

Eleventh Activity Report
Office of Administration of Justice
1 January to 31 December 2017

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I. Introduction

1. A new internal justice system for disputes of staff members or former staff members with the United Nations regarding their terms of employment was established by the General Assembly effective 1 July 2009. In the preamble of resolution 59/283, the General Assembly emphasized “the importance for the United Nations to have an efficient and effective system of internal justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations” and that a “transparent, impartial and effective system of administration of justice is a necessary condition for ensuring fair and just treatment of United Nations staff and important for the success of human resources reform in the Organization”.
2. In resolution 61/261, the General Assembly decided to “establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike”. In resolution 71/266, adopted on 23 December 2016, the General Assembly noted with appreciation the findings of an Interim Independent Assessment Panel on the system of administration of justice, established by the General Assembly in 2015, that the system “has made a good start and is an improvement over the previous system and that the aims and objectives of the system have been met to a very great extent” and recognized “that there is still room for further improvement”.
3. The Office of Administration of Justice (OAJ or Office) prepares annual activity reports which provide an overview of the work of the Office, and aggregate data on the outputs of the Tribunals, and of the Office of Staff Legal Assistance (OSLA). The reports also include summaries of notable legal pronouncements by the Tribunals on a range of subjects. The reports can be accessed on the rebranded website of the internal justice system:

<http://www.un.org/en/internaljustice/>

4. This eleventh activity report covers the period 1 January to 31 December 2017.

II. Office of Administration of Justice

5. When the General Assembly established the internal justice system in 2009, it created OAJ as an independent office with operational and budgetary autonomy would ensure the institutional independence of the system (see General Assembly resolution 62/228, the report of the Advisory Committee on Budgetary and Administrative Questions A/61/815, paragraph 22, and the report of the Redesign Panel for the internal justice system A/61/205, paragraph 124).
6. The General Assembly expressly recognized “the important role of the Office of Administration of Justice in maintaining the independence of the formal system of justice” (resolution 65/251). As an independent office, OAJ is not part of “the Administration” or “management”. OAJ is responsible for the overall coordination of the formal component of the internal justice system and for contributing to ensuring that the system functions in a fair, transparent and efficient manner. As the new internal justice system became operational, the General Assembly stressed that it must be transparent, impartial, independent and effective (resolution 61/261, preamble). The General Assembly also established the system as decentralized (resolution 62/228, paragraph 2), and determined in resolution 65/251, paragraph 9, that “all elements of the new system of administration of justice must work in accordance with the Charter of the United Nations and the legal and regulatory framework established by the General Assembly”.
7. As per General Assembly resolution 62/228, OAJ comprises “the Office of the Executive Director and the Office of Staff Legal Assistance, as well as the Registries for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.” The General Assembly established Registries for the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), consisting of a Principal Registrar overseeing the Registries, three Registries supporting UNDT in New York, Geneva and Nairobi, and one Registry supporting UNAT in New York. Each Registry includes a Registrar as well as Legal Officers and Assistants. In the resolution, the General Assembly requested the Secretary-General to provide the terms of reference for the Registries, which are included in ST/SGB/2010/3. Articles 21 of the Rules of Procedure of UNAT and UNDT, respectively, set out specific judicial support duties of the Registries under the direction of the tribunals, such as transmitting documents, maintaining dossiers of cases and organizing hearings.
8. The Office of Staff Legal Assistance (OSLA) enjoys full operational independence in terms of its mandate to provide legal assistance to staff members in an independent and impartial manner and is composed of United Nations staff members. OSLA’s Chief is responsible for the management and proper functioning of the programme of legal assistance to staff members in the internal justice system, including in administrative, disciplinary and appellate processes, management evaluation requests, and in proceedings before the UNDT and UNAT. OSLA provides legal assistance to staff members and former staff members globally and focuses also

on innovative ideas in problem-prevention and dispute resolution. Headquartered in New York, OSLA is decentralized and has branch offices in Addis Ababa, Beirut, Geneva and Nairobi.

9. In the reporting period, as part of its mandate to support the internal justice system, the Office of the Executive Director of OAJ further enhanced online search capabilities for users of the search engine for UNDT and UNAT jurisprudence, by making more advanced search features available and providing better information on how to utilize those advanced features. The preparations for an upgrade of the Court Case Management System, which facilitates electronic filing, the processing of applications and appeals and obtaining aggregate data on the processing steps and outcomes of applications and appeals, commenced in December 2017.
10. Based on the outreach strategy for internal justice in the United Nations, the Office of the Executive Director of OAJ and OAJ staff increased its activities in disseminating information about the system of administration of justice through outreach activities interacting with staff members and managers through presentations and interactive Q and A sessions. In 2017, a Legal Officer of the Geneva Registry conducted a joint outreach mission with an OSLA Legal Officer at the Economic Commission for Asia and the Pacific for United Nations staff members in Bangkok. Registry staff also participated with OSLA and regional ombudspersons of the Office of the United Nations Ombudsman and Mediation Services (UNOMS) in outreach activities organized locally by UN entities for newly on-boarded staff members. The Registry in Nairobi also participated in on-boarding briefings for new staff members at UNON and provided information on the system. In organizing outreach activities, OAJ collaborates with hosting entities and other stakeholders in the system.
11. To ensure improved access to information about the UN internal justice system, an overhaul of the OAJ website was undertaken in 2017, with a view to providing a more holistic presentation of the internal justice system including more information about the informal component, in addition to the formal dispute resolution mechanism. The website was accordingly rebranded from being an OAJ website to an administration of justice at the UN-website with a focus on the system as a whole. OAJ also undertook to revise the brochure on the internal justice system.
12. During the reporting period, the Executive Director of OAJ coordinated the preparation of the Secretary-General's report on administration of justice (A/72/204) and provided additional information to the Advisory Committee for Administrative and Budgetary Questions (ACABQ) and the Sixth and Fifth Committees of the General Assembly, as requested, during their consideration of the report. The General Assembly's consideration of the administration of justice agenda item resulted in its resolution 72/256.

III. Internal Justice Council

13. In accordance with its mandate, OAJ provided administrative and technical support, as appropriate, to the Internal Justice Council (IJC or Council), including with respect to its meetings and teleconferences and logistical arrangements for the preparation of its annual report to the General Assembly (A/72/210). Following the end of mandate of the previous Council in November 2016, four new members of the Council nominated by staff and management, respectively, were appointed by the Secretary-General. Those four members chose the fifth member to serve as Chairperson, who has been appointed by the Secretary-General as well.

14. The IJC was established by the General Assembly in resolution 62/228 to “help ensure independence, professionalism and accountability in the system of administration of justice”. The members of the Council, whose mandate is until 12 November 2020, are (in alphabetical order):
 - Ms. Carmen Artigas, distinguished external jurist nominated by staff;
 - Mr. Frank Eppert, management representative;
 - Prof. Samuel Estreicher, distinguished external jurist nominated by management;
 - Mr. Jamshid Gaziyeu, staff representative; and
 - Justice Yvonne Mokgoro, Chair.

IV. The United Nations Dispute Tribunal

A. Composition and jurisdiction

15. During the reporting period, as per article 4 (1) of its Statute the UNDT was composed of three full time judges and two half-time judges with seven-year terms. According to General Assembly resolution 72/256, UNDT also included three full-time *ad litem* judges with one-year terms:
- Full time judges with seven-year terms: Judge Memooda Ebrahim-Carstens (Botswana, based in New York), Judge Teresa Maria da Silva Bravo (Portugal, based in Geneva) and Judge Agnieszka Klonowiecka-Milart (Poland, based in Nairobi);
 - Half-time judges with seven-year terms: Judge Goolam Meeran (United Kingdom) and Judge Alexander W. Hunter Jr. (United States of America);
 - Full-time *ad litem* judges with one-year terms: Judge Nkemdilim Izuako (Nigeria, based in Nairobi), Judge Alessandra Greceanu (Romania, based in New York) and Judge Rowan Downing (Australia, based in Geneva).
16. By resolution 72/256, the General Assembly extended the term of the three *ad litem* judge positions, and the current incumbents, for one year, from 1 January to 31 December 2018.
17. During the reporting period, the judges of the UNDT held one plenary meeting and workshop in New York from 15 to 26 May 2017. Judge Nkemdilim Izuako was elected President of the UNDT for a one-year term commencing on 1 January 2018.
18. UNDT is an independent institution of the internal justice system consisting of the judges as above. Its jurisdiction is to hear and pass judgment on applications filed by staff members or former staff members, as provided for in article 3, paragraph 1, of the UNDT Statute, against the Secretary- General as the Chief Administrative Officer of the United Nations, (1) appealing an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member, (2) appealing an administrative decision imposing a disciplinary measure, or (3) requesting enforcement of a mediation agreement.

B. Judicial Work

1. Caseload and disposal of cases

19. In 2017, 382 new applications were received, and 268 applications were disposed of. For the purpose of this report, the term “application” includes any application, motion or other request brought before the UNDT which results in the registration of a case in the electronic Court Case Management System. Applications with similar content made by

separate individual applicants were often grouped into one or several cases. As at 1 January 2017, 257 applications were pending with the UNDT. On 31 December 2017, 372 applications remained pending.

20. The new applications in 2017 included two notable groups: one group of applications related to a change in the UN Common System Unified Salary Scale,¹ against which applications were filed at two duty stations of the UNDT, Geneva and New York, and another group of over 300 applications, grouped in up to nine cases per “wave”, related to changes in the post adjustment multiplier at the Geneva duty station.²
21. Tables 1 and 2 below show the number of applications received, disposed of, and pending for previous years and the breakdown by duty station.

Table 1: Applications received, disposed of and pending at the end of the year

UNDT	Received ³	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	438	480	275
2016	383	401	257
2017	382	268⁴	372
Total	3030	2659	---

¹ One cluster of 11 applications was disposed of by Judgments UNDT/2017/097, 098 and 099/Corr. 1 in Geneva on 29 December 2017.

² The applications were submitted in several litigation waves, of which three were submitted in 2017, and the fourth wave was partly submitted in 2017 and partly in 2018. All cases were transferred to the Nairobi UNDT.

³ The figures in the table include applications for suspension of action to UNDT; UNDT received 86 requests in 2017.

