

Ninth activity report
Office of Administration of Justice
1 January to 31 December 2015

CONTENTS

I. INTRODUCTION3

II. THE UNITED NATIONS DISPUTE TRIBUNAL4

A. COMPOSITION4

B. JUDICIAL WORK4

1. Caseload 4

2. Number of judgments, orders and court sessions5

3. Sources of applications6

4. Subject matter7

5. Representation of staff members7

6. Informal resolution8

7. Referral for mediation.....8

8. Outcomes8

9. Relief.....9

10. Referral for accountability10

11. Jurisprudence.....10

III. THE UNITED NATIONS APPEALS TRIBUNAL.....11

A. COMPOSITION11

B. JUDICIAL WORK11

1. Sessions.....11

2. Caseload.....11

3. Sources of appeals12

4. Representation of staff members13

5. Outcomes.....14

6. Relief16

7. Referral for accountability.....16

8. Jurisprudence.....16

IV. THE OFFICE OF STAFF LEGAL ASSISTANCE17

A. FRAMEWORK17

B. OUTREACH AND TRAINING ACTIVITIES17

C. CASE STATISTICS17

1. Number of requests for legal assistance.....17

2. Breakdown of requests.....19

3. Settlement23

V. THE OFFICE OF THE EXECUTIVE DIRECTOR24

APPENDIX I: UNDT APPLICATIONS RECEIVED IN 2015 BY EMPLOYMENT ENTITY25

APPENDIX II: PRONOUNCEMENTS OF UNDT28

APPENDIX III: PRONOUNCEMENTS OF UNAT.....37

1. Introduction

1. The Office of Administration of Justice (OAJ) is an independent office responsible for the overall coordination of the formal system of administration of justice, and for contributing to its functioning in a fair, transparent and efficient manner. OAJ provides substantive, technical and administrative support to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal through their Registries; assists staff members and their representatives in pursuing claims and appeals through the Office of Staff Legal Assistance; and provides assistance, as appropriate, to the Internal Justice Council.¹

2. The ninth report of the OAJ covers the activities of the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) and United Nations Appeals Tribunal (Appeals Tribunal or UNAT) and their Registries, the Office of Staff Legal Assistance (OSLA) and the Office of the Executive Director for the period 1 January to 31 December 2015.

3. The report includes statistical information on caseloads and summaries of notable legal pronouncements by UNDT and UNAT in 2015 on a range of subjects.

¹ ST/SGB/2010/3, section 2.1.

2. The United Nations Dispute Tribunal

A. Composition

4. During the reporting period, the composition of the Dispute Tribunal was as follows:

- (a) Judge Vinod Boolell (Mauritius), full-time judge based in Nairobi;
- (b) Judge Memooda Ebrahim-Carstens (Botswana), full-time judge based in New York;
- (c) Judge Thomas Laker (Germany), full-time judge based in Geneva;
- (d) Judge Goolam Hoosen Kader Meeran (United Kingdom), half-time judge;
- (e) Judge Coral Shaw (New Zealand), half-time judge;
- (f) Judge Nkemdilim Amelia Izuako (Nigeria), ad litem judge based in Nairobi;
- (g) Judge Alessandra Greceanu (Romania), ad litem judge based in New York;
- (h) Judge Rowan Downing, (Australia), ad litem judge based in Geneva.

5. By resolution 70/112 the General Assembly extended the term of the three ad litem judges to 31 December 2016.

6. During the reporting period the judges of the UNDT held one plenary meeting in New York from 23 to 27 February 2015. Judge Boolell was elected President of the UNDT from 1 July 2015 to 30 June 2016.

B. Judicial work

1. Caseload

7. As at 1 January 2015, 317 applications were pending. In 2015 the UNDT received 438 new applications and disposed of 480 applications. As at 31 December 2015, 275 applications were pending. The new applications included two groups of related applications: a second group of applications related to a periodic salary survey² and a group of applications related to non-renewal of fixed-term appointments because of abolitions of posts. Table 1 below shows the number of applications received, disposed of and pending for the years 2009 to 2015. Table 2 shows the breakdown by duty station.

Table 1: UNDT applications received, disposed of and pending: 2009 to 2015

UNDT	Received	Disposed of	Pending (end of year)
2009	281	98	183
2010	307	236	254
2011	281	271	264
2012	258	260	262
2013	289	325	226
2014	411	320	317
2015	438³	480⁴	275
Total	2265	1990	---

² The first group was described in A/70/187, para. 7.

³ As in previous years, this figure includes applications for suspension of action. There were 85 such requests in 2015.

⁴ This figure included 84 applications for suspension of action (10 of which were withdrawn); 66 other withdrawn applications (including as a result of informal resolution); three applications closed by inter-registry transfer; 2 applications for interpretation of judgment; two applications for revision of judgment; and 2 applications closed for want of prosecution. Of the applications disposed of, 252 were filed in 2015, 191 in 2014, 20 in 2013, 11 in 2012 and six in 2011.

Table 2: Applications received, disposed of and pending by duty station

UNDT	Received			Disposed of			Pending (end of year)		
	GVA	NBI	NY	GVA	NBI	NY	GVA	NBI	NY
2009	108	74	99	57	19	22	51	55	77
2010	120	80	107	101	59	76	70	76	108
2011	95	89	97	119	59	93	46	106	112
2012	94	78	86	106	76	78	34	108	120
2013	75	96	118	77	103	145	32	101	93
2014	209	115	87	67	128	125	174	88	55
2015	182	190	66	285	127	68	71	151	53
Total	883	722	660	812	571	607	---	---	---

2. Number of judgments, orders and court sessions

8. Table 3 shows the total number of judgments, orders and court sessions from 1 July 2009 to 31 December 2015. Table 4 shows the breakdown by duty station. It should be noted that not all applications are disposed of by way of judgment and that one judgment may dispose of more than one application.

Table 3: UNDT judgments, orders and court sessions: 2009 to 2015

UNDT	Judgments	Orders	Court Sessions ⁵
2009	97	255	172
2010	217	679	261
2011	219	672	249
2012	208	626	187
2013	181	775	218
2014	148	827	258
2015	126⁶	991⁷	192
Total	1196	4825	1537

⁵ A “court session” is a statistical unit used to ensure consistency among the three Registries in reporting on hearings. A hearing may consist of up to three daily court sessions (morning, afternoon, evening) and may be held over several days. The Court Sessions included 102 Case Management Discussions covering 129 cases.

⁶ These 126 judgments disposed of 327 applications (eight judgments disposed of 209 related applications, four judgments disposed of four applications for interpretation or revision of judgment, one judgment disposed of one application for want of prosecution, and 113 judgments disposed of 113 other applications).

⁷ This figure includes orders that disposed of 153 applications (the 74 suspension of action applications that proceeded; 76 withdrawals; and three inter-Registry transfers, all referred to in footnote 4 above); 541 orders relating to case management; 114 orders relating to extension of time and 144 other orders.

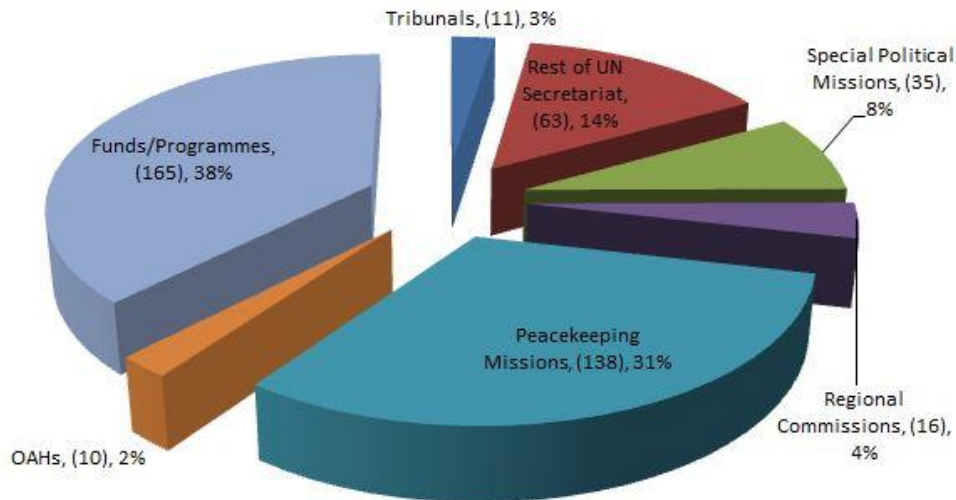
Table 4: UNDT judgments, orders and court sessions by duty station

UNDT	Judgments			Orders			Court sessions		
	GVA	NBI	NY	GVA	NBI	NY	GVA	NBI	NY
2009	44	20	33	39	26	190	21	33	118
2010	83	52	82	93	248	338	54	116	91
2011	86	52	81	224	144	304	54	117	78
2012	79	65	64	172	183	271	24	88	75
2013	41	67	73	201	219	355	32	114	72
2014	37	67	44	197	275	355	31	119	108
2015	48	40	38	272	405	315	58	66	68
Total	418	363	415	1198	1500	2128	274	653	610

3. Sources of applications

9. The categories of applicants who filed in 2015 were as follows: Director (33); Professional (132); General Service (183); Field Service (33); Security (7); National Staff (42); Others (17).

10. The 438 applications received during the reporting period were filed by staff members in a number of UN entities, as illustrated in Chart 1 below.

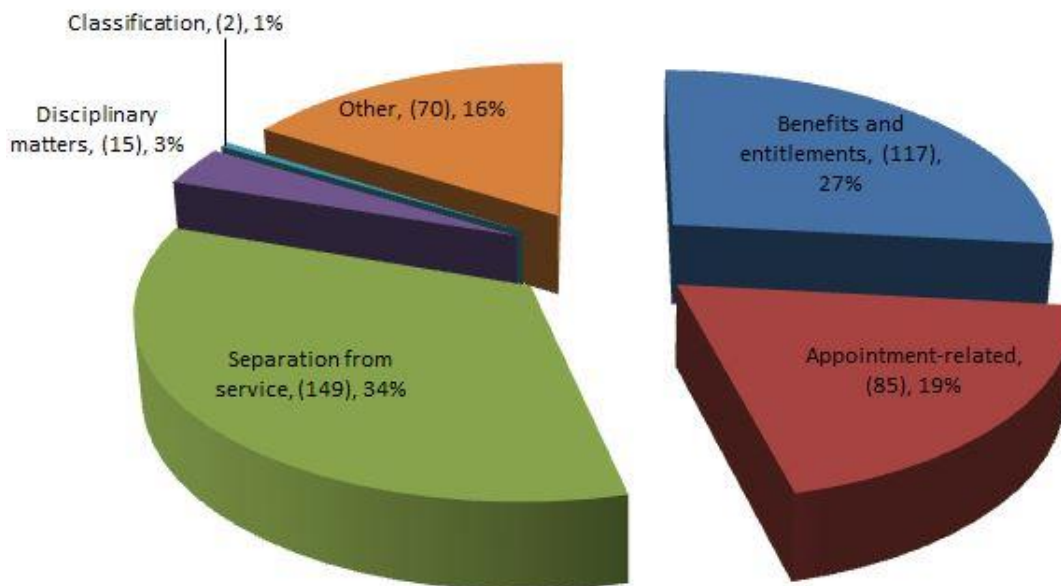
Chart 1: Breakdown of applications received in 2015 by entity of the staff member

11. Information on the departments or offices where applicants were serving at the time of the contested decision is contained in Appendix I. (Please note that the decision-maker of a decision which was challenged before the UNDT may not have been part of the department or office where the applicant served.)

4. Subject matter

12. The subject matter of applications received during the reporting period fell into six main categories: (1) benefits and entitlements: 117 applications; (2) appointment-related matters (non-selection, non-promotion and other related matters): 85 applications; (3) separation from service (non-renewal and other separation matters): 149 applications; (4) disciplinary matters: 15 applications; (5) classification: two applications; and (6) other: 70 applications. This is illustrated in Chart 2 below.

