does this right extend to being represented by a lawyer?		
3	Does an appellant have the right to legal aid?		
4	Is there any defense service offered by the Organization?		
5	Does such service have sufficient full-time, properly qualified staff?		
6	Does an appellant have the right to an oral proceeding?		
7	Does an appellant have the right to summon witnesses?		
8	Does an appellant have the right to cross-examine the evidence presented by the respondent?		
9	Does an appellant have the right to the production of documents in the respondent's possession?		

EXPLANATORY NOTES

4.3

Question Nos. 2 – 5:

Derived from the Statute and rules of procedure of the appellate body and where applicable, from relevant jurisprudence (difference between 3.3 and 4.3: internal appeals body's jurisprudence is almost never published).

4.4:

Question No. 3:

This is replied “No” when the respondent has the discretion to reject the appellate body's relief to specific performance and choose to pay monetary compensation in lieu thereof.

Question No. 4:

This is replied “No” when there is a limit in the Statute (of the appellate body) with respect to the maximum amount of compensation to be ordered (even when it is allowed to exceed it under exceptional circumstances).

Question No. 7:

This is replied “Yes” unless it is expressly prohibited under the Statute or rules of procedure of the appellate body.

Question No. 8:

This question is based on the inherent powers of a judicial body and jurisprudence, where available.

Question No 10

This is answered “No” only when it is explicitly forbidden by the Statute or the Rules of procedure.

4.5

Question No. 1:

This question is answered “No” if the appointment is by the Executive Head of the Organisation and is answered “Yes” if the appointment is made by the governing body of the Organization.

Question No. 2:

This question is answered “Yes” only if there are procedures for appointment as well as removal of the members.

4.6

Question No. 1:

This is answered “Yes” if the appellate body has the power to hold oral proceedings.

Question No. 4:

This is answered “Yes”, if the appellate body has absolute power to require the production of documents, including confidential documents (in which case it should at least have the power to review it in camera). If the relevant law leaves such production to the discretion of the IO, it is answered “No”.

Question No. 7:

This is answered “Yes” based on the appellate body's Statute, Rules of Procedure and jurisprudence, where available.



4.7

Question Nos. 6 and 7:

The answer is “Yes”, as long as the appellate body has the discretion to order oral proceedings and hear witnesses.

Question No. 8:

This is answered “Yes”, as long as the appellant has an opportunity to review the evidence (orally or through written submissions).

Question No. 9:

This is answered “Yes”, if the appellate body has absolute power to require the production of documents, including confidential documents (in which case it should at least have the power to review it in camera). If the relevant law leaves such production to the discretion of the IO, it is answered “No”.

Authors:

Renuka Dhinakaran (Dhinakaran International Law Consultancy)

Alex P Haines (Bretton Woods Law)