⁴ This figure reflects 100 judgments in 2017, 86 applications for suspension of action disposed of by orders (19 of which were withdrawals); 44 applications on merits withdrawn and closed by order, five decisions on interpretation or revision, and 25 applications closed by inter-registry transfer based on UNDT orders. Of the 268 applications disposed of, 177 were filed in 2017, 56 were filed in 2016, 25 in 2015, nine in 2014, and one in 2013.

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

UNDT	Received			Disposed of			Pending (end of year)		
	Geneva	Nairobi	New York	Geneva	Nairobi	New York	Geneva	Nairobi	New York
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
2016	215	92	76	147	163	91	139	80	38
2017	127	137	118	108	100	60	158	118	96
Total	1225	951	854	1067	834	758	---	---	---

2. Number of judgments, orders and court sessions

22. Table 3 shows the total number of judgments, orders and court sessions from 1 July 2009 to 31 December 2017. Table 4 shows the breakdown by duty station. Applications were disposed of by way of judgment or order. A judgment or order may dispose of more than one application.

Table 3: Judgments, orders and court sessions 2009 to 2017

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	126	991	192
2016	221	1036	183
2017	100	758⁶	211
Total	1517	6619	1931

⁵ A "court session" is an aggregate unit used to ensure consistency among the three Registries supporting the UNDT 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 81 "case management discussions".

⁶ The figure includes orders disposing of 155 applications (including 86 suspension of action applications; 44 withdrawals; 25 inter-Registry transfers; and 467 orders relating to case management; 39 orders relating to extension of time and 104 other orders).

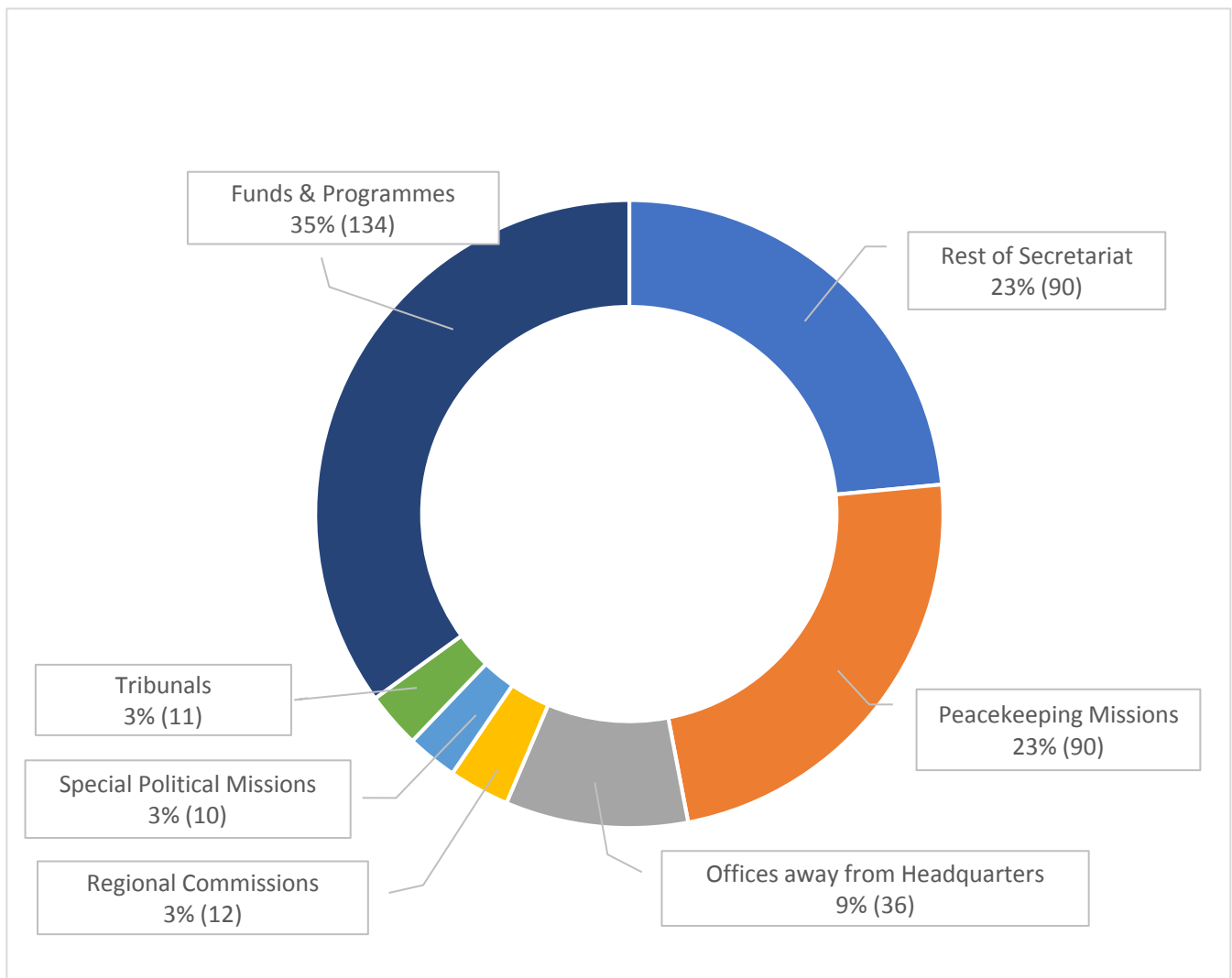
Table 4: Judgments, orders and court sessions by duty station 2009 to 2017

UNDT	Judgments			Orders			Court sessions		
	Geneva	Nairobi	New York	Geneva	Nairobi	New York	Geneva	Nairobi	New York
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
2016	64	107	50	250	501	285	55	60	68
2017	35	46	19	262	219	282	97	71	43
Total	517	516	484	1710	2220	2695	426	784	721

3. Sources of applications

23. The categories of applicants being staff members or former staff members who filed applications in 2017 were as follows: Director (28); Professional (222); General Service (57); Field Service (33); Security (8); National Staff (4); others (31).
24. The 382 applications received during the reporting period were filed by staff members or former staff members of UN entities, as illustrated in Chart 1 below.

Chart 1: Breakdown of applications received in 2017 by entity of the staff member



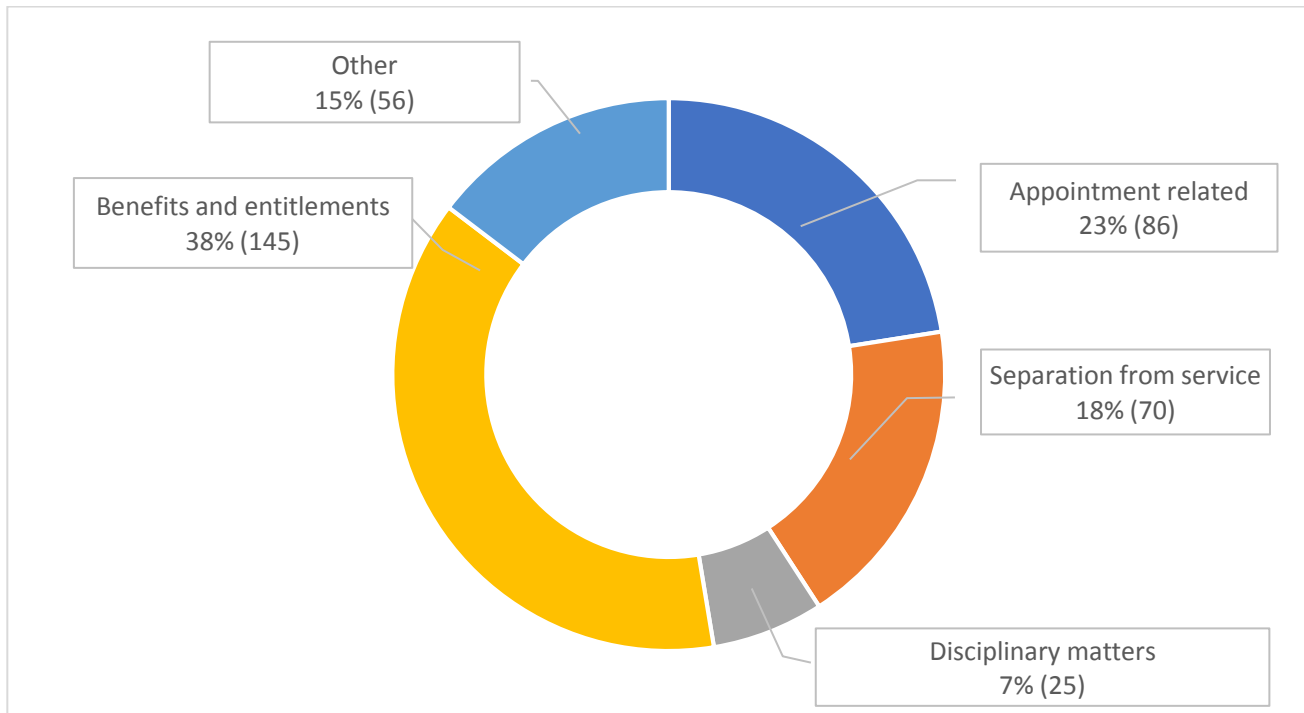
25. Information on the departments or offices where applicants were serving at the time of the contested decision is contained in Appendix I. Please note that the decision-maker of a decision which was challenged before the UNDT may not have been part of the department or office where the applicant served.

4. Subject matter

26. The subject matter of applications received during the reporting period fell into five main categories: (1) benefits and entitlements, (2) appointment-related matters (non-selection, non-promotion and other related matters), (3) separation from service (non-

renewal and other separation matters), (4) disciplinary matters, and (5) other. This is illustrated in Chart 2 below.