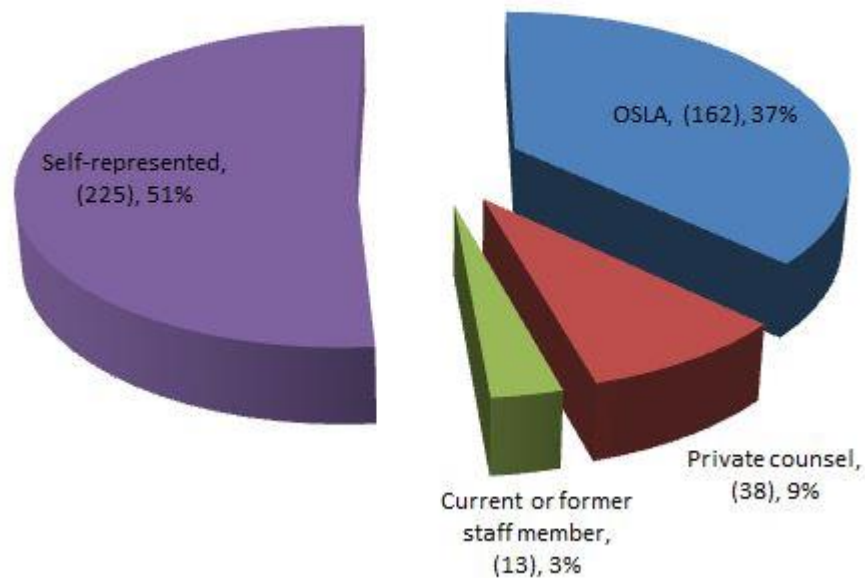
Chart 2: Applications received in 2015 by subject matter



5. Representation of staff members

13. OSLA provided representation before the UNDT in 162 of the 438 UNDT applications received in 2015.⁸ In 38 applications, staff members were represented by private counsel, in 13 applications staff members were represented by volunteers who were either current or former staff members of the Organization and in 225 applications staff members represented themselves. This is illustrated in Chart 3 below.

⁸ OSLA's data on representation before the UNDT differs because OSLA became co-counsel in 2015 with respect to a number of applications filed with the UNDT in 2014.

Chart 3: Representation of staff members for applications received in 2015

6. Informal resolution

14. A total of 76 applications pending before the UNDT were either informally resolved between the parties or as a result of UNDT case management or were withdrawn by Applicants or were mediated by the Office of the Ombudsman and Mediation Services.

7. Referral for mediation

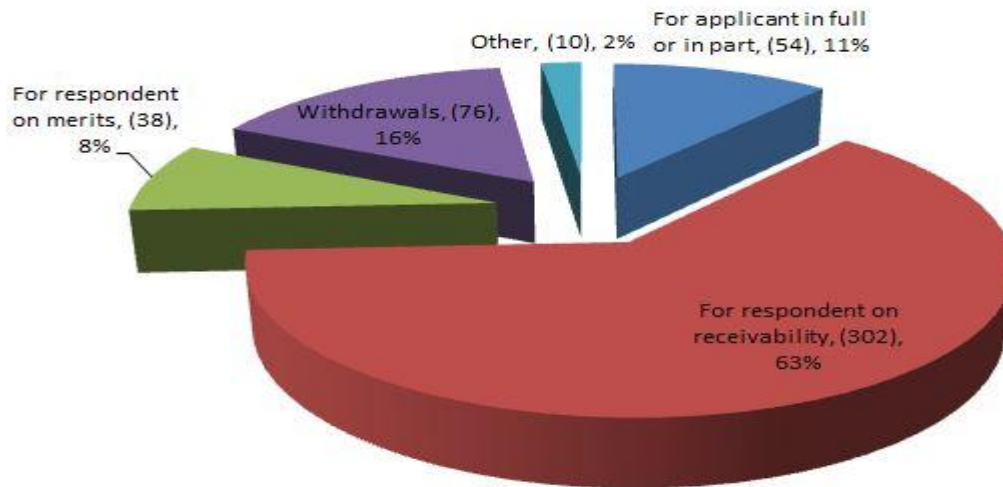
15. In 2015, 15 applications were successfully mediated by the Office of the Ombudsman and Mediation Services following a referral by the UNDT under Article 10.3 of the UNDT Statute.

8. Outcomes

16. The outcomes of the 480 applications disposed of by the UNDT in 2015 are illustrated in Chart 4 below. The applications that were informally resolved or withdrawn while they were pending before the Tribunal are included under “Withdrawals”.

17. In 2015 the applications rejected on receivability included over 200 related applications which concerned one particular matter.

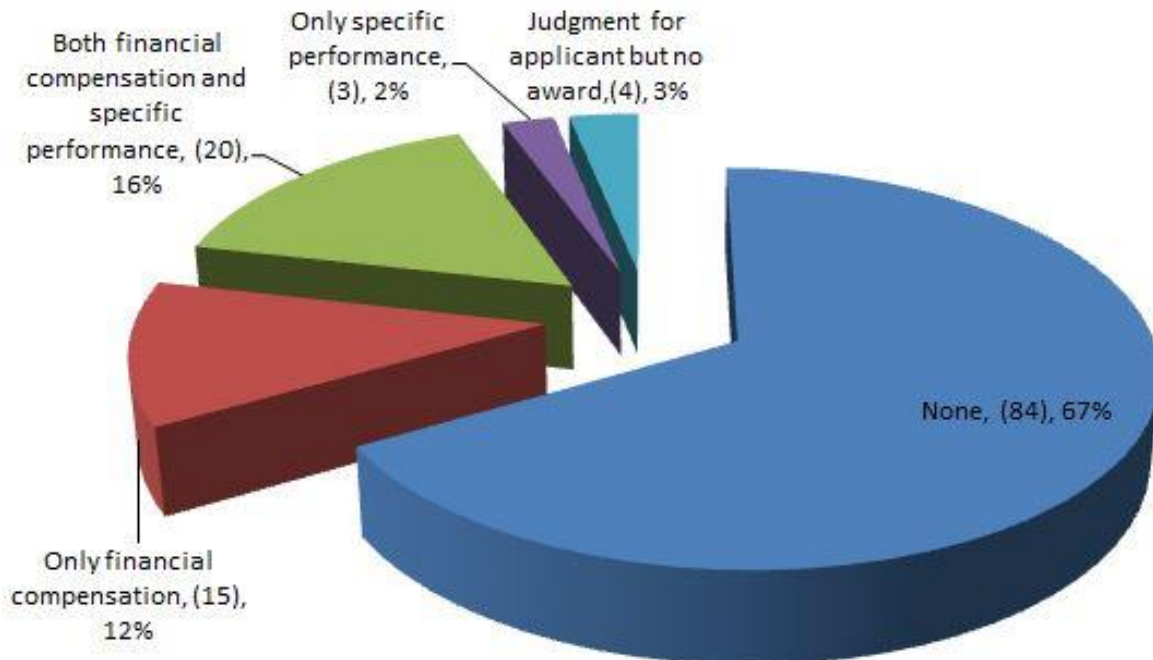
Chart 4: Outcome of applications disposed of in 2015



9. Relief

18. The UNDT ordered relief as set out in Chart 5 below.

Chart 5: Relief granted to applicants in 2015



10. Referral for accountability

19. The UNDT made three referrals for accountability under article 10.8 of the UNDT Statute.

11. Jurisprudence

20. The UNDT rendered legal pronouncements on a range of subjects, some examples of which are set out in Appendix II in brief.

III. The United Nations Appeals Tribunal

A. Composition

21. During the reporting period, the composition of UNAT was as follows:

- (a) Judge Richard Lussick (Samoa);
- (b) Judge Rosalyn Chapman (United States);
- (c) Judge Inés Weinberg de Roca (Argentina);
- (d) Judge Sophia Adinyira (Ghana);
- (e) Judge Luis María Simón (Uruguay);
- (f) Judge Mary Faherty (Ireland);
- (g) Judge Deborah Thomas-Felix (Trinidad and Tobago).

22. In June 2015 UNAT elected its Bureau for the term 1 July 2015 to 30 June 2016, with Judge Chapman serving as President, Judge Adinyira as First Vice-President, and Judge Thomas-Felix as Second Vice-President.

B. Judicial work

1. Sessions

23. UNAT held three sessions in 2015: a spring session (16 to 27 February 2015), a summer session (22 June to 3 July 2015) and a fall session (19 to 30 October 2015). At the sessions, UNAT heard and passed judgment on appeals filed against judgments rendered by the Dispute Tribunal (see article. 2.1 of the UNAT Statute), appeals against decisions of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board (UNJSPB) alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF) (see article. 2.9 of the UNAT Statute), and appeals against judgments and decisions in connection with entities that concluded special agreements with the Secretary-General of the United Nations (see article. 2.10 of the UNAT Statute): the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the International Civil Aviation Organization (ICAO), the International Court of Justice (ICJ), and the International Tribunal for the Law of the Sea (ITLOS). UNAT held two oral hearings in 2015.

2. Caseload

24. As at 1 January 2015, UNAT had 101 appeals pending. During the reporting period UNAT received 191 new appeals⁹ and disposed of 145 appeals.¹⁰ As at 31 December 2015, UNAT had 147 appeals pending.

25. Table 5 below shows the number of appeals received, disposed of and pending for 2015 and previous years. There was a 39 per cent increase in the number of appeals received in 2015, compared to 2014. This increase was largely due to the first group of periodic salary survey applications¹¹ which were adjudicated by the UNDT in 2014, being appealed to the UNAT in 2015.

⁹ The 191 new appeals included six applications for revision, correction or execution of UNAT judgments or for confidentiality.

¹⁰ UNAT disposed of 128 appeals by judgment and closed 17 appeals by judicial order or administratively.

¹¹ See A/70/187, para. 7.

Table 5: UNAT appeals received, disposed of and pending: 2009 to 2015

UNAT	Received	Disposed of	Pending (end of year)
2009	19	N/A ¹²	19
2010	167	95	91
2011	96	104	83
2012	142	103	122
2013	125	137	110
2014	137	146	101
2015	191	145	147
Total	877	729	---

26. Table 6 below shows the number of interlocutory motions received in 2015 and previous years.

Table 6: Interlocutory motions received by UNAT: 2010 to 2015

UNAT	Received
2010	26
2011	38
2012	45
2013	39
2014	84
2015	81
Total	313

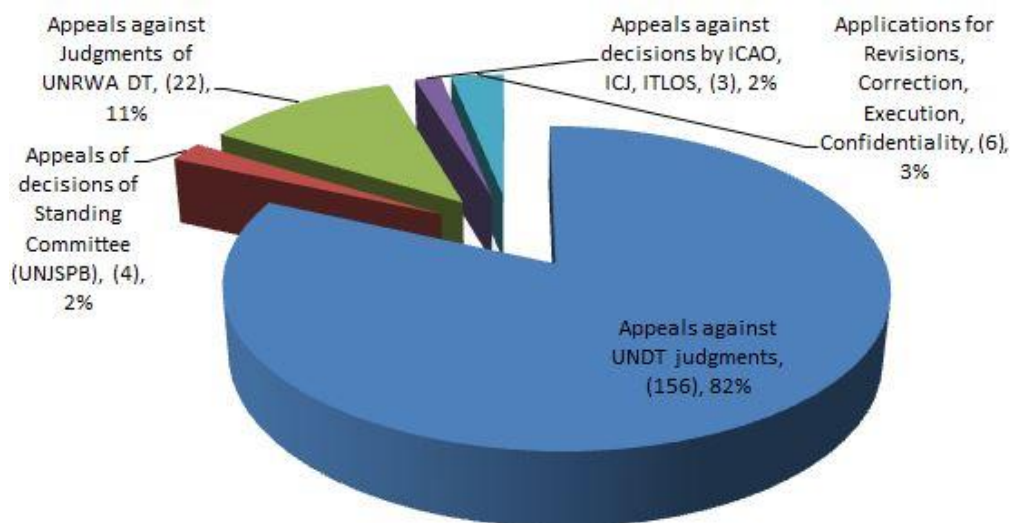
3. Sources of appeals

27. The 191 new appeals filed in 2015 included 156 appeals against judgments of the UNDT (139 filed by staff members and 17 filed on behalf of the Secretary-General); four appeals of decisions of the Standing Committee acting on behalf of the UNJSPB; 22 appeals against judgments rendered by the UNRWA Dispute Tribunal (21 brought by staff members and one brought on behalf of the Commissioner-General); one appeal against a decision by the Secretary General of the ICAO; one appeal against a decision of the Registrar of the ICJ; and one appeal against a decision by the Registrar of ITLOS. They also included one application for revision of a UNAT judgment, one application for correction of a UNAT judgment, two applications for execution of UNAT judgments, and two applications for confidentiality filed by non-parties.

