



INTERNAL MEMORANDUM - MÉMORANDUM INTÉRIEUR

Date: 11 June 2019

Ref.:

To: All Staff
À:

Copy: Judge Carmel Agius, President
Copie: Mr. Serge Brammertz, Prosecutor

From: Olufemi Elias, Registrar
De:

A handwritten signature in blue ink, appearing to read 'Olufemi Elias', written over the printed name of the Registrar.

Subject: **Mechanism Downsizing Policy**
Objet:

I hereby adopt the following policy (“Mechanism Downsizing Policy”) as recommended to me by the Joint Negotiating Committee (“JNC”) on 6 May 2019.

I. Guiding Principles

- A. Statute of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), Articles 14(5), 15(4): the Office of the Prosecutor and Registry “shall retain a small number of staff commensurate with the reduced functions of the Mechanism” and maintain rosters “of qualified potential staff, preferably from among persons with experience at the ICTY [International Criminal Tribunal for the former Yugoslavia] or ICTR [International Criminal Tribunal for Rwanda], to enable” rapid recruitment of additional staff as may be required to perform their functions.
- B. The overarching principles for the policy (“Downsizing Policy”) are that downsizing must:
 1. meet the operational needs of the organisation / mandate / section / organ;
 2. be transparent;
 3. be fair and consistently applied;
 4. be objective; and,
 5. be understandable.
- C. The Downsizing Policy will apply to any proposed post reductions from 1 January 2020 unless revised.

II. Downsizing Policy/Procedure

A. General policy provisions

1. **Revision:** Following consultation with the Joint Negotiating Committee (“JNC”), the Registrar may revise the downsizing policy where necessary in connection with each budget submission, to accommodate changing operational requirements and the realities of a smaller institution.

2. **Overriding criterion**: Determination of operational requirements, to ensure that core functions, including trials, appeals and other matters, are properly staffed and running smoothly so that the Mechanism can discharge its mandate efficiently and effectively.
3. **Comparative Review Pools**: Where multiple staff members perform interchangeable functions, they will be grouped in pools (“Comparative Review Pools”). As the Comparative Review Pools will be based on interchangeable functions, the budget categorisation of continuous posts and *ad hoc* posts is irrelevant for downsizing purposes.
4. **Standalone posts**: Where a post is the only post at a certain grade bearing a functional title, or performs functions that are not interchangeable, this post will be deemed a “Standalone Post”.
5. **Review Board**: A joint staff-management advisory body (“Review Board”) will provide oversight to the implementation of the Downsizing Policy and make recommendations to the Registrar on matters as detailed in section III below.
6. The Review Board shall be composed of an independent chair (“Chair”) and representatives of Management and representatives nominated by the Staff Union (“Representatives”).
7. The JNC will prepare terms of reference for the Review Board, including details on its composition, for adoption by the Registrar. The Chair of the Review Board may, in consultation with the Representatives, submit suggestions it considers necessary for its functions to the Registrar.

B. Downsizing criteria and Comparative Review Formula

1. **Downsizing in Comparative Review Pools**: Redundancies in Comparative Review Pools will be handled through the comparative review mechanism described below in section B.2. Standalone Posts will be downsized based on operational requirements.
2. **Comparative Review Formula**: All staff members on fixed-term, continuing and permanent appointments will receive a point score (“Comparative Point Score”) based on the following formula (“Comparative Review Formula”). These Scores will be used to rank staff members within Comparative Review Pools (“Sequential List”). Points will only be allocated for full calendar months of service.
 - a. One (1.0) point for each full month of continuous service at the ICTR, ICTY or Mechanism during the past five ePAS/ePerformance cycles (as applicable) with the following performance multiplier: exceeds performance expectations – two (2); fully meets performance expectations – one (1); partially meets performance expectations or does not meet expectations – zero (0). A staff member without a performance rating for a particular cycle will be treated as having received a “fully meets performance expectations” rating for the purpose of calculating his/her Comparative Point Score.
 - b. Plus one (1.0) point for each full month of continuous service at the ICTR, ICTY or Mechanism (including temporary appointments) not included in the calculation under sub-paragraph (a) above. Breaks in service of no longer than one (1) month shall not be considered to have interrupted continuous service.