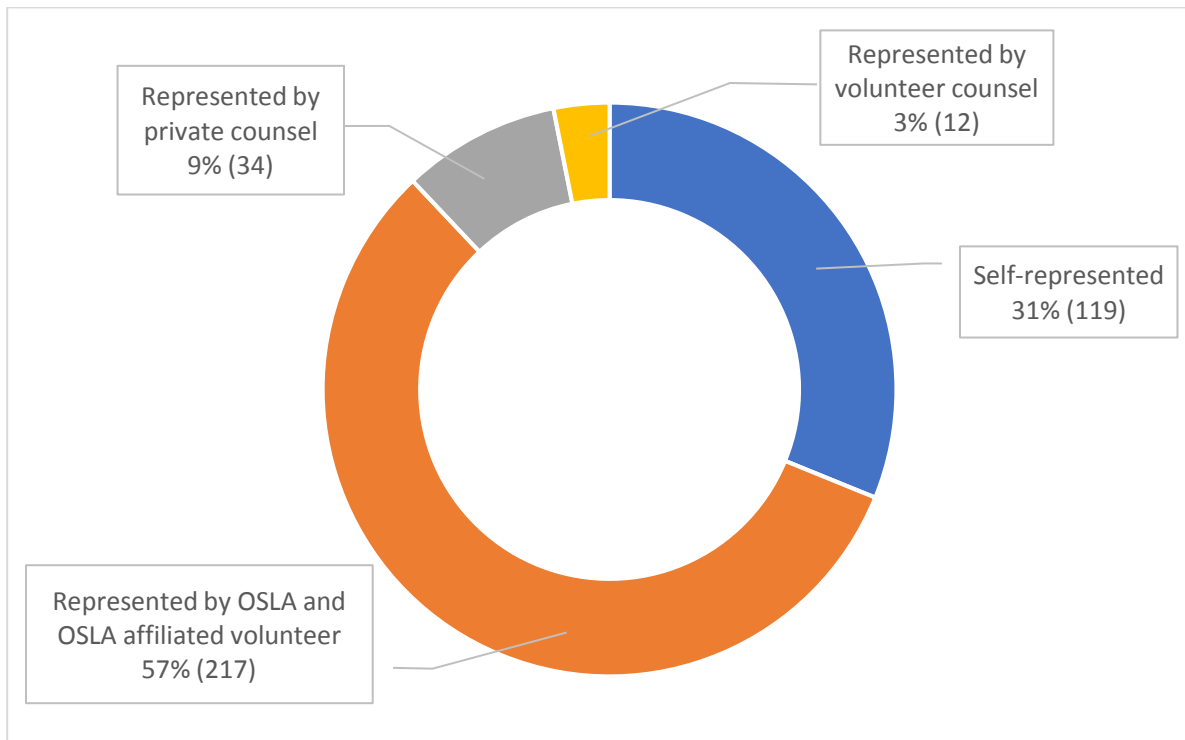
Chart 2: Applications received in 2017 by subject matter



5. Representation of staff members

27. OSLA, private counsel and volunteers who were either staff members or former staff members of the Organization, provided representation before the UNDT in 69 per cent of applications received in 2017 by the UNDT.⁷ This is illustrated in Chart 3 below.

⁷ OSLA's data on representation before the UNDT may differ because OSLA aggregates its data in a manner specifically reflective of its mandate.

Chart 3: Representation of staff members for applications received in 2017

6. Informal resolution

28. As a result of case management by the UNDT leading to informal settlement, referrals by the Tribunal to mediation by the Office of the Ombudsman and Mediation Services (UNOMS), withdrawal by applicants following informal settlement *inter partes*, or resolution by other non-judicial means, a total of 44 applications pending before the UNDT were resolved without the need for a final adjudication on the merits.

7. Referral for mediation

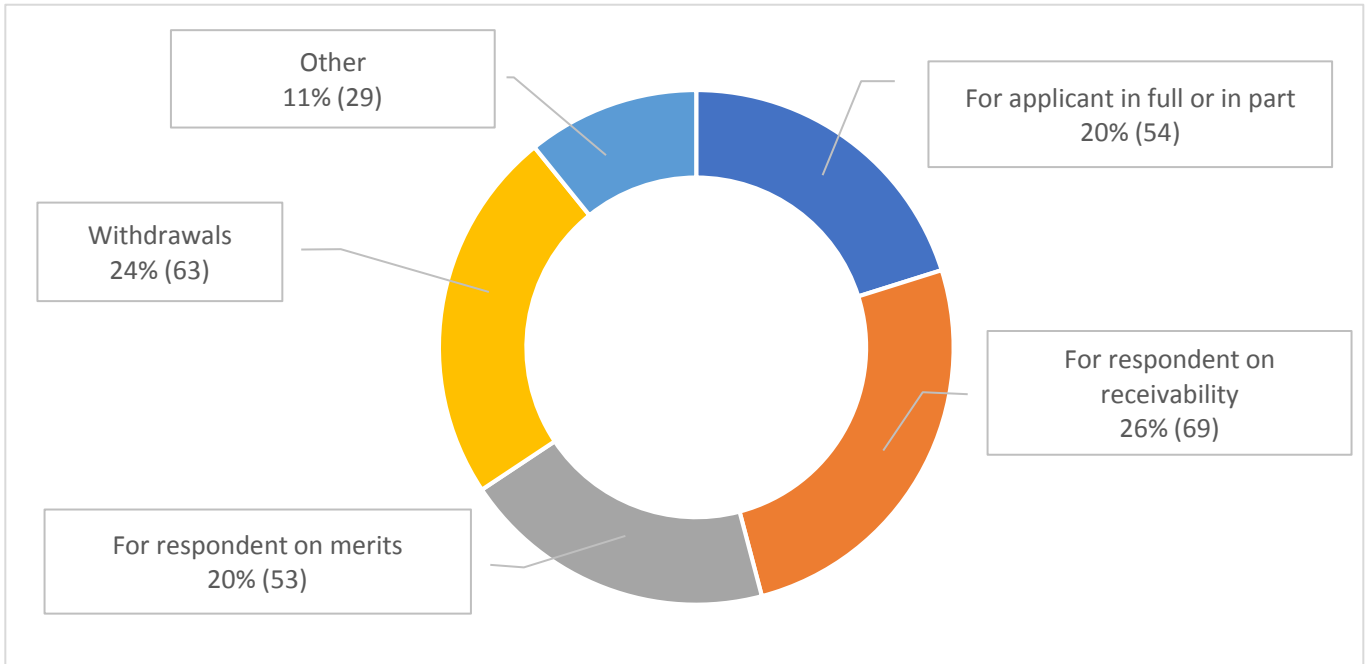
29. In 2017, nine applications were referred to UNOMS by the UNDT under article 10.3 of its Statute.

8. Outcomes

30. The outcomes of the 268 applications, including applications for suspension of action, disposed of by the UNDT in 2017 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".

31. In 2017, notable applications rejected on the ground that they were not receivable included related applications concerning the implementation of a Comprehensive Salary Survey in New Delhi,⁸ and applications filed claiming damages against the Organization for “detention and charging” by host country authorities.⁹

Chart 4: Outcome of applications disposed of in 2017



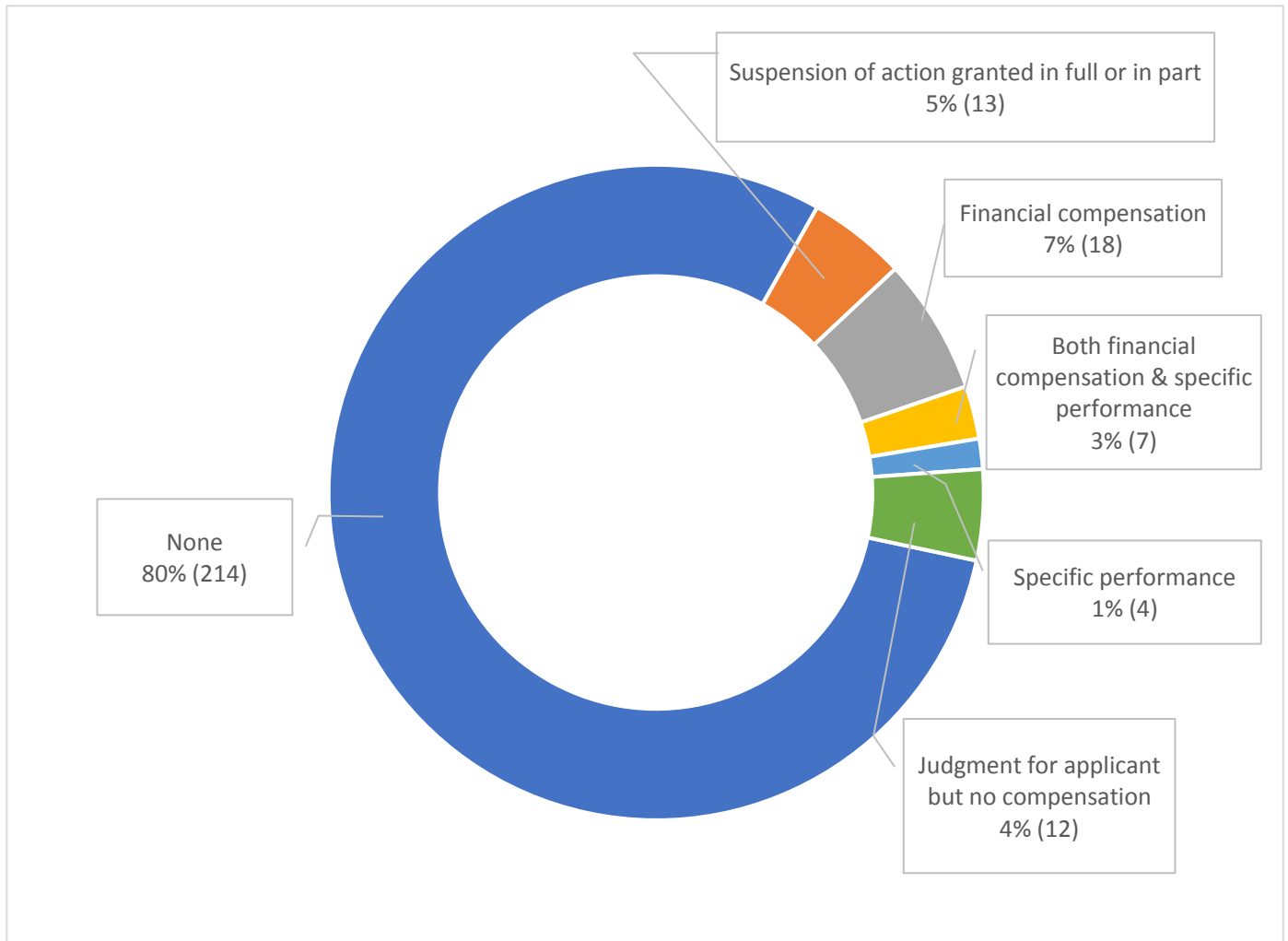
9. Relief

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

⁸ The applications were deemed adjudicated in Judgment UNDT/2017/052.

⁹ The applications were deemed non-receivable by UNDT as the applicants had not previously submitted management evaluation requests, Judgment UNDT/2017/034.