28. The ratio of appeals filed by staff members compared to those filed on behalf of the Secretary-General changed from 2014 to 2015. In 2014, 64 per cent of the appeals were filed by staff members and 36 per cent of the cases were filed on behalf of the Secretary-General, while in 2015, 89 per cent of the appeals were filed by staff members and 11 per cent were filed on behalf of the Secretary-General.

29. Chart 6 shows the breakdown of the appeals received in 2015.

¹² UNAT did not hold a session in 2009; it held its first session in the spring of 2010.

Chart 6: Breakdown of the appeals received in 2015

30. Table 7 reflects a breakdown of judgments, orders and hearings for UNAT for the period 2009 to 2015.

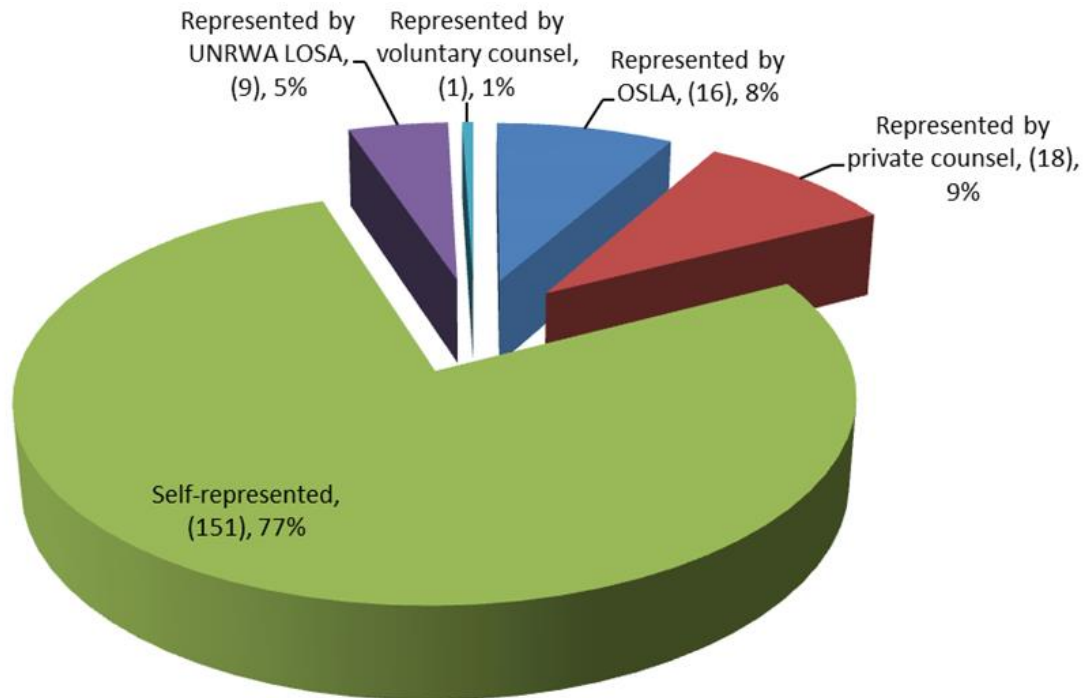
Table 7: UNAT judgments, orders and hearings: 2009 to 2015

UNAT	Judgments	Orders	Hearings
2009	N/A	N/A	N/A
2010	102	30	2
2011	88	44	5
2012	91	45	8
2013	115	47	5
2014	100	42	1
2015	114¹³	39	2
Total	610	247	23

4. Representation of staff members

31. With respect to the 191 appeals received during the reporting period, in 12 appeals, 16 staff members (one appeal was jointly filed by 5 staff members) were represented by OSLA, nine staff members were represented by UNRWA Legal Office – Staff Assistance, 18 were represented by private counsel, one by voluntary counsel, and 151 staff members were self-represented. This is illustrated in Chart 7 below.

¹³ This figure includes 77 UNAT judgments on appeals against UNDT judgments, 31 UNAT judgments on appeals related to decisions of other entities, and six judgments on applications for correction, execution, interpretation and revision.

Chart 7: Representation of staff members

5. Outcomes

32. The 114 judgments rendered by UNAT in 2015 disposed of 89 appeals against Dispute Tribunal judgments in 77 UNAT judgments, one appeal against an ICAO decision, two appeals against ICJ decisions (three cases), one appeal against an ITLOS decision, four appeals against decisions of the Standing Committee of the UNJSPB and 23 appeals against UNRWA Dispute Tribunal judgments. The Appeals Tribunal also rendered six judgments on applications for execution, correction, interpretation and revision, disposing of seven applications, which are included in the count of 114. UNAT further considered nine cross-appeals, which it disposed of in the respective judgments on the appeals; the cross-appeals are not counted separately. Overall, the UNAT disposed of 128 appeals by judgment (one application from ICAO staff; three applications from ICJ staff, one application from ITLOS staff; 89 applications against UNDT judgments; four applications against UNJSPB Standing Committee decisions; 23 applications against UNRWA Dispute Tribunal judgments and seven interpretation/revision cases), and closed 18 appeals by judicial order or administratively.

33. UNAT issued four judgments on appeals of decisions taken by the Standing Committee, acting on behalf of the UNJSPB.

34. UNAT rendered 23 judgments, disposing of 20 appeals filed by UNRWA staff members and three appeals filed by the UNRWA Commissioner-General.

35. UNAT rendered one judgment disposing of an appeal filed by an ICAO staff member.

36. UNAT rendered one judgment on an appeal filed by an ITLOS staff member.

37. UNAT rendered two judgments disposing of three appeals of an ICJ staff member.

38. UNAT rendered six judgments disposing of seven applications by staff members for interpretation, correction, revision or execution of judgments, including three UNRWA-related applications and one ICAO-related application.

39. Charts 8 and 9 illustrate the outcome of appeals against UNDT judgments by party.

Chart 8: Outcome of appeals against UNDT judgments filed by staff members

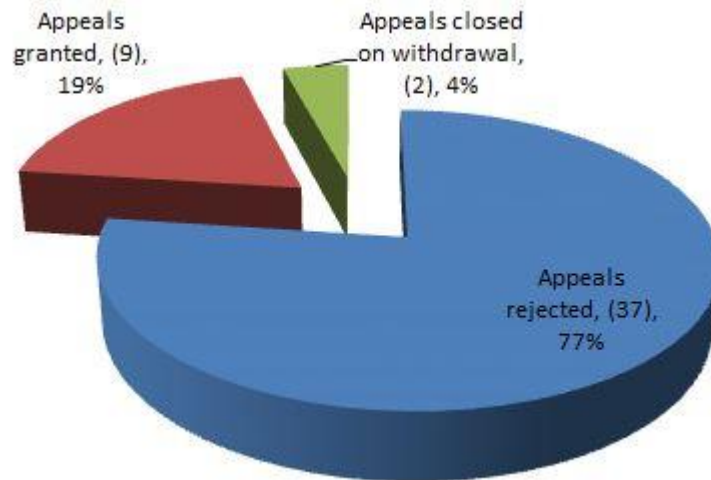
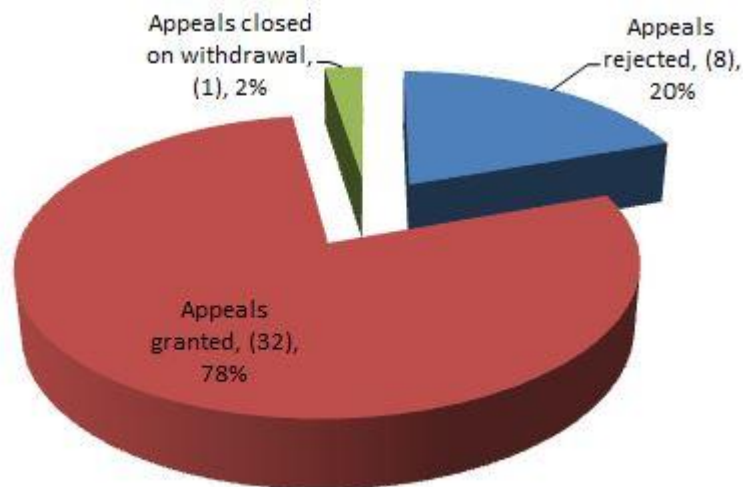


Chart 9: Outcome of appeals against UNDT judgments filed on behalf of the Secretary-General



6. Relief

Appeals against UNDT judgments

40. In six appeals, UNAT vacated or modified the award of compensation and vacated the specific performance ordered by the UNDT. In 20 appeals, UNAT vacated or modified the compensation awarded by the UNDT and in seven appeals UNAT vacated the UNDT's specific performance order.
41. UNAT remanded seven appeals to the Dispute Tribunal. It also remanded one appeal for the establishment of a new fact-finding panel and one appeal to the Advisory Board on Compensation Claims.

Appeals against decisions of the Standing Committee of the UNJSPB

42. In two judgments, UNAT remanded the appeals to the Standing Committee of the UNJSPB.

Appeals against decisions by the Secretary General of ICAO

43. UNAT remanded one appeal to the ICAO Advisory Joint Appeals Board.

Appeals against decisions by the Registrar of the ICJ

44. UNAT ordered specific performance in three appeals where none was ordered by the ICJ.

Appeals against UNRWA DT judgments

45. In two appeals, UNAT vacated the UNRWA Dispute Tribunal's specific performance order and also vacated the award of compensation.
46. In one appeal, UNAT ordered specific performance where none was ordered by the UNRWA DT and in one appeal, UNAT ordered compensation where none was ordered by the UNRWA DT.

Costs

47. In three appeals, UNAT vacated an order of costs against the Secretary-General. In two appeals, UNAT awarded costs against UNRWA staff members. In two appeals, UNAT affirmed the orders of costs against the concerned staff members.

7. Referral for accountability

48. In four judgments, UNAT found that the UNDT erred in making a referral to the Secretary-General for possible action to enforce accountability under article. 10.8 of the UNDT Statute.

8. Jurisprudence

49. In 2015, the UNAT rendered a number of legal pronouncements on a range of subjects, some examples of which are set out in Appendix III in brief.

IV. The Office of Staff Legal Assistance

A. Framework

50. The Office of Staff Legal Assistance (OSLA) continued to provide legal advice and representation to UN staff world-wide, at all levels, in a wide range of employment matters, from non-appointment to termination, claims of discrimination/harassment/abuse of authority, pension benefits, disciplinary and misconduct cases, and other rights and entitlements under the staff rules. OSLA also provided advice and representation to former staff members and their beneficiaries regarding rights that arose from their employment, including pension and post-separation entitlements claims.

B. Outreach and training activities

51. In 2015, OSLA visited the five sub-regional offices of the Economic Commission for Africa (in Lusaka, Niamey, Kigali, Rabat, and Yaoundé), the United Nations Assistance Mission for Afghanistan (UNAMA), the United Nations Mission in Congo (MONUSCO) and the office of United Nations High Commissioner for Refugees (UNHCR) in Tyre, Lebanon. Legal Officers gave presentations to staff members, UN staff associations and managers on the system of administration of justice at the UN, including the role of OSLA therein. OSLA participated in regular outreach and training activities for UN staff members in the five duty stations with an OSLA presence (Addis Ababa, Beirut, Geneva, Nairobi, and New York) in addition to outreach and training activities organized by staff associations at those duty stations.