- c. Plus one half (0.5) point per full month of non-continuous service at the ICTR, ICTY or Mechanism (including temporary appointments) not included in the calculation under sub-paragraphs (a) and (b) above, where there have been a break of service for longer than one (1) month.
- d. Plus one half (0.5) point per full month of any other prior UN service.
- e. Staff members on 50% or 80% employment will receive points for each month of service on the same basis as staff members on 100% employment (with multiplier per sub-section (a) above, as applicable).
- f. Staff members on extended sick leave with full pay or with half pay will receive points for each month (with multiplier per sub-section (a) above, as applicable).
- g. If a staff member was on Special Leave Without Pay (“SLWOP”), loan or secondment for one (1) month or less, the staff member will receive points for this period in accordance with sub-sections (a)-(d) above, as applicable.
- h. If a staff member was on loan or secondment to another UN organisation for more than one (1) month, the staff member will receive points for this period in accordance with sub-section (d) above. The staff member will receive these points for every month during which the loan or secondment was in effect, even if a portion of a month was spent in service at the ICTY, ICTR or Mechanism. No ePerformance multiplier will apply.
- i. If a staff member was on SLWOP or on loan to a non-UN organisation for more than one (1) month,¹ the staff member will not receive points for the calendar months during which the SLWOP or loan was in effect, but it will not be treated as a break-in-service.
- j. A multiplier of zero (0) will apply to the months of service for any performance cycle in which a staff member received a disciplinary or administrative sanction, within the past five (5) performance cycles, in accordance with ST/AI/2017/1 “Unsatisfactory Conduct, Investigations and the Disciplinary Process”, or otherwise imposed by OHRM.
- k. For purposes of creating the Sequential Lists, a staff member who received a disciplinary sanction, administrative sanction, “partially meets performance expectations” rating, or “does not meet performance expectations rating” in the immediately preceding performance cycle will be ranked at the bottom of his/her respective Sequential List regardless of his/her Score and remain at the bottom until the next Comparative Review exercise.
- l. A staff member who has received a disciplinary sanction, administrative sanction, “partially meets performance expectations” rating, or “does not meet performance expectations rating” any time between the beginning of an ePerformance cycle (1 April preceding year) and the establishment of Sequential Lists for Comparative Review Pools will remain “frozen” in his/her numeric position in the Sequential List until the next Comparative Review exercise. The cut-off date for the establishment of Sequential Lists for Comparative Review Pools will be announced to staff each year in advance.

¹ For purposes of this policy, organisations such as ICC, STL, OPCW, SCSL, RSCSL et cetera are “non-UN organisations”.

3. **Tie-breaking criteria for the Comparative Review:** In the event two or more staff members within a Comparative Review Pool have the same numerical Score, the order of those staff members within the Sequential List shall be determined by application of the following tie-breaking criteria, in the order presented:

- a. Entry on Duty (“EOD”) date with continuous service with the ICTR, ICTY and/or Mechanism, using the exact (not rounded) date, with preference going to the staff member with the earlier EOD; continuous service shall be calculated consistent with the definition of breaks in service above;
- b. If any staff members have the same EOD, then gender parity will be considered, based on the Comparative Review Pool’s composition, with preference going to the under-represented gender;
- c. If gender parity is not determinative, proximity to the mandatory age of separation will be considered, with preference going to the older staff member;
- d. If proximity to the mandatory age of separation is not determinative, placement of the remaining staff members with the same Score within the Sequential List shall be determined by lottery. In the event this method is required, staff members involved in the tie must be given the option to be present when the lottery drawing is made, through whatever means are agreed by the Review Board.

4. **Contract types and downsizing order:**

- a. Downsizing within Comparative Review Pools shall be consistent with UN Staff Rules 9.6(e) and 13.1(d), meaning that staff members will be downsized in the following order:
 1. Staff members with fixed-term appointments
 2. Staff members with continuing appointments
 3. Staff members with permanent appointments
- b. Staff members with the same appointment type will be downsized based on Comparative Point Scores and tie-breakers as required. Staff members on Standalone Posts will be downsized according to operational requirement, regardless of appointment type.
- c. The Downsizing Policy does not apply to staff members with temporary appointments.

III. Implementation of downsizing policy

A. The following steps will take place following preparation of the budget submission.

1. The Human Resources Section (“HRS”) may set deadlines for submission of completed ePerformance appraisals to HRS. If ePerformance appraisals are not submitted by the deadline, the multiplier for the relevant performance cycle will be one (1). A staff member who believes there are special or extenuating circumstances may request reconsideration from the Chief of HRS.