Chart 5: Relief granted to applicants in 2017



10. Referral for accountability

33. The UNDT made three referrals for accountability under article 10.8 of its Statute.¹⁰

11. Jurisprudence

34. The UNDT rendered legal pronouncements on a range of subjects, a selection of which are summarized in Appendix II.

¹⁰ Judgments UNDT/2017/004, UNDT/2017/026, UNDT/2017/087.

V. The United Nations Appeals Tribunal

A. Composition and jurisdiction

35. In 2017, the Appeals Tribunal was composed of seven judges, as per article 3 (1) of its Statute:
- Judge Deborah Thomas-Felix (Trinidad and Tobago);
 - Judge Richard Lussick (Samoa);
 - Judge Rosalyn Chapman (United States of America);¹¹
 - Judge John Raymond Murphy (South Africa);
 - Judge Dimitrios Raikos (Greece);
 - Judge Sabine Knierim (Germany); and
 - Judge Martha Halfeld Furtado de Mendonça Schmidt (Brazil).
36. In June 2016, UNAT elected its Bureau for the term 1 July 2016 to 30 June 2017, with Judge Thomas-Felix serving as President, Judge Lussick as First Vice-President, and Judge Chapman as Second Vice-President. The Bureau's mandate was subsequently extended by UNAT plenary decision until 31 December 2017 to coincide with the calendar year. Judge Murphy was elected President in October 2017, effective 1 January 2018. Judges Raikos and Knierim were elected as First and Second Vice-Presidents at the same time.
37. UNAT is an independent institution of the internal justice system consisting of seven judges as above. Its statutory role is to hear and pass judgment on appeals filed against a judgment rendered by the United Nations Dispute Tribunal in which it is asserted that the UNDT: (a) Exceeded its jurisdiction or competence; (b) Failed to exercise jurisdiction vested in it; (c) Erred on a question of law; (d) Committed an error in procedure, such as to affect the decision of the case; or (e) Erred on a question of fact, resulting in a manifestly unreasonable decision. UNAT is also the appeals body for a number of organizations and institutions not being part of the UN Secretariat and Funds and Programmes.

B. Judicial work

1. Sessions

38. UNAT held three two-week sessions in 2017: a spring session (20 to 31 March 2017), a summer session (3 to 14 July 2017) and a fall session (16 to 27 October 2017). At the sessions, UNAT heard and passed judgment on appeals filed against judgments rendered by the UNDT (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

¹¹ Judge Chapman resigned on 3 November 2017 and her position remained vacant in 2017.

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 Maritime Organization (IMO).

2. Caseload

39. In 2017, 88 new cases¹² were received and 152 cases were disposed of. As at 1 January 2017, 96 cases were pending. On 31 December 2017, 40 cases remained pending. Table 5 below shows the number of cases received, disposed of and pending for 2017 and previous years.

Table 5: UNAT cases received, disposed of and pending: 2009 to 2017

UNAT	Received	Disposed of	Pending (end of year)
2009	19	N/A ¹³	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
2016	170	221	96
2017	88	152	40¹⁴
Total	1135	1103	N/A

40. Table 6 below shows the number of interlocutory motions received in 2017 and previous years.

Table 6: Interlocutory motions received by UNAT: 2010 to 2017

UNAT – Interlocutory motions	Received
2010	26
2011	38
2012	45
2013	39
2014	84
2015	81
2016	45
2017	40
Total	398

3. Sources of cases

41. The 88 new cases filed in 2017 included 54 appeals against judgments of the UNDT (32 filed by staff members and 22 filed on behalf of the Secretary-General); 6 appeals of decisions of

¹² For the purpose of this report, “cases” include appeals against UNDT Judgments, decisions taken by the heads of entities and the Pension Board as well as applications for interpretation, revision and correction.

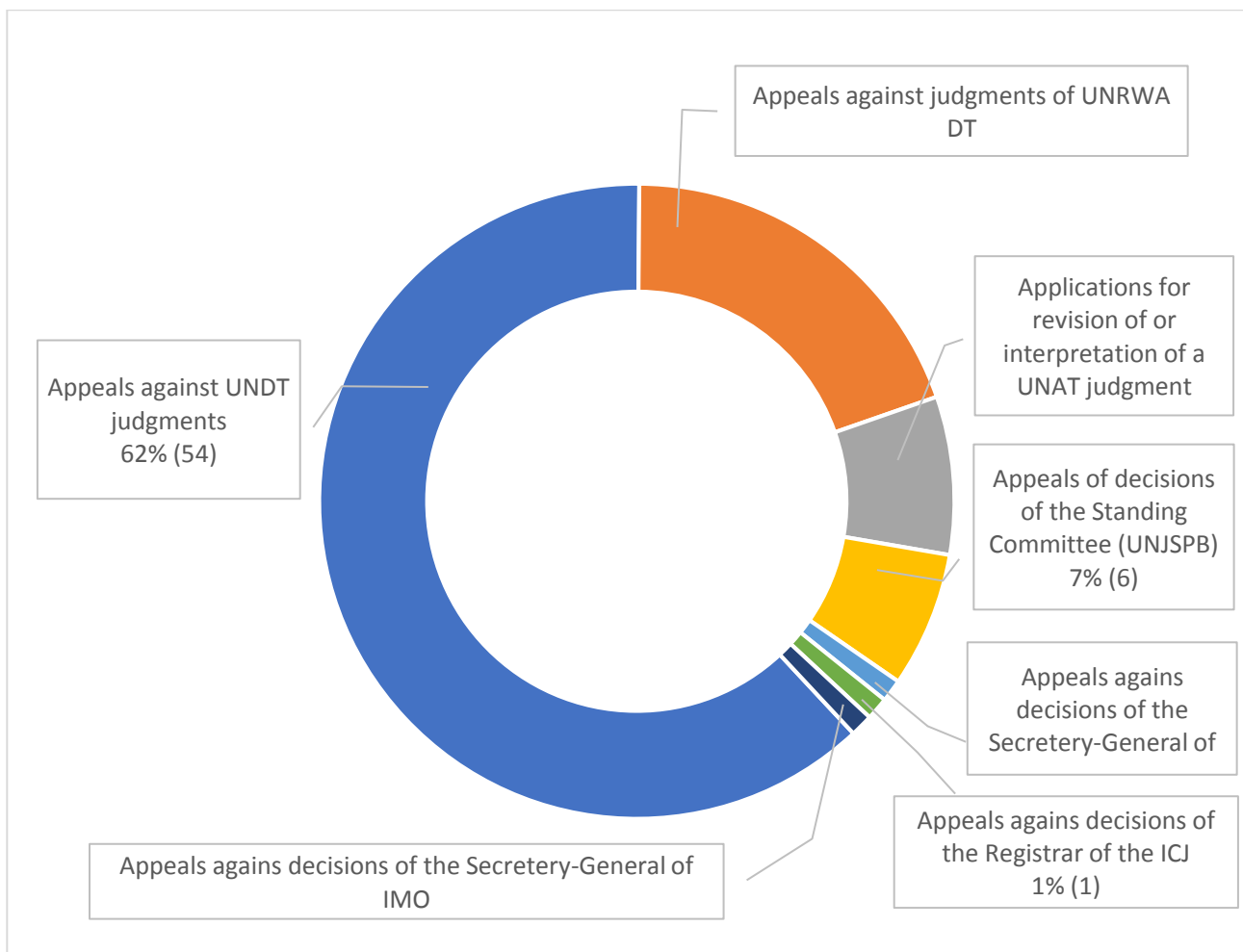
¹³ UNAT did not hold a session in 2009; it held its first session in the spring of 2010.

¹⁴ The number of appeals pending at the end of 2017 is 40. The number of appeals pending at the end of 2016 (96) is not accurate owing to a counting error that was made before the introduction of an electronic file management system.

the Standing Committee acting on behalf of the UNJSPB; 17 appeals against judgments rendered by the UNRWA Dispute Tribunal (15 filed by staff members and two on behalf of the Commissioner-General); one appeal against a decision of the Registrar of ITLOS; one appeal against a decision of the Secretary General of ICAO; one appeal against a decision of the Registrar of the ICJ; and one appeal against a decision of the Secretary-General of the IMO. They also included 5 applications for revision of UNAT judgments and 2 applications for interpretation of a UNAT judgment.

42. The ratio of appeals against UNDT judgments filed by staff members compared to those filed on behalf of the Secretary-General changed from 2016. In 2016, 71 per cent of the appeals were filed by staff members and 29 per cent were filed on behalf of the Secretary-General, while in 2017, 59 per cent of the appeals were filed by staff members and 41 per cent on behalf of the Secretary-General. Chart 6 shows the breakdown of the appeals received in 2017.

Chart 6: Breakdown of the cases received in 2017



43. Table 7 reflects a breakdown of UNAT judgments, orders and hearings for the period 2009 to 2017.

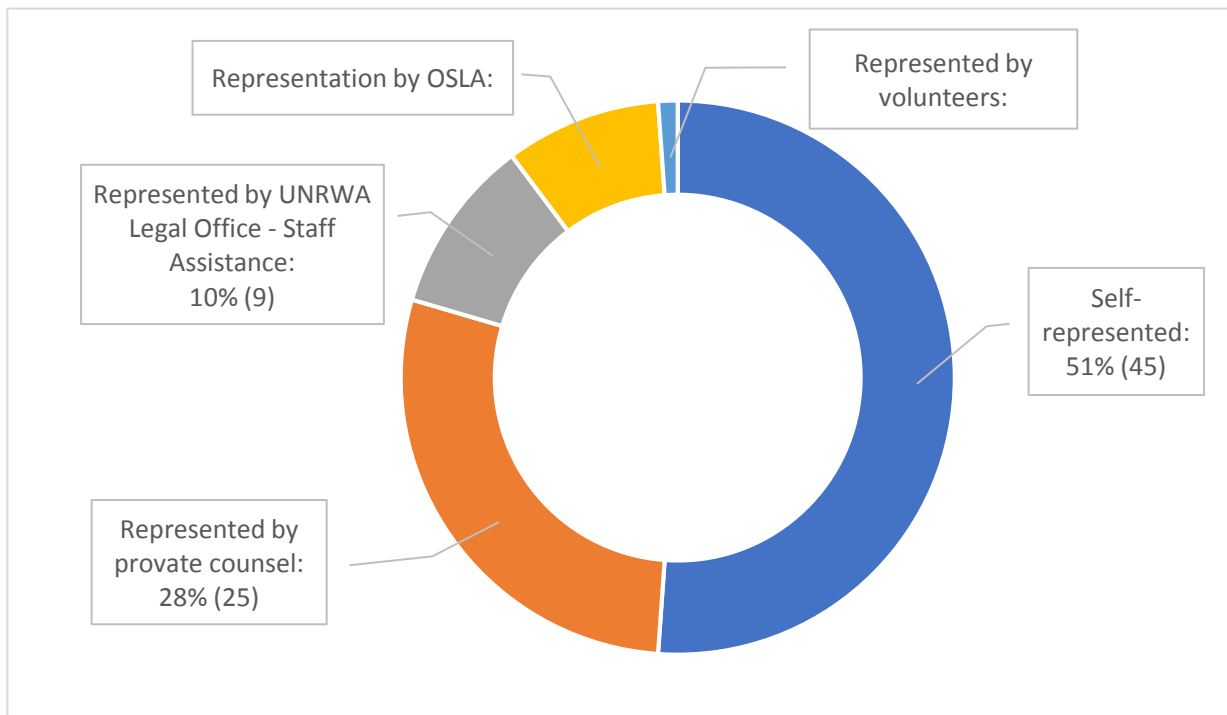
Table 7: UNAT judgments, orders and hearings: 2009 to 2017