52. These activities provided invaluable opportunities to inform staff, staff associations and managers about the internal justice system, including OSLA's role. A recurring observation from these activities is that many staff members, especially in the deep field, have limited knowledge of the internal justice system, including the resources available to facilitate informal dispute resolution and how to access OSLA, the Management Evaluation Unit (MEU) and the Registries of the two Tribunals. OSLA continues to receive and accept invitations from peacekeeping missions and other operations and from staff associations to conduct outreach and training activities.

53. During the year, OSLA refined plans for targeted outreach in 2016, focusing on regions that have significant staff populations but no physical presence of the formal justice system, including East Asia, Latin America and Europe outside Geneva, and on duty stations with high opt-out rates from the voluntary supplemental funding mechanism.

C. Case statistics

54. OSLA provides a wide range of legal assistance to staff, including legal advice; advice and representation during informal dispute resolution and mediation; assistance with the management evaluation review and during the disciplinary process; and legal representation of staff before the Dispute and Appeals Tribunals and other recourse bodies. Each request for legal assistance is tracked as a "case", although the time and action required on the part of the legal officer can vary.

1. Number of requests for legal assistance

55. In 2015 OSLA received 1,502 new requests for legal assistance and closed or resolved 1,443 such requests. There were 173 requests carried over into 2015 from previous years. As at 31 December 2015, there were 281

requests pending. The numbers of requests received and their breakdown by type of matter is illustrated in Table 8 below.

Table 8: Numbers and types of requests for legal assistance received: 2009 to 2015

OSLA	Legal advice	Management evaluation matters	Representation before the UNDT	Representation before the UNAT	Disciplinary matters	Other	Total
2009	171	62	168	13	155	31	600
2010	309	90	77	39	70	12	597
2011	361	119	115	21	55	10	681
2012	630	198	96	31	46	28	1029
2013	491	116	70	33	37	18	765
2014	798	210	102	15	44	11	1180
2015	830	196	415	16	33	12	1502
Total	3590	991	1043	168	440	122	6354

56. The majority of requests for legal assistance related to the provision of legal advice. The nature of “Legal advice” requests vary. They often involve gathering information, conducting legal research, identifying strengths and weaknesses, and advising staff members on options for seeking redress and likely outcomes and implications of a particular course of action or approach. These requests do not involve preparing submissions to a formal body such as the MEU or the Tribunals, or in cases of alleged misconduct, writing to the Administration, or otherwise representing a staff member.

57. “Management evaluation” requests are those where OSLA holds consultations and provides legal advice to staff member clients, drafts management evaluation requests on their behalf, holds discussions with the MEU or equivalent entity within the Funds and Programmes and negotiates settlements or agreed outcomes.

58. “Disciplinary matters” are those where OSLA provides assistance to staff members to respond to allegations of misconduct under the Staff Rules.

59. In “Representation” before the UNDT” and “Representation before the UNAT” requests, OSLA holds consultations and provides legal advice to staff member clients, drafts submissions on their behalf, provides legal representation at oral hearings, holds discussions with opposing counsel and, to the extent possible, negotiates settlements.

60. OSLA similarly provides advice and assistance in submissions and processes before other formal bodies, and represents staff in mediation.

2. Breakdown of requests

61. The charts and tables below provide various breakdowns of the 1,502 requests for legal assistance OSLA received in 2015.

Chart 10: Requests by subject matter

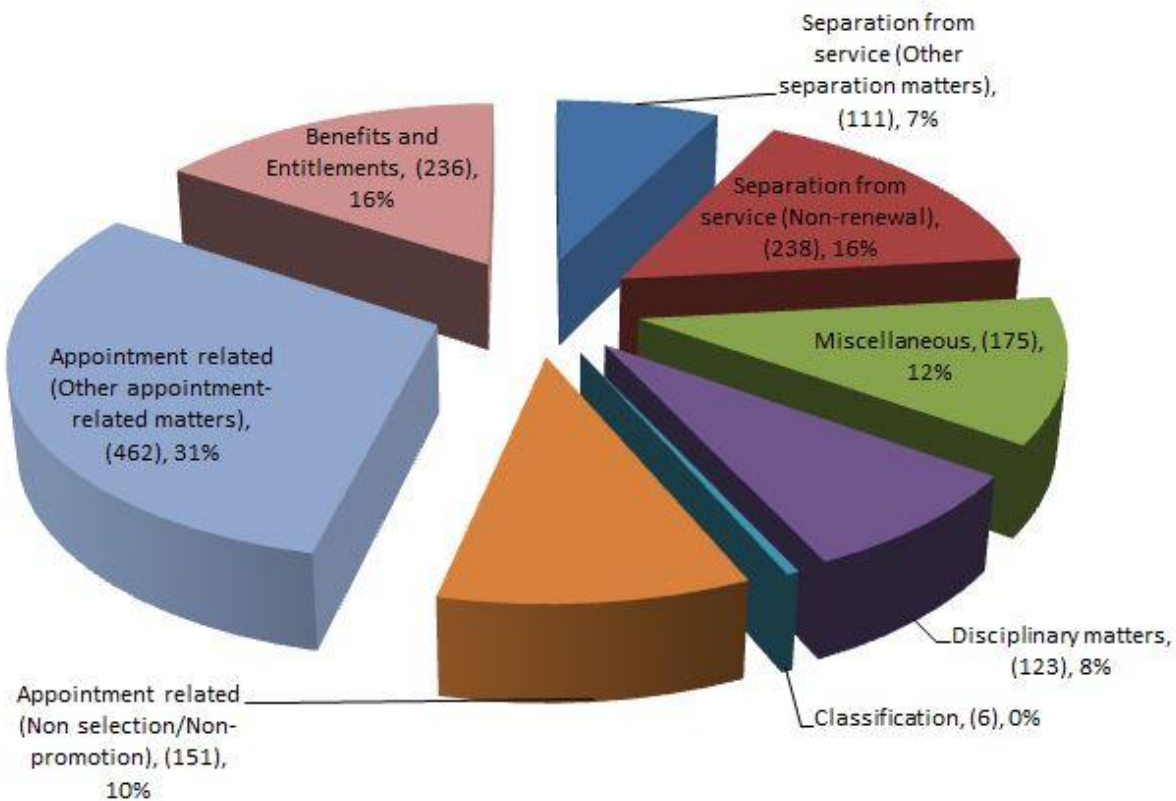


Table 9: UN entity in which the staff member was employed at the time of request for legal assistance