2. HRS generates maximum contract extension dates based on post abolition schedule in the budget submission and provides data to section chiefs or unit heads (“Managers”). HRS also calculates Comparative Point Scores in accordance with the Comparative Review Formula for all staff members on fixed-term, continuing and permanent appointments, and communicates Scores to individual staff members. Staff may submit requests for reconsideration or correction of Scores to the Review Board through HRS within ten (10) calendar days of receipt of the Score. If the matter is one that can be resolved by HRS, HRS will do so in consultation with the staff member; otherwise HRS will forward the matter to the Review Board.
3. Managers define Standalone Posts and Comparative Review Pools and submit them, accompanied by relevant justifications, via their Principal (or his/her designee) to the Review Board for review. The Review Board considers Managers’ submissions and staff members’ requests for reconsideration or correction of Scores, and makes recommendations regarding these matters for the Registrar’s decision.
4. Once the structure of Standalone Posts and Comparative Review Pools is approved, HRS will populate the Standalone Posts and Comparative Review Pools with staff member names, and produce the lists of staff members on Standalone Posts and the Sequential Lists, with necessary adjustments in accordance with section II.B.2-4. HRS will send the lists of staff members on Standalone Posts and the Sequential Lists to the Review Board. The Review Board reviews placements and ensures tie-breaking criteria have been applied correctly, and makes recommendations to the Registrar.
5. Once the lists of staff members on Standalone Posts and the Sequential Lists are approved by the Registrar, HRS will prepare individual notification letters (“Notifications”) to inform staff members of their placement on a Standalone Post or relative placement in a Comparative Review Pool, and of the maximum contract extension date. Managers will personally deliver these Notifications, and staff members will sign for receipt. Absent exceptional circumstances, if a staff member does not sign for receipt, the Notification will be considered received ten (10) calendar days after the Manager has delivered the Notification.
6. HRS and Managers will make the best effort to provide these Notifications three (3) months in advance of a staff member’s downsizing date, and will further make the best effort to provide information regarding separation one (1) month prior to the downsizing date. Should a staff member subsequently advance position in his/her Comparative Review Pool and receive an extension, HRS and Managers will make the best effort to provide information regarding separation one (1) month prior to the new downsizing date.
7. Staff members may appeal the Notification to the Review Board within ten (10) calendar days of receipt of the Notification. The Review Board will consider such appeals and make recommendations to the Registrar.
8. The Review Board will remain constituted in order to consider any proposed modifications to the Standalone Posts or Comparative Review Pools, exceptions (*see* section III.C), or other matters referred by the Registrar for consideration, including matters referred to the Registrar by staff members.

B. *The effect of staff movements and changes to established Comparative Review Pools*

1. A staff member (including both a new staff member, or a current staff member changing jobs in the Mechanism) who is recruited to a vacancy in an established Comparative Review Pool after the end of ePerformance cycle (31 March) but before the Sequential List for that Comparative Review Pool has been established, shall have his/her Point Score calculated in accordance with section II.B.2.
2. A staff member (including both a new staff member, or a current staff member changing jobs in the Mechanism) who is recruited to a vacancy in an established Comparative Review Pool after the Sequential List for that Comparative Review Pool has been established, shall be placed at the bottom of the Sequential List for that Comparative Review Pool for the duration of the period for which the Comparative Review exercise was conducted. When the next Comparative Review exercise commences, the staff member's position in the Sequential List will be made in accordance with the calculation of points in that Comparative Review exercise.
3. If the staff member joins a Comparative Review Pool where another staff member has been placed at the bottom of the Sequential List in accordance with section II.B.2(k), that other staff member will remain at the bottom of the List and the new staff member will be placed above him/her.
4. If more than one staff member joins a Comparative Review Pool at the same time, their order amongst themselves on the Sequential List will be determined by their Comparative Review Scores, but they will remain below staff members who joined earlier (except as provided in paragraph 3 above).

C. *Requests for exception to Comparative Review*

1. After the lists of staff members on Standalone Posts and the Sequential Lists have been approved by the Registrar (*see* section III.A.4-5), a Manager may in exceptional circumstances request that the application of the Comparative Review be modified with respect to one or more staff member's relative placement in the Sequential List.
2. A request for exception shall only be granted where the loss of specific skills of a staff member, or of gender representation, would result in an inability of the organisation to meet its operational needs.
3. Any request for exception shall be submitted by the Manager responsible for Comparative Review Pool creation via their Principal (or his/her designee) to the Review Board, with an explanation for the request. Staff members in the Comparative Review Pool where the exception is envisioned shall be notified of the request and be permitted to offer observations to the Review Board orally or in writing. Staff members may opt to be represented, and will be notified of when the Review Board will meet to consider the request for exception no less than ten (10) days prior to that meeting. The Review Board shall submit a recommendation to the Registrar.
4. If an exception is granted by the Registrar, it may not shorten the length of contracts already issued to staff members in the affected Comparative Review Pool. The impacted staff members will be informed in writing of the reason for the exception.



IV. Miscellaneous

- A. For all deadlines referenced in this policy, if the deadline falls on a weekend or official Mechanism holiday, the deadline shall be interpreted as falling on the next working day.
- B. If a staff member's appointment is extended for purposes of sick leave entitlement only, pursuant to ST/AI/2013/1, paragraph 4.9-4.10, the staff member shall be removed from his/her Comparative Review Pool (if applicable) at the time the post s/he encumbered had been scheduled to be downsized. The provisions of ST/AI/1999/16, "Termination of Appointment for Reasons of Health," will apply to determine the date of separation. If the staff member subsequently becomes medically fit to work, s/he shall be eligible to apply for vacancies.
- C. If SLWOP for pension purposes is authorised in accordance with Staff Rule 5.3(d), the staff member shall be removed from his/her Comparative Review Pool (if applicable) at the time the post s/he encumbered is downsized.