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	114	39	2
2016	101	27	2
2017	100	31	0
Total	811	305	25

4. Representation of staff members

44. The representation of staff members in 2017 is demonstrated in the following chart.¹⁵

Chart 7: Representation of staff members



¹⁵ UNAT counts appeals by appellant, differently from OSLA, which lists the number of staff members who requested any assistance in relation to a possible UNAT appeal. Different registration dates may occur between UNAT appeals and requests to OSLA with regard to appeals.

5. Outcomes

- 45. UNAT disposed of 148 cases by judgment and closed four appeals by judicial order or administratively, by action of the Registry upon instruction of the President.
- 46. The 100 judgments rendered by UNAT in 2017 disposed of 148 cases. The Appeals Tribunal disposed of 121 appeals against 115 Dispute Tribunal judgments (in 73 UNAT judgments), one appeal against an ICAO decision, one appeal against an ICJ Registrar decision, one appeal against an IMO decision, seven appeals against decisions of the Standing Committee of the UNJSPB and 13 appeals against UNRWA Dispute Tribunal judgments. The Appeals Tribunal also rendered four judgments on applications for revision. UNAT further considered seven cross-appeals, which it disposed of in the respective judgments on the appeals; the cross-appeals are not counted separately.
- 47. Charts 8 and 9 illustrate the outcome of appeals filed by staff members.

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

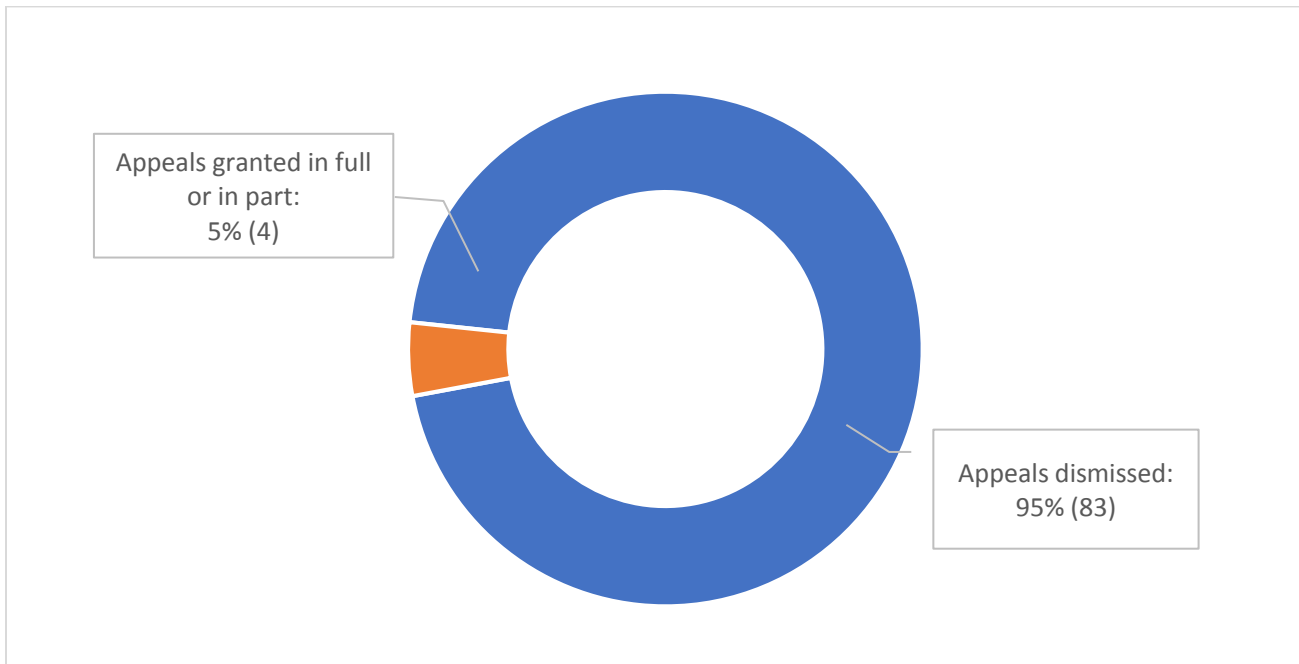
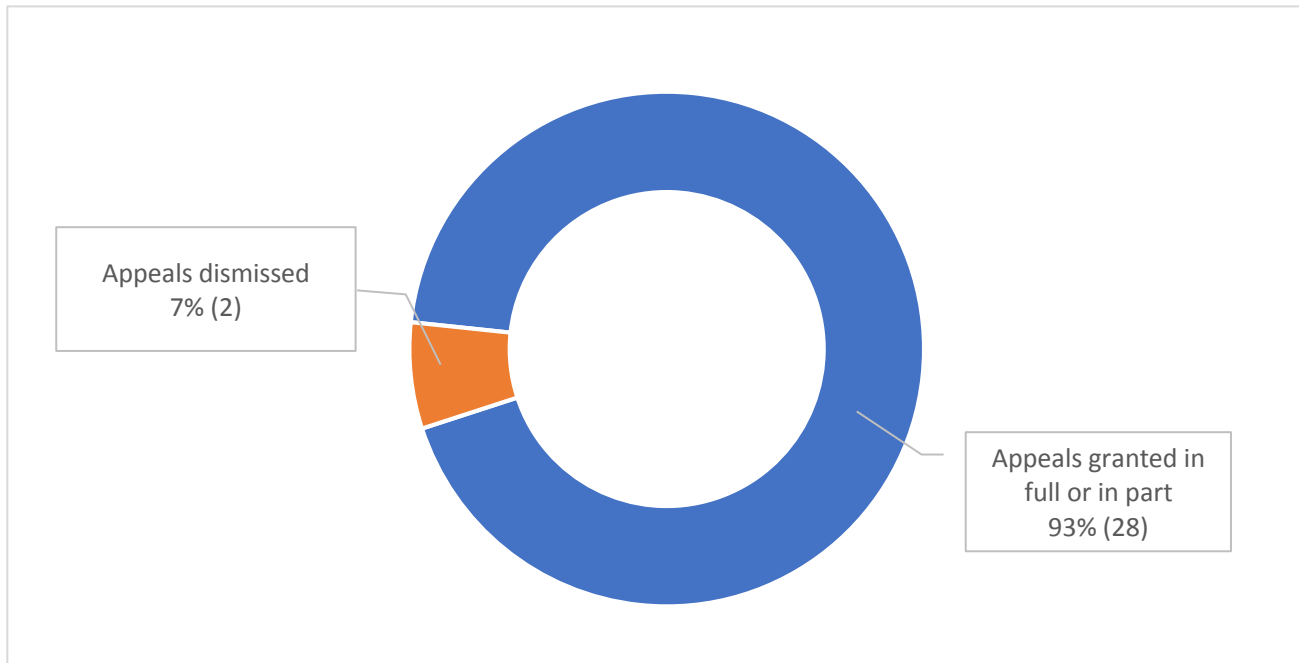


Chart 9: Outcome of appeals against UNDT judgments filed on behalf of the Secretary-General

6. Relief

Appeals against UNDT judgments

48. Overall, of the 121 appeals against 115 judgments, UNAT dismissed 85 appeals against UNDT judgments, granted 23 appeals in full, granted nine appeals in part and closed four cases on withdrawal. In five of the aforementioned cases, UNAT remanded the appeals to the UNDT. Specifically, regarding appeals filed by the Secretary-General, UNAT granted 20 appeals in full, 8 appeals in part and dismissed 2 appeals. On appeals from staff members, UNAT granted 3 in full, one in part and 83 were dismissed.
49. Of the 115 UNDT judgments appealed, UNAT vacated 19 UNDT judgments in full, 14 in part and affirmed 82.
50. In seven cases, UNAT vacated the UNDT's rescission order and in one case, UNAT ordered rescission of the contested administrative decision on appeal. In one case, UNAT vacated the UNDT's specific performance order and in one case, UNAT ordered specific performance on appeal where none had been ordered by the UNDT.

Appeals against decisions of the Standing Committee of the UNJSPB

51. UNAT dismissed four appeals against decisions of the Standing Committee of the UNJSPB. UNAT granted three appeals (including in one appeal in part) against decisions of the Standing

Committee of the UNJSPB. In one of the aforementioned judgments, UNAT remanded the case to the Standing Committee of the UNJSPB.

52. UNAT remanded one case to the Standing Committee of the UNJSPB by judicial order.

Appeal against decision by the Secretary General of ICAO

53. UNAT dismissed one appeal against a decision by the Secretary General of ICAO.

Appeal against decision by Registrar of the ICJ

54. UNAT granted in part one appeal against a decision by the ICJ Registrar.

Appeal against decision by Secretary-General of the IMO

55. UNAT granted in part one appeal against a decision by the Secretary-General of the IMO.

Appeals against UNRWA DT judgments

56. UNAT dismissed nine appeals against judgments of the UNRWA Dispute Tribunal. In one case, UNAT granted the appeal and remanded the case to the UNRWA Dispute Tribunal. In two cases, the appeals were granted in part and in one of these cases, the case was remanded to the UNRWA Administration. In one case, the appellant withdrew his appeal.