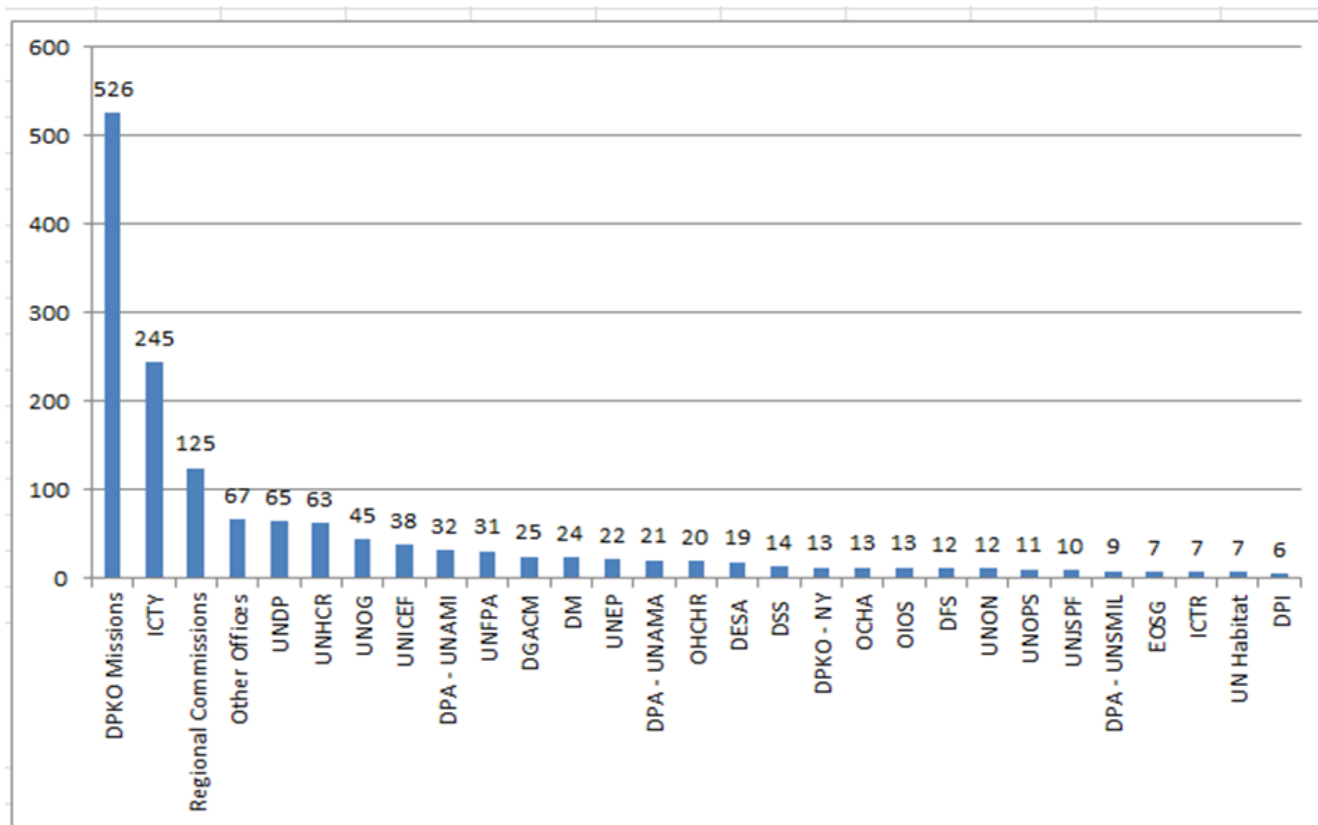


Table 10: Requests by duty station of the staff member client¹⁴

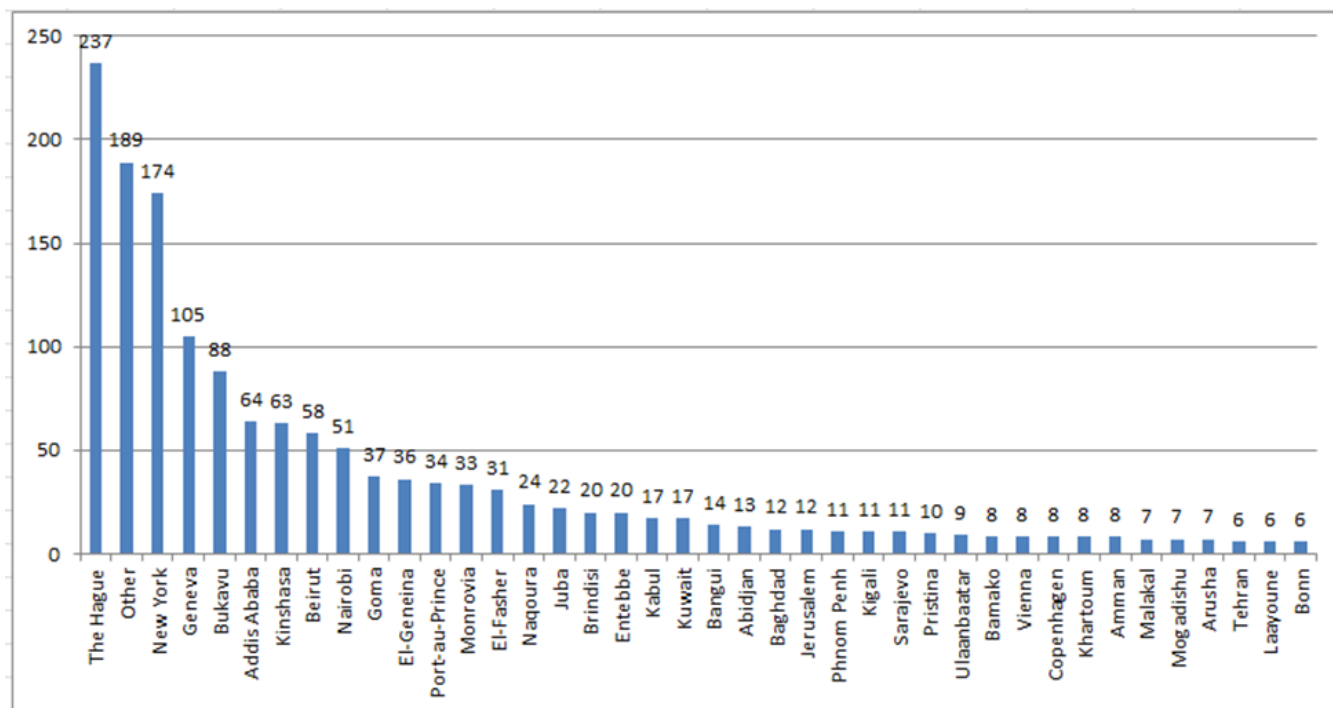
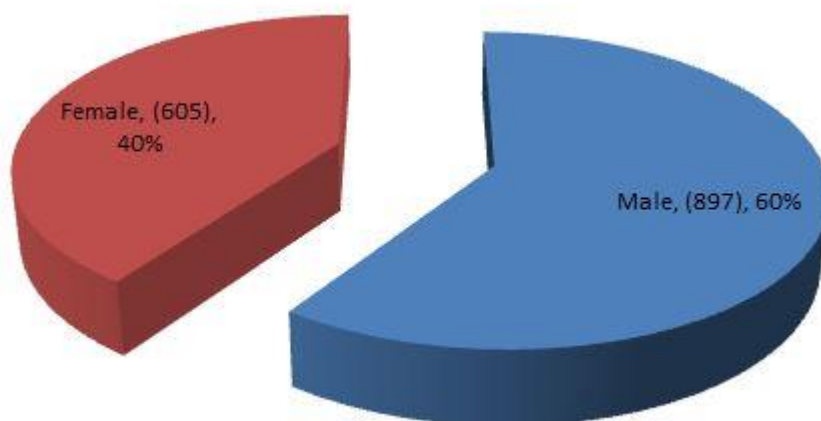


Chart 11: Requests by gender



¹⁴ All duty stations with fewer than six requests are in the “other UN duty stations” category.

Chart 12: Requests by recourse body

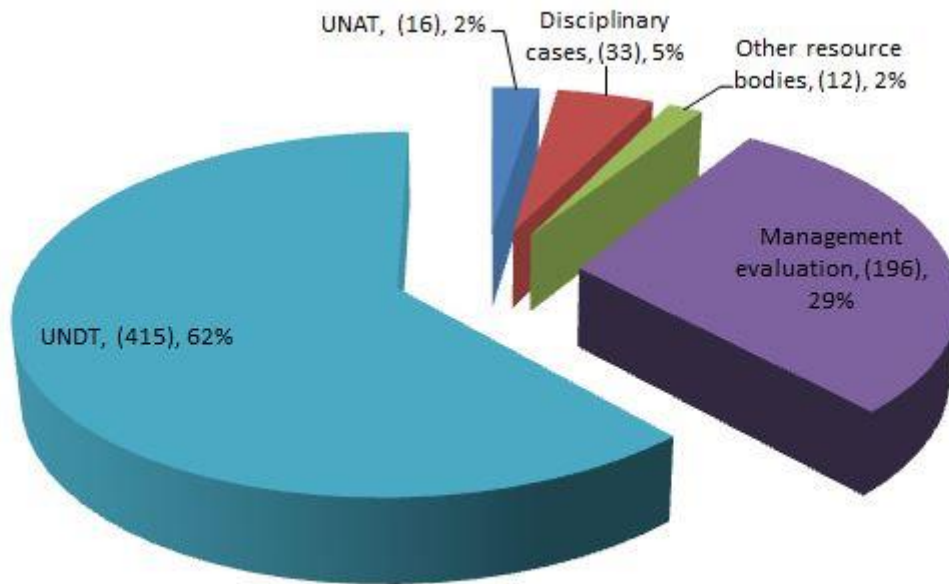
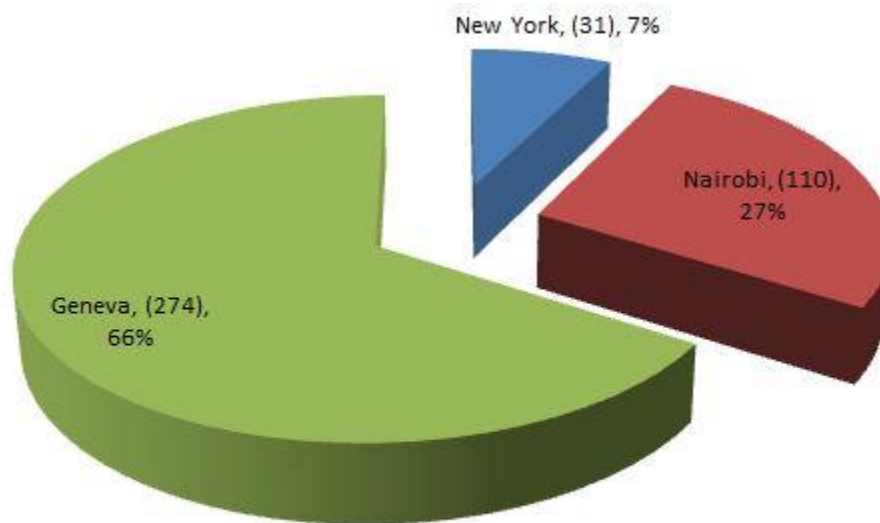


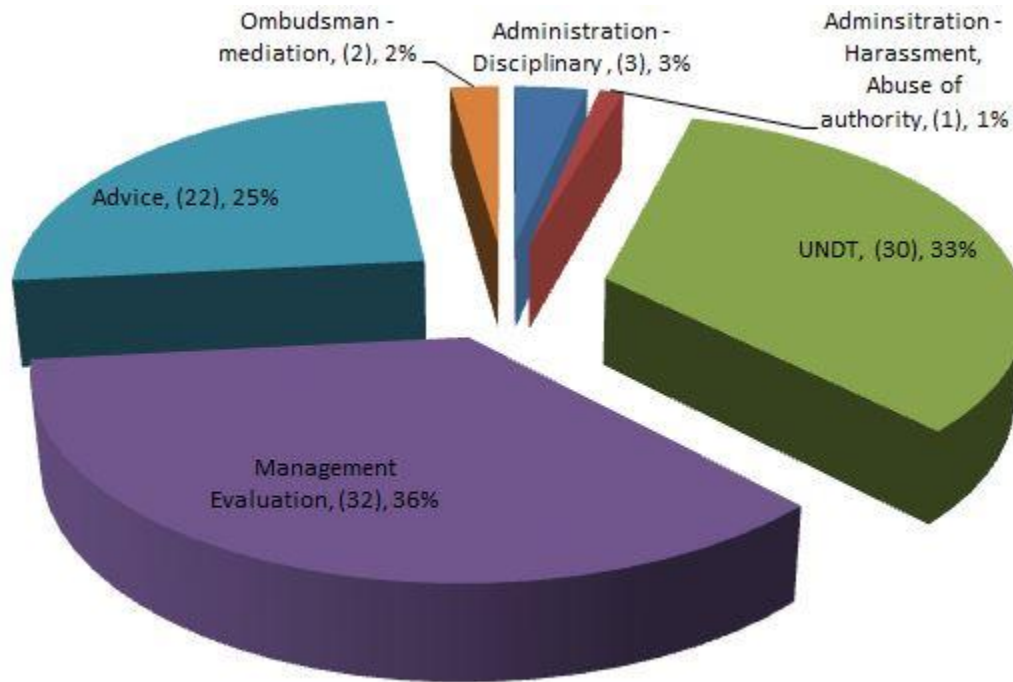
Chart 13: Representation before the UNDT by location



3. Settlement

62. OSLA settled 90 requests in 2015. This figure includes requests which were opened in previous years but were closed in 2015 as a result of settlement, as well as new requests opened and closed in 2015 as a result of settlement. Chart 14 shows the breakdown by the forum (i.e., relevant recourse body) in which they settled.

Chart 14: Requests settled and closed in 2015 by forum



V. The Office of the Executive Director

63. During the reporting period, OAJ coordinated the preparation of the Secretary-General's reports on administration of justice at the United Nations (A/70/187) and amendments to the rules of procedure of the Appeals Tribunal (A/70/189), participated in discussions on the reports held by the Advisory Committee for Administrative and Budgetary Questions (ACABQ) and provided additional information to the ACABQ and the Fifth and Sixth Committees of the General Assembly as requested.

64. OAJ provided administrative and technical support, as appropriate, to the Internal Justice Council (IJC) in connection with its mandate, including with respect to its meetings and teleconferences and the preparation of its annual report to the General Assembly (A/70/188). In 2015, the IJC instituted a full public process to identify suitable candidates for judicial vacancies at the UNDT and the UNAT that will arise in 2016 upon the expiry of the terms of office of some judges. OAJ provided support to the IJC in that process and in the preparation of its report to the Assembly on the appointment of the judges of the UNAT and of the UNDT (A/70/190).

65. OAJ compiled background materials, consisting of relevant General Assembly resolutions and reports on administration of justice at the United Nations, for the panel that conducted an interim independent assessment of the internal justice system in 2015.

66. OAJ continued to enhance online search capabilities for users of the jurisprudential search engine, enhance the Court Case Management System platform for data reporting purposes and updated the OAJ website as required. There were 113,981 visitors to the OAJ website in 2015, of which nearly 38 per cent were new visitors.

67. OAJ continued to disseminate information about the system of administration of justice through outreach and training activities and the OAJ website, and organized professional development and skills training for legal officers and legal assistants working in the internal justice system.

APPENDIX I: UNDT APPLICATIONS RECEIVED IN 2015 – BY EMPLOYMENT ENTITY

UN Secretariat (Headquarters)	DESA	4
	DGACM	8
	DM	4
	DPI	3
	DFS	4
	DSS	6
	OAJ	2
	OCHA	3
	OIOS	16
	DPA	1
	OHCHR	6
	OLA	1
	UN-OHRLLS	1
	Other UN Secretariat (Headquarters)	4
Total	63	
UN Secretariat Offices Away from Headquarters	UNOG	9
	UNOV	1
	Total	10
Peacekeeping missions	MINUSTAH	9
	MONUSCO (former MONUC)	68
	UNAMID	15
	UNDOF	9
	UNIFIL	3
	UNLB	7
	UNMIK	2
	UNMIL	7
	UNMISS	4
	UNOCI	2
	MINURSO	2
	MINUSMA	1

	UNMIT	1
	UNSOA	1
	Other	7
	Total	138
Regional Commissions	ECA	4
	ECE	2
	ESCAP	5
	ESCWA	5
	Total	16
Special political missions	UNAMA	2
	UNAMI	28
	UNSMIL	5
	Total	35
Tribunals	ICTR	3
	ICTY	1
	UNAKRT	7
	Total	11
Agencies/Funds/Programmes/Other UN entities	UNCTAD	2
	UNDP	19
	UNEP	3
	UNFPA	12
	UNFCCC	2
	UNHCR	22
	UNICEF	87
	UNODC	1
	UN-Women	1
	UNICRI	2
	UNOPS	3
	UNU	2

	WFP (local staff)	1
	Other	8
	Total	165
Grand total		438

Appendix II: Pronouncements of UNDT

1. Summaries of selected legal pronouncements made by the UNDT in judgments rendered 1 January to 31 December 2015 are provided below. They are for illustrative purposes only and are not authoritative, representative or exhaustive. The complete set of UNDT judgments issued in 2015 is available on the OAJ website (<http://un.org/en/oaj/dispute>). Some UNDT judgments summarized may have been appealed to UNAT by either party. Accordingly, the OAJ website should be consulted for the final determination made in cases that have been appealed.