7. Referral for accountability

57. The Appeals Tribunal made no referrals for accountability in 2017.

VI. Office of Staff Legal Assistance

A. Framework

58. The Office of Staff Legal Assistance continued to provide advice and representation to United Nations staff worldwide, at all levels, on a wide range of employment matters, from non-appointment to termination, to claims of discrimination, harassment or abuse of authority, to pension benefits, to disciplinary and misconduct cases, to other rights and entitlements under the staff rules.

B. Outreach and training activities

59. In 2017, the Office of Staff Legal undertook outreach at UNMIL, ESCAP, and UNFICYP, as well as providing information sessions at the duty stations where OSLA has offices. OSLA also participated in one Webinar and gave a number of briefings to staff representative bodies in person and via electronic means.
60. During 2017, the Office continued to explore possible opportunities to increase outreach in 2018, focus both on areas where there is a high demand for its services, such as the peacekeeping missions, as well as those areas where there is a limited or no presence of the internal justice system entities, such as Asia and the Pacific and Central and Latin America.

C. Statistics

61. The Office provides a wide range of legal services and advice to staff, including giving summary legal advice, representation during informal dispute resolution and the mediation process, assistance with the management evaluation review and during the disciplinary process, and legal representation of staff before the 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 may vary.

1. Requests for legal assistance

62. In 2017, the Office’s workload included 4,379 requests for legal assistance. Of these, 4,147 were newly opened in 2017 and 232 were carried over from previous years. In 2017, 2,483 requests were closed or resolved through settlement. As at 31 December 2017, there were 1,896 requests pending. The number of requests received and their breakdown by type of matter is illustrated in table 12.

Table 8: Treatment of requests for legal assistance received by OSLA, 2009–2017

Year	Summary advice	Management evaluation matters	Representation before the United Nations Dispute Tribunal	Representation before the United Nations Appeals Tribunal	Disciplinary matters	Other	Total	Pending requests
2009	171	62	168	13	155	31	600	377
2010	309	90	77	39	70	12	597	261
2011	361	119	115	21	55	10	681	293
2012	630	198	96	31	46	28	1 029	234
2013	491	116	70	33	37	18	765	213
2014	798	210	102	15	44	11	1 180	222
2015	830	196	415	16	33	12	1 502	278
2016	1 006	319	71	322	35	3	1 756	232
2017	1 190	1 132 ¹⁶	1 761 ¹⁷	8	50	6	4 147	1 896
Total	5 786	2 442	2 875	498	525	131	12 257	–

63. The nature of “summary advice” requests varies. Such requests often result in the resolution of the dispute. They involve gathering information, conducting legal research, identifying the strengths and weaknesses of a case, and advising the client 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 Management Evaluation Unit or the Tribunals or, in cases of alleged misconduct, writing to the Administration or otherwise representing a staff member.
64. “Management evaluation” cases are those requests in which the Office holds consultations and provides legal advice to staff members, drafts management evaluation requests on their behalf, holds discussions with the Management Evaluation Unit or equivalent entity within the funds and programmes, and negotiates settlements or agreed outcomes.
65. “Disciplinary matters” are those in which the Office provides assistance to staff members in responding to allegations of misconduct under the Staff Rules.
66. In requests relating to “representation before the United Nations Dispute Tribunal” and “representation before the United Nations Appeals Tribunal”, the Office holds consultations and provides legal advice to staff members, drafts submissions on their behalf, provides legal

¹⁶ There were 818 requests for management evaluation which were grouped as 6 management evaluation requests, so the actual total number of management evaluation requests filed was 320. The Office counts each staff member client as a separate “request for assistance”.

¹⁷ 1529 individual Applications were grouped into 22 cases by the Dispute Tribunal, so the actual total number of UNDT Applications proceeding was 254. The Office counts each staff member client as a separate “request for assistance”.

representation at oral hearings, holds discussions with opposing counsel and, to the extent possible, negotiates settlements.

67. The Office similarly provides advice and assistance in submissions and processes before other formal bodies and represents staff in mediation.

2. Breakdown of requests

68. Charts 10 to 16 provide various breakdowns of the new 4,147 requests for legal assistance received in 2017.

Chart 10: Requests for legal assistance, by subject matter

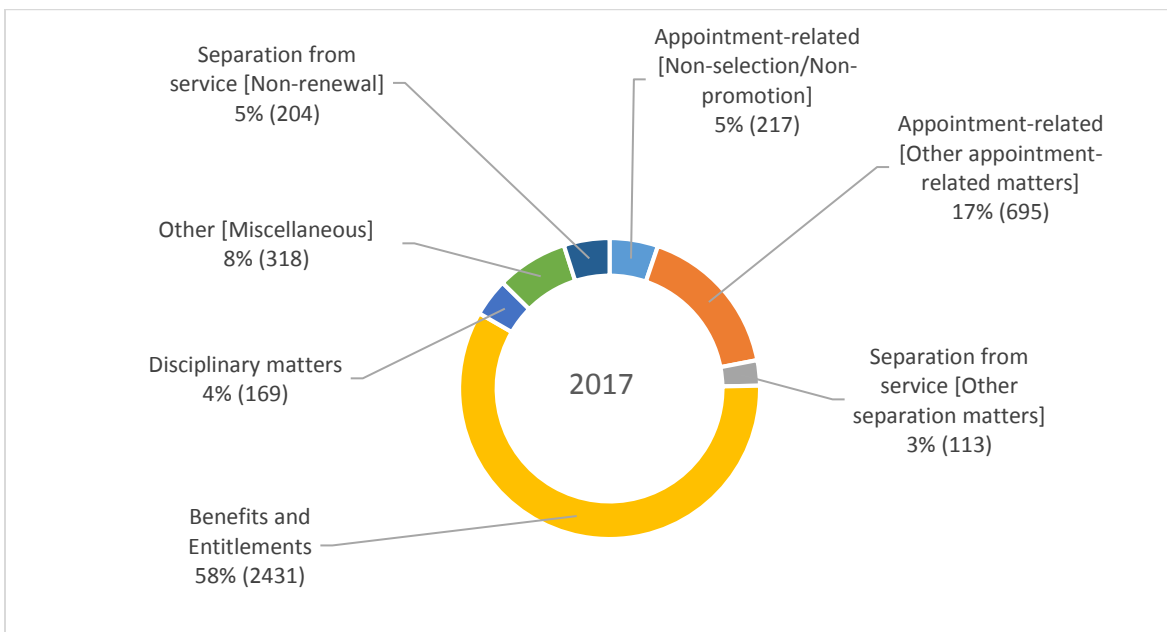


Chart 11: Treatment of requests for legal assistance

69. There were 1,529 applications grouped into 22 cases by the Dispute Tribunal and 818 management evaluation requests grouped into 6 management evaluation requests. Chart 11 best represents the treatment of requests by OSLA.

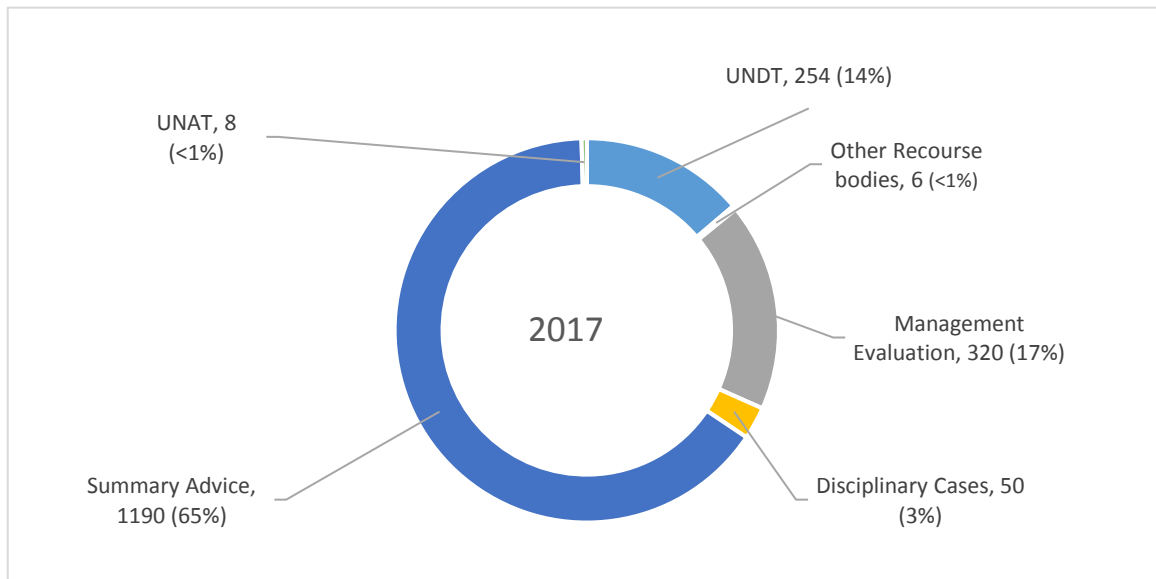


Chart 12: United Nations entity in which the staff member was employed at the time of request for legal assistance

70. Abbreviations: DESA, Department of Economic and Social Affairs; DFS, Department of Field Support; DGACM, Department for General Assembly and Conference Management; DM, Department of Management; DPA, Department of Political Affairs; DPKO, Department of Peacekeeping Operations; DSS, Department of Safety and Security; ICTY: International Tribunal for the Former Yugoslavia; JIU, Joint Inspection Unit; NY, New York; OCHA, Office for the Coordination of Humanitarian Affairs; OHCHR, Office of the United Nations High Commissioner for Human Rights; OIOS, Office of Internal Oversight Services; UNAKRT, United Nations Assistance to the Khmer Rouge Trials UNAMA, United Nations Assistance Mission in Afghanistan; UNAMI, United Nations Assistance Mission for Iraq; UNCTAD, United Nations Conference on Trade and Development; UNDP, United Nations Development Programme; UNEP, United Nations Environment Programme; UNFPA, United Nations Population Fund; UN-Habitat, United Nations Human Settlements Programme; UNHCR, Office of the United Nations High Commissioner for Refugees; UNICEF, United Nations Children’s Fund; UNJSPF, United Nations Joint Staff Pension Fund; UNODC, United Nations Office on Drugs and Crime; UNOG, United Nations Office at Geneva; UNON, United Nations Office at Nairobi; UNOV, United Nations Office at Vienna; WFP, World Food Programme.