Judgment UNDT/2015/048

Non-promotion - Retaliation against a whistleblower – Duties of counsel

2. The Applicant became the Country Programme Manager (CPM) at the P-4 level in Côte d'Ivoire on 1 April 2010. In 2012, the CPM post was upgraded to the P-5 level and advertised. The Applicant applied and was not selected, resulting in her separation. She contested the decision not to select her for the P-5 job opening and contended that the selection decision was tainted by bias, improper consideration of performance appraisals and procedural error.

3. Beginning in May 2010, the Applicant reported orally and in writing to the Director and Deputy Director of the West Africa Regional Office (WARO) that another staff member seemed to have been involved in inappropriate transactions with Non-Governmental Organizations (NGOs) that were recipients of UN Women funds and had actually recovered such funds from the said NGOs. The Applicant made similar reports to UN Women in New York and to the UNDP Office of Audit and Investigations (OAI) which commenced a joint investigation with UNFPA.

4. The UNDT considered whether the Applicant was given full and fair consideration and whether there was bias or retaliation against the Applicant in the selection process. The UNDT found that the interview panel for the reclassified post was materially tainted with regard to the Applicant's application and that there were procedural irregularities in the selection process. Having heard oral testimony, ordered production of the investigation report and considered the parties' written submissions, the UNDT found that the Applicant's superiors at WARO had tried to cover up WARO's involvement in the irregular handling of project funds. The UNDT also found that the Applicant had acted properly and ethically in blowing the whistle on the misuse of project funding.

5. The UNDT concluded that the Applicant had discharged her burden of proof to show that her non-selection for the upgraded post and subsequent separation from the Organization were motivated by bias, procedural breaches and retaliation for whistleblowing.

6. The UNDT referred the WARO Director to the Secretary-General for accountability under article 10.8 of its Statute.

7. The UNDT also stated that counsel for the Respondent sought deliberately to mislead the UNDT by presenting the case as if the OAI investigation report did not exist and, when ordered to produce the report, providing an incomplete report. The UNDT observed that in prosecuting a case, counsel are first and foremost officers of the court. They must at all times be beyond reproach and not place themselves in a position where they stand or fall with their clients. The UNDT cited judgment 2015-UNAT-531 wherein UNAT stated that it is the self-evident duty of all counsel appearing before the Tribunals to contribute to the fair administration of justice and the promotion of the rule of law.

8. The UNDT ordered rescission of the contested decision and ordered the Respondent to reinstate the Applicant and deploy her in the next P-5 country representative position available, or a similar post, together with payment of salary at the upgraded P-5 level since the time of her separation. In the alternative, the

Applicant was awarded two years net base salary. The Applicant was also awarded a total of 6 months net base salary as compensation for the substantive and procedural irregularities occasioned by the failure of the Administration to follow its own guidelines, rules and procedures.

Judgment UNDT/2015/066

Compensation for permanent loss of function as a result of service-incurred injury

9. The Applicant contested the decision, based on a recommendation of the Advisory Board on Compensation Claims, to award him compensation for permanent loss of function based on pensionable remuneration scales in effect at the date of a service-incurred injury in October 1991. He submitted that compensation should be computed based on pensionable remuneration scales in effect at the date of payment and no later than the date of maximum medical improvement (“MMI”) in July 2012, rather than the date of the injury.

10. After the Applicant and Respondent filed a joint statement of facts in the early stages of the proceedings, the Applicant filed a motion for summary judgment, which the UNDT denied. While claims normally need to be filed within four months from an injury, the UNDT considered that the Applicant’s case was exceptional and was accepted by the Secretary-General over two decades after the injury.

11. The UNDT examined Appendix D (Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations) to the Staff Rules. It considered that article 11.3(c), which sets out a schedule of awards for lump sum compensation for service-incurred injury or illness, is ambiguous in its reference to “twice the annual amount of the pensionable remuneration at grade P-4, step V”. The UNDT noted that pensionable remuneration scales are adjusted regularly and there is no explicit statement or guidance in Appendix D to indicate the relevant or operative date for assessing the pensionable remuneration at grade P-4, step V in any given case.

12. The UNDT further noted that article 11.3 of Appendix D requires an assessment of the permanent loss of function as a percentage of the function of the whole individual. The parties agreed that these determinations—i.e. whether the loss of function is permanent and, if so, what percentage of the whole individual is affected—could only be carried out when the staff member had reached MMI. MMI is the point at which an injured worker’s medical condition has stabilized and further improvement is unlikely, even with continued medical treatment or rehabilitation. Assessment of the date of MMI is a medical determination.

13. Having considered the legislative history of Appendix D, principles of statutory interpretation, and other legal and policy issues, the UNDT found that, given the facts of the case, the logical and reasonable conclusion was that compensation should be calculated based on the pensionable remuneration scales in effect at the date of MMI, at which point the Applicant’s claim had crystallized and he was entitled to payment.

14. The UNDT ordered the Respondent to pay to the Applicant the difference between the compensation already paid and the amount to which he was entitled under pensionable remuneration scales in effect at the date of MMI, plus interest on this amount at the US prime rate from the date of MMI to the date the difference amount was paid, and interest on an amount of USD1,494.80 already paid on the difference between the 1 July and 1 November 1990 pay scales for staff at the P4 step 5 level.

15. The UNDT also stated that it is the professional and ethical duty of counsel to assist the UNDT by filing precise pleadings and annexes.

Judgment UNDT/2015/089**Determination of personal status - Non-retroactivity - Right to marry**

16. The Applicant contested the decision to deny him dependency benefits for his wife and stepdaughter retroactively to the date of his marriage. The Applicant is a Lebanese national and married a Malaysian national in a religious ceremony in Vienna on 22 June 2007. The Islamic Association of Vienna issued the marriage certificate, which did not refer to any domestic law. Malaysian authorities registered and recognized the certificate. In line with ST/SGB/2004/13, which provided that the personal status of staff members for the purpose of entitlements is determined by reference to the law of nationality of the concerned staff member, the Organization requested confirmation from the Lebanese Permanent Mission to the United Nations in Vienna whether Lebanon recognized the marriage. The Mission initially declined, since only civil marriages contracted elsewhere could be registered in Lebanon. Subsequently, the Mission advised that, to be registered in Lebanon, the marriage had to be confirmed by the competent Lebanese Islamic Authorities. The Lebanese Permanent Mission did not respond to the UN Office on Drugs and Crime's (UNDOC) subsequent request for verification of whether confirmation had been sought from the Islamic Authorities. UNDOC also asked the Office of Human Resources Management for an exception from ST/SGB/2014/13 by considering the Applicant's partner as a spouse under her domestic law, but this was not granted. The Applicant subsequently requested management evaluation of "the decision not to recognize his marital status for the purpose of UN entitlements."

17. In the UNDT's view, the management evaluation request was appropriately rejected given the lack of response by the Lebanese authorities, since no final decision had been made by the Administration on the Applicant's personal status.

18. In June 2014, ST/SGB/2004/13 was revised to determine staff members' personal status by reference to the domestic law of the competent authority under which the personal status had been established. As a result, the Applicant's personal status was changed by the Organization to "married and related" and he was granted dependency benefits for his wife and stepdaughter as of the date of the decision, based on the recognition of the marriage by Malaysia.

19. He was, however, not granted dependency benefits retroactive to 22 June 2007, which he contested. The Applicant asserted that his human rights had been violated when the Organization used discriminatory national laws to deny him benefits. The UNDT noted that it had no jurisdiction to deal with potential breaches of the Universal Declaration of Human Rights by the legislation of a sovereign member state. Therefore it could not verify whether a domestic law was in fact discriminatory. The UNDT noted that the Appeals Tribunal has confirmed the validity of the Organization's choice to refer to the staff member's domestic law as a way to respect the various cultural and religious sensibilities. This did not violate any higher norms in the Organization's legislation. The Applicant could have contracted a civil marriage in Austria and have it recognized in Lebanon; it was his responsibility to be informed of the Organization's internal rules and organize his affairs accordingly. He was not precluded from marrying his wife; the right to enter into a marriage must be distinguished from its recognition by the Organization.

20. According to the general principle of law against retrospective application of laws, and since the Applicant's religious marriage as well as the failure by the Lebanese authorities to recognise it occurred before the revised bulletin was promulgated, it was legally correct not to apply the latter. In the result, the UNDT rejected the application.

Judgment UNDT/2015/110**Decision of the Ethics Office on retaliation claims – Stare decisis (Binding force of Appeals Tribunal decisions)**

21. Two investigators from the Office of Internal Oversight Services had filed applications contesting: (a) the Ethics' Office's determination that retaliation against them had not been established; (b) the expertise, selection process and terms of reference of an alternative investigating panel ("AIP") set up by the Ethics Office to investigate their complaints of retaliation, and (c) the decision not to provide the Applicants with a copy of the full AIP report or reasonably specific information as to the AIP's findings on each of their allegations.
22. Both Applicants requested the redaction of their names from the published judgment. The UNDT rejected this request.
23. The Applicants had not filed requests for management evaluation as the MEU had informed them that the acts they wished to challenge were outside the scope of management evaluation and they could directly submit a request for review to the UNDT. With regard to the decisions of the Ethics Office, the Respondent submitted that the Ethics Office is independent from the Secretary-General and, accordingly, its actions or omissions cannot be attributed to the Organization and do not constitute administrative decisions. The Respondent relied in particular on the judgment of the Appeals Tribunal majority in judgment 2014-UNAT-457, in which the majority had held that acts of the Ethics Office are not subject to judicial review.
24. The UNDT considered it difficult to reconcile the finding of the Appeals Tribunal in 2014-UNAT-457 that the Ethics Office is limited to making recommendations to the Administration with the nature of the independent assessment and conclusion reached by the Office in these cases. The UNDT also considered the Ethics Office's decision-making powers accorded under secs. 5.2(c) and 5.8 of ST/SGB/2005/21, and the Organization's own reference to the Ethics Office making "final determination[s]" on the website of the Ethics Office, and it opined that that the Ethics Office is not limited to making recommendations to the Administration, but it also has a decision-making role in that it makes the final determination as to whether or not retaliation has in fact been established in a given case. In such cases, in the view of the UNDT, its determination amounts to making a final administrative decision affecting the rights of the Applicants under their terms of appointment and contract of employment, and which was binding on the Administration in that it was the Organization's final decision on the matter.
25. The UNDT noted, however, that as a first instance tribunal it is bound by the decisions of the Appeals Tribunal. Given the Appeals Tribunal jurisprudence in the cases 2014-UNAT-457 and 2015-UNAT-544 the UNDT decided that the matters contested in the applications were not administrative decisions subject to judicial review. In the result, UNDT dismissed the applications as not receivable.
26. The UNDT added an observations section to its judgment in which it recalled that it is bound by the precedent of the Appeals Tribunal. However, the UNDT referred the issues raised in its judgment to the Secretary-General for further consideration. The UNDT highlighted its view that if a final decision by the Ethics Office determining that retaliation has not occurred in a particular case is to remain immune from judicial review and scrutiny, the United Nations' policy on retaliation should clearly state this. The UNDT invited Member States and the Secretary-General to make their intentions clear in this regard in considering any amendments to ST/SGB/2005/21.

Judgment UNDT/2015/116**Stare decisis - Binding force of the Appeals Tribunal's decisions—Interest of the Organization—Retroactivity—Entry into force of rules**

27. Eight staff members and former staff members of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) contested decisions made by the Assistant-Secretary-General for Human Resources Management (“ASG/OHRM”) denying them conversion of their respective fixed-term appointments to permanent ones. The Applicants requested that they receive retroactive permanent appointments or, in the alternative, compensation calculated on the basis of termination indemnity applicable to a permanent appointment in the Applicants’ cases, and moral damages in the sum of Euro27,000 each.

28. The contested decisions arose from a re-consideration exercise ordered by the Appeals Tribunal in 2013-UNAT-357, which rescinded the non-conversion decisions issued in an initial round of a one-time Secretariat-wide review for conversion to permanent appointment. The ASG/OHRM took fresh decisions with regard to all Applicants following the Appeals Tribunal judgment.

29. The UNDT recalled that judgments of the Appeals Tribunal are binding upon the parties, and this extends to the operative paragraphs, which in this case set out the major considerations for the determinations made. Citing these paragraphs from the Appeals Tribunal judgment, the UNDT took the view that the framework thereby provided had an impact on its judicial review.

30. The UNDT analysed ST/SGB/2009/10 and found that it distinguishes between eligibility and suitability for a permanent appointment, but that the impugned decisions, which applied four criteria, blurred eligibility and suitability. The UNDT found that the decisions seemed to imply that the four criteria were of equal relevance while by law a suitability test consisted of the elements: (1) qualifications, performance and conduct and (2) the highest standards of efficiency, competence and integrity. The UNDT stated that in considering conversion, the interest of the Organization is a legitimate, but ancillary consideration, when assessing suitability.

31. The decisions were found to be unlawful by the UNDT on several counts, primarily because the decisions disregarded the instructions of the Appeals Tribunal to provide a meaningful level of individual consideration of the Applicants. The Applicants were not considered individually in light of their proficiencies, qualifications, competencies, conduct and transferrable skills, and the decisions were based on the limited mandate of ICTY alone, to the exclusion of all other relevant factors.

32. The Organization has broad discretion to identify and weigh its interest and the finite mandate of a staff member’s entity of employment is a relevant operational reality that can be validly considered in deciding on the conversion of his or her appointment to permanent. However, as clearly ruled by the Appeals Tribunal, it cannot be relied upon *exclusively*. In spite of the limitation of the Applicants’ appointments to service in ICTY, it was possible to grant them, upon conversion, permanent contracts without limitation. The UNDT found that ultimately the only reason for the contested decisions was the finite mandate of ICTY.

33. The UNDT also opined that to meet the Appeals Tribunal’s direction to afford the Applicants *retroactive consideration*, it was not sufficient to implement retrospectively the decisions resulting from the re-consideration exercise. The exercise should have appraised the circumstances as they stood at the time of the first impugned refusal to convert their appointments, and not new circumstances that were only known when the new decisions were reached.

34. The amendment of article 10.5 of the UNDT’s Statute did not apply to these applications, as they were filed before the amendment had been published. Accordingly, the Appeals Tribunal decision in 2013-UNAT-357 could be relied upon in setting the appropriate compensation.

35. The UNDT rescinded all decisions and remanded them back to the ASG/OHRM for individualized consideration and awarded each Applicant moral damages in the amount of Euro3,000.

Judgment UNDT/2015/120

Disciplinary measures – Conduct of investigations –procedural irregularities

36. The Applicant, a former United Nations High Commissioner for Refugees (UNHCR) staff member at the D-1 level in Kigali, Rwanda, contested the decision by UNHCR to impose on her the disciplinary measures of a written censure as per Staff Rule 10.2(a)(i) and a fine of one month net base salary as per Staff Rule 10.2(a)(v) for misconduct. The Applicant alleged that she had been subjected to “double jeopardy” during the investigation process because an Investigation Team was established to investigate the same allegations that an Inspection Mission had found to be unsubstantiated. She also alleged that her due process rights had not been respected during the investigation and subsequent disciplinary processes.

37. The primary issue was whether the Administration exercised its discretion properly by establishing two investigations to examine the same allegations. The Respondent submitted that the terms of reference and focus of the Inspection Mission and Investigation Team were different.

38. The UNDT concluded that the *ad hoc* Inspection Mission, which was established by UNCHR’s Inspector General’s Office and focused on the overall management of the UNHCR operation in Rwanda and the internal management of the Kigali office, was an investigation and a fact-finding exercise as set out in paragraph 1 of ST/AI/371/Amend.1. The Mission concluded that there was an absence of evidence to support any of the allegations made against the Applicant. The UNDT held that the Respondent’s next step should have been to follow the procedure set out in paragraph 2 of ST/AI/371/Amend.1 by forwarding the matter to the Director of Human Resources Management if he believed there was sufficient evidence indicating that the Applicant had engaged in wrongdoing that could amount to misconduct.

39. Shortly thereafter, UNHCR established an Investigation Team to investigate allegations of harassment and abuse of authority contained in two complaints received by UNHCR with regard to the Applicant. The Team concluded in its report that the Applicant had harassed a number of staff under her supervision and that she had abused her authority based on a number of factors. Subsequently, the Applicant was asked for comments on the allegations and the Investigation Team report and eight months later UNHCR imposed the aforesaid disciplinary measures.

40. The UNDT found that it was an improper exercise of discretion by UNHCR to establish a Team to investigate basically the same complaints that had been investigated and reported on by the Inspection Mission. The UNDT concluded however that to the extent that the Inspection Mission had investigated the same allegations as the Investigation Team and found nothing adverse against the Applicant, there was no “reason to believe” that the Applicant had engaged in unsatisfactory conduct as is required by ST/AI/371/Amend.1.

41. The UNDT also concluded that the Investigation Team committed a number of procedural irregularities by failing to inform the Applicant of the precise allegations against her, by putting words in the mouth of witnesses, by asking highly leading questions, by coming to conclusions in the absence of evidence, by failing to provide her with all the documentary evidence, by ignoring the testimony and comments of the Applicant, and by sitting on appeal on the findings of the Inspection Mission to justify their conclusions based on the same set of facts.

42. The UNDT held that since the investigation process was flawed, the disciplinary process was tainted. Due to the egregious nature of the procedural irregularities, the UNDT did not examine whether the facts on which the disciplinary measures were based had been established and whether the established facts legally

amounted to misconduct. The UNDT concluded that the Applicant's due process rights had not been respected and ordered the Respondent to remove the written censure from the Applicant's official status file and to reimburse the fine.

Judgment UNDT/2015/124

Receivability – Deadlines for filing requests for management evaluation and applications to UNDT - Manifest abuse of proceedings - duty of counsel—costs

43. The Applicant, a former staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”) filed five applications relating to two administrative decisions — to separate him from service and not to select him for position of Chief, Integrated Support Service with MINUSTAH. The UNDT addressed the applications in one judgment.

44. With respect to the applications concerning his separation, the Applicant failed to file them within the statutory period of 90 days from the date of expiration of time for a response to his management evaluation request. The UNDT found, relying on 2013-UNAT-345, that receipt of a management evaluation response after the expiration of the 90-day period for the filing of an application with the UNDT did not re-set the 90-day deadline.

45. With respect to the applications concerning his non-selection, the UNDT found that the Applicant failed to file a timely management evaluation request of the contested decision and his claims were not receivable. The UNDT considered alternative dates suggested by the Applicant for the purpose of calculation of the time limits, and found that even if it were to apply those dates his claims would still be time-barred.

46. The UNDT concluded that the five applications were not receivable due to the Applicant's failure to comply with the relevant statutory requirements. All five applications were dismissed by the UNDT.

47. The UNDT found that the applications had fundamental procedural flaws that the Applicant attempted to cure by multiple re-filings of the same claims, making concurrent and inconsistent submissions regarding receivability and dates. The UNDT found that this constituted a manifest abuse of proceedings. The UNDT found that OSLA, as counsel of record, was presumed to have acted on the Applicant's instructions, in the absence of any indications to the contrary. The UNDT further found that, in the absence of power to order costs against a representative, costs were properly ordered against the Applicant and awarded costs in the sum of USD1,000.

48. The UNDT included observations regarding what it considered to be a failure of the Management Evaluation Unit (“MEU”) to have due regard to the deadlines for completion of management evaluation responses. The UNDT observed that the MEU continued to engage in correspondence with staff members having filed management evaluation requests well beyond the prescribed time limits, blurring the lines between formal and informal procedures.

Judgment UNDT/2015/125

Exception to rules and policy – exercise of discretion

49. The Applicant, a Senior Investigator at the P-5 level wishing to apply for a D-2 post, contested a decision by the Assistant Secretary-General for Human Resources not to grant him an exception to section 6.1 of ST/AI/2010/3 (Staff selection system), which provides that staff members are “not eligible to apply for positions more than one level higher than their personal grade”. The decision stated that making an exception would be prejudicial to the interests of other similarly situated staff

members or groups of staff members with respect to positions in the same and other categories advertised across the Secretariat and who did not apply for the posts.

50. The UNDT found that although Staff Rule 12.3(b) refers to exceptions to the Staff Rules, the same rule applies to legal instruments of subsidiary nature, including administrative instructions. The UNDT examined the meaning of the phrase “prejudicial to the interests [of other staff]” in the context of Staff Rule 12.3(b). The UNDT found that the word “prejudicial” is equivalent to “harmful”. The UNDT further found that the Staff Regulations and Rules use the terms “interest” and “interests” in a broader context as compared to “right” or “rights”. The UNDT concluded that the term “interests” of staff is broader than “rights” of staff, and that the choice of the term “interests” in Staff Rule 12.3(b) was not accidental.

51. The UNDT also considered that an exception, by its nature, is a deviation from the rule, as it treats the staff member in whose favour it is being made differently from the rest of staff. To find that an exception is not possible due to the mere fact that it would result in differential treatment of a staff member, in comparison to other staff members, was considered to be a logical fallacy by the UNDT because it faults the instrument of exception precisely for what it is. The UNDT found that consideration of a request for an exception is, in and of itself, an administrative decision and every administrative decision entails a reasoned determination after consideration of relevant facts, since there is a duty on institutions to act fairly, transparently and justly in their dealings with staff. Each request for an exception has to be considered on its particular circumstances. To make a proper finding that the granting of an exception would be “prejudicial” (harmful) to the “interests” of other staff, the decision-maker must make a reasoned case-by-case assessment of the circumstances in each particular case, determine identifiable and sufficiently comparable interests of other staff that might be prejudiced by the exception, and make his or her decision bearing in mind the right of staff to have their requests for exception properly considered.

52. The UNDT concluded that the Applicant’s request was not properly considered in that some irrelevant factors were taken into consideration while some relevant factors were not. In particular, no proper consideration was given to the individual circumstances and attributes that may have warranted a legitimate exception. The UNDT found that no reasonable explanation was provided to the Applicant as to why the granting of this exception would have been prejudicial to other staff. The UNDT awarded the Applicant the sum of USD3,000 as compensation for loss of chance of promotion.

Order No. 99 (GVA/2015)

Suspension of Action – valid delegation of authority - administrative leave pending investigation

53. The Applicant, a Director, Field Operations and Technical Cooperation Division (D-2), Office of the High Commissioner for Human Rights (“OHCHR”), requested suspension of action, pending management evaluation, of the decision taken by the Acting Director-General, United Nations Office at Geneva (“UNOG”) to place him on administrative leave with pay pending the outcome of an investigation into allegations of misconduct. The contested decision stated that “[i]n the context of the investigation, it [was] considered to be in the interest of the Organization to place [the Applicant] on administrative leave in order to preserve all evidence and to avoid any interference with the investigation. The reasons for your placement on administrative leave also include an assessment that your redeployment would not be feasible in the current circumstances”.

54. The UNDT held that there were serious and reasonable doubts that the Director-General, UNOG, had delegated authority to place the Applicant on administrative leave pursuant to Staff Rule 10.4. Having considered, inter alia, section 2 of ST/SGB/2000/4 (Organization of the United Nations

Office at Geneva) and the Memorandum of Understanding between UNOG and OHCHR dated 1 June 2010, the UNDT concluded that it appeared that OHCHR is a mere client of and is administered by UNOG, but is not part of its organizational structure. As such, OHCHR Geneva-based staff members do not fall under the delegation of authority provided for under Annex V of ST/SGB/234/Rev.1 (Administration of the staff regulations and staff rules) to UNOG “with respect of [its] staff”. The fact that the ASG/OHRM was copied on the contested decision, and that she confirmed by e-mail that it was her understanding that the Director-General of UNOG had the delegated authority to take such decision did not correct the irregularity.