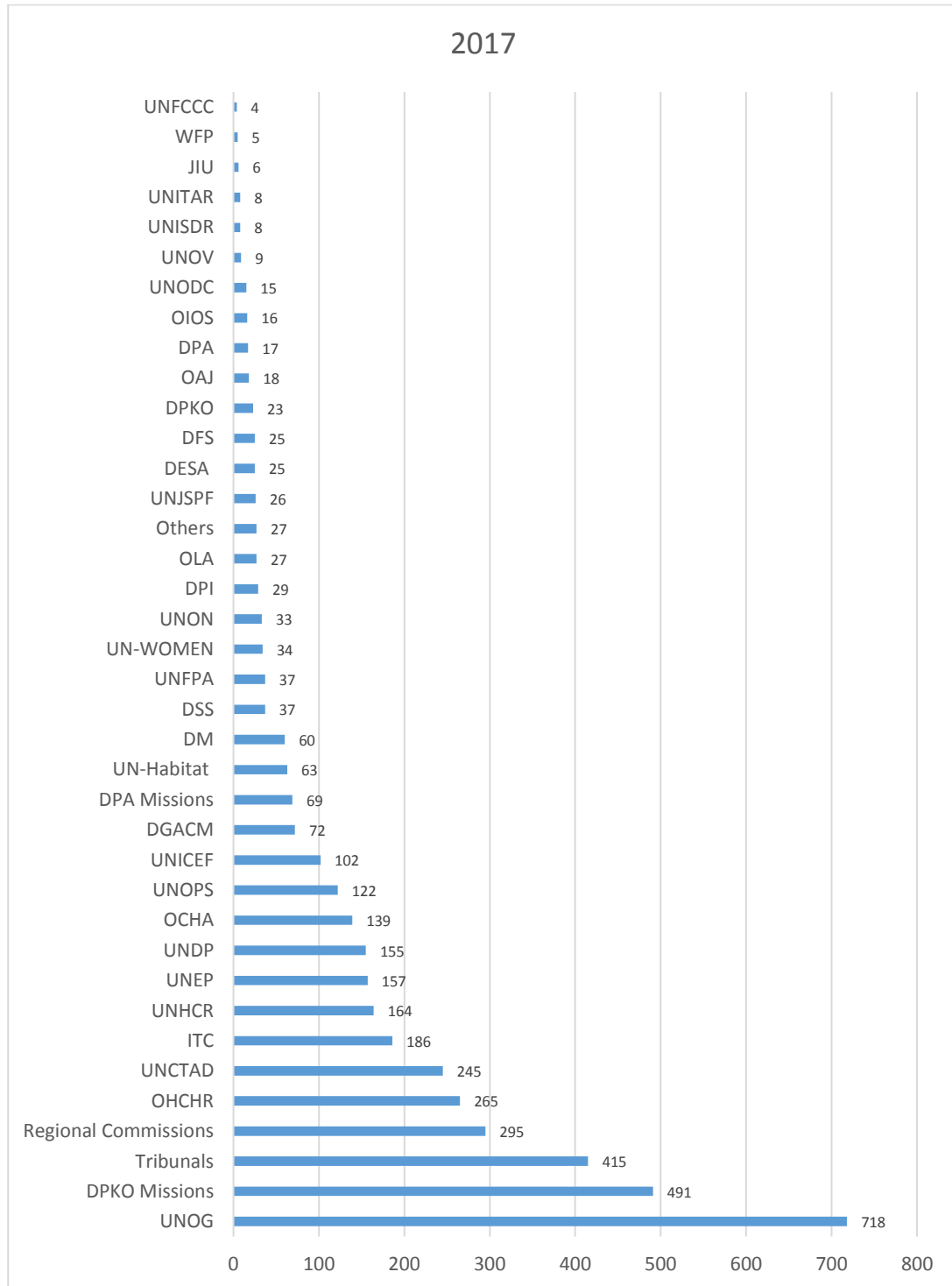


Chart 13: Requests by duty station of the staff member client

Note: All duty stations with ten or fewer requests are in the “Other” category.