55. The UNDT also found that the reasons set out in paragraph 4 of ST/AI/371/Amend.1 (Revised disciplinary measures and procedures) for placing a staff member on administrative leave pending investigation — namely that “the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed”—are exhaustive and that there were serious and reasonable doubts that the contested decision was justified by any of these reasons. In particular, the UNDT held that administrative leave did not serve the purpose of avoiding a risk of evidence being destroyed or concealed as the Applicant did not contest the main facts under investigation, would have had ample opportunity to destroy or conceal evidence prior to being placed on administrative leave given the one-month period taken to place him on leave, and there was no indication that he might have had any intention to do so.

56. The UNDT concluded that the contested decision was *prima facie* unlawful and that the criteria of “urgency” and “irreparable damage” were satisfied, and ordered that the decision placing the Applicant on administrative leave be suspended pending management evaluation.

Appendix III: Pronouncements of UNAT

Introduction

1. A summary of major legal pronouncements made by UNAT in judgments rendered during its 2015 sessions is provided below. The judgments summarized are provided for illustrative purposes only and are not intended to be authoritative, representative or exhaustive. A complete set of UNAT judgments issued during the period covered by this report is available on the OAJ website (<http://un.org/en/oaj/appeals>).

Judgment 2015-UNAT-496

Promulgation of rules and procedures - right to be informed of identity of interview panel in selection exercise

2. UNAT held that Administrative Instruction ST/AI/2010/3 (Staff Selection System) did not impose an obligation on the Administration to inform a staff member of the composition of an interview panel and that the UNDT erred in law in finding that, pursuant to the “Instruction Manual for the hiring manager on the Staff Selection System”, a candidate for an advertised post was entitled to be apprised of the composition of the interview panel prior to the interview. UNAT noted, however, that by pointing out that she had been previously interviewed for the post and that there were ongoing proceedings before the UNDT with regard to her challenge to a prior selection exercise, the Applicant had put the Administration on notice of the importance she attached to the panel’s composition. In the specific circumstances of the case, the UNDT did not err in concluding that had the Applicant been informed of the composition of the panel, she would have requested the replacement of the panel members and the Administration’s failures with regard to the composition and notice of composition of the panel vitiated the entire process. UNAT therefore confirmed the UNDT’s award of material damages of USD8,000 for lack of full and fair consideration and moral damages for the distress the Applicant suffered due to the irregularities.

Judgment 2015-UNAT-505

Refusal to conduct a fact-finding investigation – scope of fact-finding investigation

3. UNAT affirmed the UNDT judgment which found that the ASG/OHRM did not err in deciding that the Applicant’s complaint against her former supervisor did not provide sufficient grounds to warrant a formal fact-finding investigation. Noting that a period of six months to communicate the decision not to open a formal fact-finding investigation was far from prompt, UNAT also affirmed the UNDT’s award of compensation in the amount of USD3,000 for emotional distress and anxiety caused by the six-month delay in deciding the Applicant’s complaint.

Judgment 2015-UNAT-518

Establishment of investigation panel

4. UNAT found that the UNDT erred in determining that the refusal by the Executive Director of the Office of Administration of Justice to open an investigation into all of the allegations of harassment and abuse of authority raised by the Applicant against her supervisor and another former colleague violated ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). UNAT held that there is a degree of discretion as to how to conduct a review and

assessment of a complaint and decide whether to undertake a fact-finding investigation regarding some or all of the allegations. UNAT held that the Executive Director acted in accordance with sections 5.14 and 5.15 of ST/SGB/2008/5 when she asked for comments from the alleged offenders before making the assessment under the ST/SGB; this added transparency to the procedure. UNAT affirmed the UNDT's conclusion that the Executive Director did not follow the ST/SGB by hiring two consultants from outside the Organization to conduct the investigation. Under the ST/SGB, the responsible official must entrust the fact-finding investigation to a panel of two persons from the department who are trained for that purpose or, if that is not possible, appoint two persons from the roster maintained for that purpose by OHRM. UNAT remanded the matter to the Executive Director to establish a new fact-finding panel in accordance with ST/SGB/2008/5. UNAT determined that the Applicant had not experienced any inordinate delay with regard to the handling of her complaint which would merit the award of damages and vacated the UNDT's award of CHF8,000 in moral damages.

Judgment 2015-UNAT-542

Summary Judgment/Receivability of application where effect of administrative decision continues after expiration of appointment

5. UNAT considered an appeal against a UNDT order on case management and a partial appeal against a UNDT summary judgment on the receivability of a UNDT application seeking to challenge two non-selection decisions (not appealed to UNAT), the blocking of the staff member's e-mail account and denial of access to UN City Copenhagen, insofar as she was no longer a staff member, a challenge to her own rebuttal process, and a challenge to the UNFPA Rebuttal Policy as such. With respect to the fact that the Applicant's e-mails were blocked after the end of her contract and that she was denied access to the UN City Building in Copenhagen, UNDT held that since the Applicant had no appointment at the time of the contested decisions, she had no legal standing to bring those matters before the UNDT. The Applicant's challenge of her rebuttal process was found to be premature as the process was still pending. Her challenge to the UNFPA Rebuttal Policy was found to be not receivable as it challenged a regulatory framework rather than an administrative decision. In its judgment, UNAT determined that the Applicant had not established that the UNDT exceeded its authority by its case management and the resulting order. UNAT agreed with the UNDT's rejection of the complaint regarding the Applicant's rebuttal procedures as not receivable and found that the UNDT's holding on the challenge to UNFPA's Rebuttal Policy had not been in fact been appealed by the Applicant. UNAT determined with regard to the blocking of the e-mail and access to the UN City, that the contested questions could not have been determined in a summary manner. It held that the UNDT erred when it determined a question of law without assessing the underlying factual matrix which gave rise to the impugned decisions. Thus, the question of whether there was a decision which was not in compliance with the Applicant's terms of appointment required a factual enquiry to establish the Applicant's standing at the time of her application to the UNDT and such factual enquiry necessitated the Respondent's reply to her specific complaints. UNAT therefore remanded the matter back to the UNDT for a *de novo* consideration on these specific issues.

Judgment 2015-UNAT-555**Decision implementing an ICSC decision as an appealable decision as an administrative decision**

6. UNAT considered an appeal against a UNDT judgment which found the staff member's application not receivable because she failed to challenge an appealable administrative decision when she challenged the harmonization of the numbering of posts at the GS level across the United Nations Common System made by the International Civil Service Commission (ICSC) and, in her case, implemented by the International Civil Aviation Organization. The resulting renumbering, lowering the number of GS-levels from nine to seven, had set the Applicant's level from G-7 to G-6. The UNDT opined that the Secretary-General had had no discretionary authority in proceeding with implementation of the ICSC's decision. The UNDT further found that the contested decision was not taken solely with respect to the Applicant, and that she did not establish that the renumbering exercise gave rise to legal consequences that adversely affected her. UNAT held that the Secretary-General was duty bound to implement decisions by the ICSC as directed by the General Assembly and that for the most part, such decisions are of general application and therefore not reviewable. UNAT found, however, that where a decision of general application negatively affects the terms of appointment of a staff member, such decision shall be treated as an "administrative decision" within the scope of Article 2(1) of the UNDT Statute. Based on the Applicant's Personnel Action Forms, before and after implementation of the renumbering exercise, UNAT found that the exercise had a direct adverse impact on her. The UNDT failed to give any consideration to the Applicant's Personnel Action Forms and thus erred in law and fact in concluding that her application was not receivable. UNAT vacated the judgment and remanded the matter back to the UNDT.

Judgment 2015-UNAT-574**Date of recruitment for the purpose of determining eligibility for after-service health insurance**

7. UNAT found that the UNDT erred in concluding that the Applicant's eligibility for after-service health insurance (ASHI) should be determined based on the date of her recruitment to the International Criminal Tribunal for the Former Yugoslavia in October 2006 instead of her appointment to the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) in October 2009. Under Staff Rule 4.17, the date of recruitment that is relevant for determining the terms of appointment of a former staff member who receives a new appointment after separating from the Organization is the date of the new appointment. In the Applicant's case, her new appointment with UNAKRT was a re-employment under Staff Rule 4.17 and not a reinstatement. The Applicant's eligibility for ASHI was therefore properly determined by reference to the date of her recruitment to UNAKRT in October 2009. UNAT allowed the appeal on behalf of the Secretary-General.

Judgment 2015-UNAT-575**Net vs. gross pension benefits**

8. UNAT considered an appeal of a United Nations Joint Staff Pension Fund (UNJSPF) Standing Committee decision to deny the Applicant's request under Article 45 of the UNJSPF Regulations that his former spouse be paid 50 per cent of his monthly periodic pension benefit after the deduction of his ASHI premium. The Applicant asserted that the Standing Committee erred in law in its interpretation of the phrase "net base pension benefit", thereby derogating from the ordinary definition of that phrase. UNAT noted that the Applicant's retirement benefit from the UNJSPF including the monthly periodic pension benefit was not subject to taxation and/or payment of statutory deductions and that therefore,

any challenge with respect to the application and meaning of the words “gross” and “net” was merely semantic. The ASHI premium was a voluntary payment which was deducted by the UNJSPF at the behest of a beneficiary and therefore cannot be treated as or deemed to be a statutory deduction. UNAT rejected the appeal.

Judgment 2015-UNAT-576

Impact of application for correction of judgment on time limit to appeal judgment on merits

9. The staff member filed an appeal against a UNDT judgment more than a month after the expiration of the 60-day time limit for filing an appeal. The Applicant argued that the 60-day deadline ran from the date that his second motion for correction of judgment was denied on 4 September 2014 and that his appeal was therefore timely. UNAT held that a staff member cannot extend the statutory deadline for appeal by filing post-judgment motions. To hold otherwise would allow the parties to set their own deadlines for appeal of a UNDT judgment and undermine the mandatory nature of the statutory deadline in Article 7(1)(c) of the UNAT Statute. UNAT rejected the appeal as time-barred.

Judgment 2015-UNAT-600

Receivability of claims of gross negligence and separation on health grounds

10. UNAT affirmed the UNDT’s finding that the Applicant’s claims that the Organization was negligent in carrying out his unsuccessful eye surgery, owed him well over USD 2 million of compensation and failed to separate him in a timely manner on health grounds were not receivable because he was required to request management evaluation of these claims under Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2(a) but failed to do so. UNAT rejected his contention that the impugned decisions were based on the advice of technical bodies, namely the Advisory Board on Compensation Claims, the Medical Services Division and the Medical Board, and that he was therefore not required to request management evaluation under Staff Rule 11.2(b). UNAT noted that a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D. The Applicant was therefore required to submit a request for management evaluation of these decisions before proceeding with an application to the UNDT.

Judgment 2015-UNAT-604

Calculation of time limit to appeal - Date of service of UNDT judgment

11. The issue for determination by UNAT was whether the relevant date for the filing of the Secretary-General’s appeal ran from the date on which the Administrative Law Section in OHRM received the judgment in its capacity as counsel of record for the Secretary-General before the UNDT or the date on which the judgment was received by the Office of Legal Affairs (OLA), the Secretary-General’s counsel of record before UNAT. UNAT found that in the absence of any published UNDT rule or practice direction which decreed that transmission of UNDT judgments be made to OLA, it was not permissible for the Secretary-General to seek to rely on the date when the judgment was received by OLA. Consequently, the appeal was found to be time-barred and the UNDT judgment awarding compensation of two years and 6 months net base salary was not disturbed.

Judgment 2015-UNAT-607

UNAT's jurisdiction over the UNJSPF

12. The Applicant challenged the UNJSPF's refusal to submit his case to the Standing Committee. He claimed that the decision violated the "international civil servants' right of appeal" and applied the UNJSPF's Regulations in an "arbitrary, unfair or prejudicial manner". UNAT found that the decision of the UNJSPF not to submit the Applicant's appeal to the Standing Committee contravened his rights under the Regulations and Rules of the UNJSPF by depriving him of access to the appeals process and was a serious violation of his due process rights. Noting that UNAT's jurisdiction was limited to hearing appeals of decisions of the Standing Committee and that the Applicant's case had not been reviewed by the Standing Committee, UNAT found that it had no jurisdiction to hear the appeal and remanded it to the UNJSPF Standing Committee.