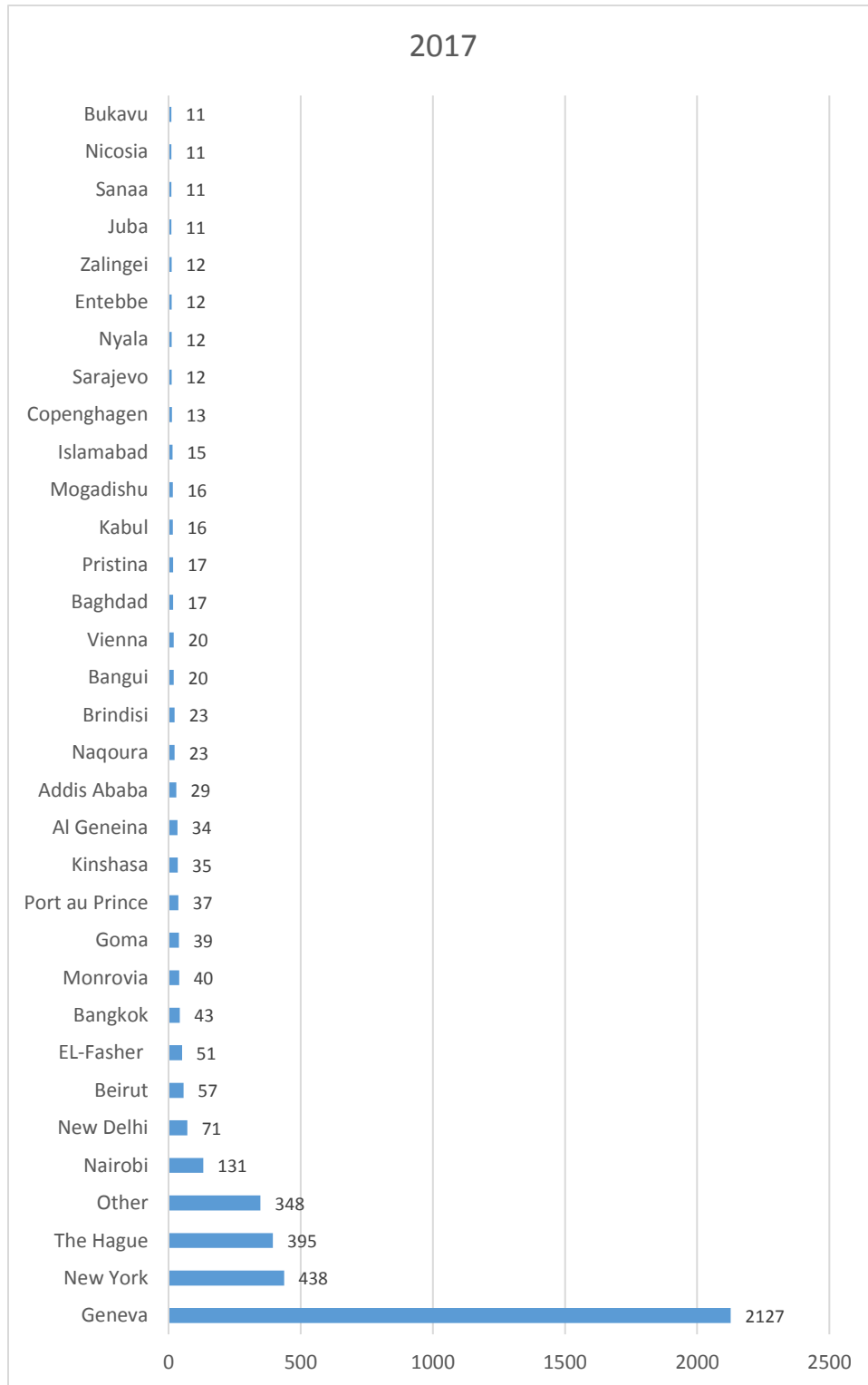


Chart 14: Regional distribution of requests for legal assistance

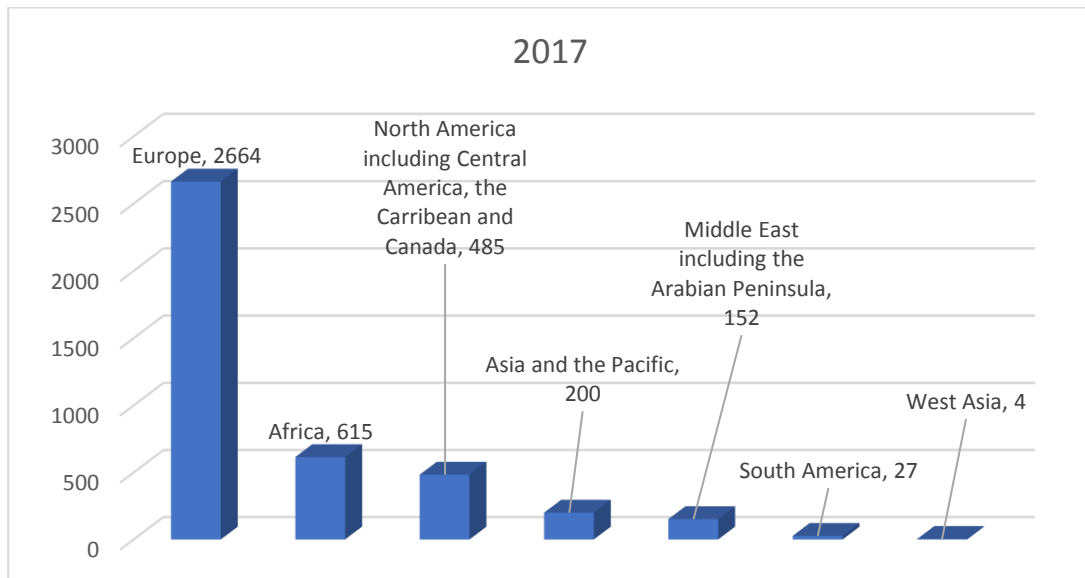


Chart 15: Requests by female and male staff

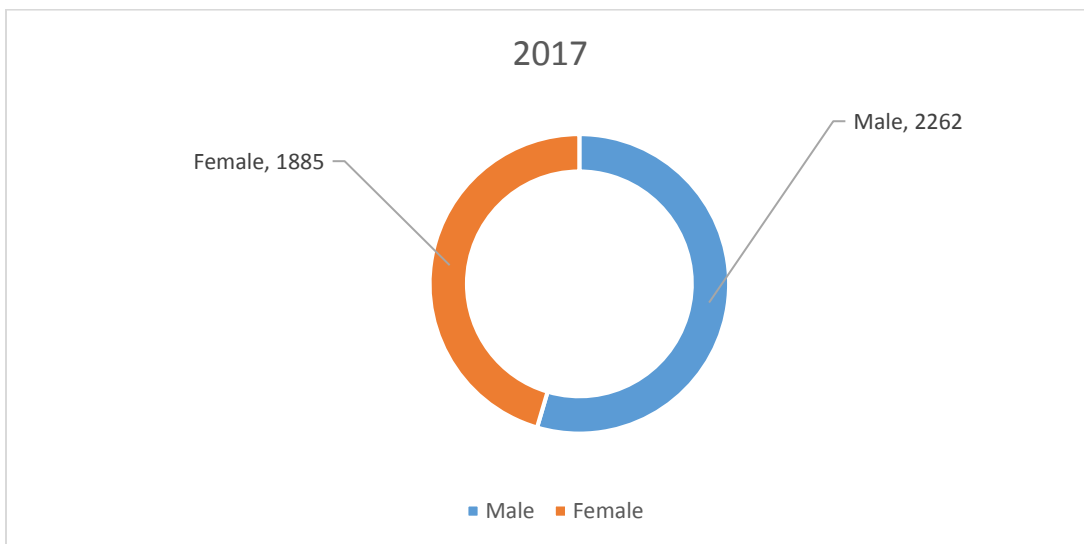
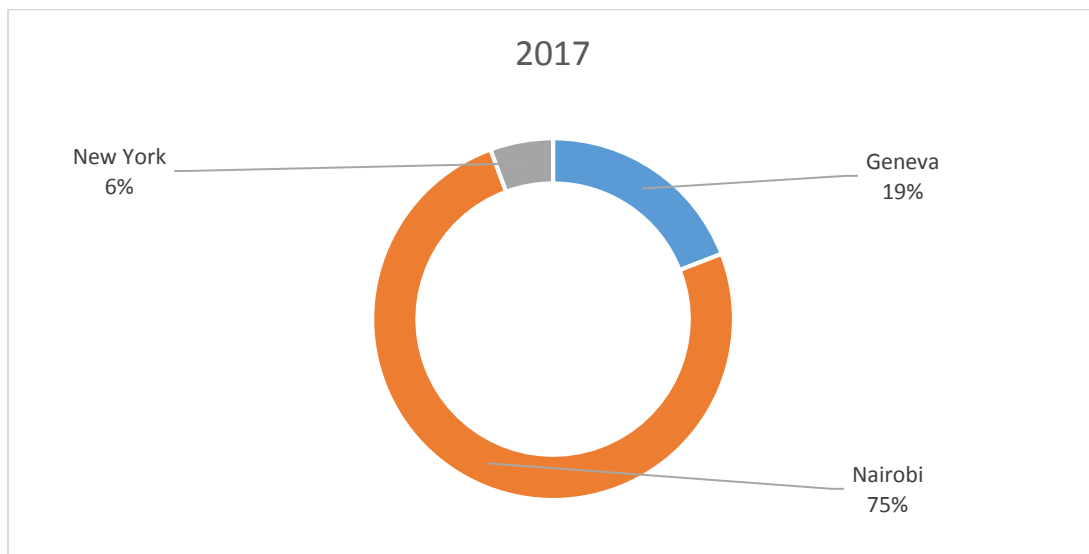


Chart 16: Representation before the United Nations Dispute Tribunal by location

3. Resolution of cases and settlement agreements

71. A large number of UNDT applications filed in Geneva were transferred to the Nairobi Tribunal due to the recusal of a Geneva Judge, resulting in elevated Nairobi figures, from OSLA's workflow perspective.
72. In 2017, OSLA closed 2483 requests for assistance. 29 per cent of new requests for legal assistance to the Office of Staff Legal Assistance were settled or otherwise disposed of prior to the initiation of a formal dispute through a dispute resolution mechanism under chapter XI of the Staff Rules. Of those cases which went to formal dispute resolution mechanisms, negotiated agreements were achieved in 22 cases before the Management Evaluation Unit, and in 16 cases before the United Nations Dispute Tribunal. Table 13 shows the breakdown of the requests that were formally settled or otherwise resolved, indicating the stage at which the matters were closed.

Table 9: Requests formally settled or otherwise resolved in 2017

Stage of process at which case resolved or settled	Number of cases resolved other than by settlement agreement in 2017	Number of cases settled in 2017
Office of Staff Legal Assistance summary advice	1160	7
Management Evaluation Unit	1080	22
United Nations Dispute Tribunal	92	16
United Nations Appeals Tribunal	63	0
Administration (disciplinary cases)	36	2
Ombudsman	2	0
Advisory Board on Compensation Claims	2	0
Classification Appeals	1	0
Total	2436	47

APPENDIX I: UNDT APPLICATIONS RECEIVED IN 2017 – BY EMPLOYMENT ENTITY

Entity	Office	#
UN Secretariat (Headquarters)	DESA	7
	DGACM	15
	DM	19
	DPI	3
	DFS	2
	DSS	9
	DPKO	1
	OCHA	2
	OIOS	7
	DPA	4
	OLA	9
	OAJ	2
	OHCHR	2
	OOSA	1
	UNODA	1
	OTHER	3
	Total	90
UN Secretariat Offices Away from Headquarters	UNOG	31
	UNOV	1
	UNON	3
	Total	35
Peacekeeping missions	MINUSTAH	14
	MONUSCO (former MONUC)	15
	UNAMID	8
	UNSOA	1
	UNIFIL	9
	UNLB	3
	UNMIK	1
	UNMIL	9
	UNMISS	5
	UNOCI	6
	MINURSO	1
	MINUSMA	1
	UNSOS	1
	Other	12
	Total	90
Regional Commissions	ECA	5
	ECE	2

	ECLAC	1
	ESCAP	4
	Total	12
Special political missions	UNAMA	2
	UNSMIL	2
	BINUB	1
	UNMOGIP	4
	UNTSO	1
	Total	10
Tribunals	ICTR	1
	ICTY	5
	MICT	3
	UNAKRT	2
	Total	11
Agencies/Funds/Programmes/Other UN entities	UNCTAD	3
	UNDP	18
	UNEP	13
	UNFPA	3
	UNFCCC	1
	UNHCR	26
	UNICEF	15
	UNODC	6
	UN-HABITAT	16
	UN-Women	18
	UNITAR	3
	UNOPS	7
	ITC	1
	Other	4
	Total	134
Grand total		382

APPENDIX II: PRONOUNCEMENTS OF THE UNDT

1. Summaries of selected legal pronouncements made by the UNDT in judgments rendered from 1 January to 31 December 2017 are provided below. They are for illustrative purposes only and are not authoritative, representative or exhaustive. The complete set of UNDT judgments issued in 2017 is available on the website of the internal justice system <http://www.un.org/en/internaljustice/>. Some UNDT judgments summarized below 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.

UNDT/2017/018 (NBI, not appealed) – Non-reassignment - revocation of appointment – removal from post – re-advertisement of post

2. The Applicant challenged the decisions of the United Nations High Commissioner for Refugees (UNHCR) to remove him from the post of Deputy Representative in South Sudan and to re-advertise his post. At the time of the contested decision, the Applicant was serving at the P-5 level. In March 2013, the Applicant's substantive post as Assistant Representative (Operations) was reclassified to Deputy Representative, South Sudan. The Applicant participated in a competitive selection process for the reclassified position.

3. On 15 December 2013, a conflict broke out in South Sudan while the Applicant and the UNHCR Representative for South Sudan (Country Representative) were on leave. The Applicant returned to South Sudan on 23 December 2013 to support UNHCR's operations during the conflict. He learned the same day through a UNHCR broadcast that he had been selected for the post of Deputy Representative, South Sudan, and that his new appointment was to take effect on 1 January 2014. On 29 December 2013, the Applicant e-mailed female staff members who were on leave not to return to South Sudan due to the escalation of gender-based violence at the time. On 30 December 2013, the Applicant departed to Ethiopia due to a family emergency. The Country Representative had still not returned from leave at the time, but the Applicant informed the acting Representative in South Sudan who in turn informed the UNHCR leadership in Geneva.

4. On 7 January 2014, the Country Representative wrote to the High Commissioner requesting the reversal of the Applicant's appointment as the Deputy Representative. On 8 January 2014, the Applicant was informed of the High Commissioner's decision to review assignments for the reconfiguration of UNHCR's response to the crisis. He was also informed that his job description and functions would be revised and that his new position would be re-advertised to reflect the changed operational realities. The Country Representative told the Applicant on 14 January 2014 that the UNHCR leadership was unhappy with him for leaving South Sudan on 30 December 2013. The Applicant immediately emailed the UNHCR leadership to apologize for leaving South Sudan prior to the Representative's arrival.

5. By memorandum dated 13 January 2014, the High Commissioner removed the Applicant from the post of Deputy Representative and assigned another staff member to the post. By memorandum

dated 23 January 2014, UNHCR provided the Applicant with information related to his departure from South Sudan.

6. UNDT noted that the Applicant had properly competed for and had been selected for the Deputy Representative post. UNDT determined that the Country Representative failed to conduct a proper and detailed analysis of the refugee emergency in South Sudan, which would have shown what new skill-set was required and how that of the Applicant was not suitable in the circumstances, before requesting the Applicant's removal from the Deputy Representative post on 7 January 2014. UNDT held that a mere statement by the Country Representative that there had been "dramatic developments" in the country that required adjustment to the profile of the Deputy Representative was not a reasoned request and could not, without more, constitute a sufficient basis for the exercise of the High Commissioner's discretion to remove the Applicant.

7. UNDT held that the alleged unauthorized departure of the Applicant from South Sudan on 30 December 2013 and his unilateral advisory to female staff members not to return to the country during the emergency were the reasons for his removal from the Deputy Representative post. The decision of the High Commissioner to remove the Applicant was not based on any operational reasons but was simply "disciplinary action by stealth". UNHCR ought to have called for an explanation from the Applicant regarding his departure from the duty station and then determined whether removal was justified in light of his explanations and the UN's policy on staff balancing their personal and professional lives. UNDT concluded that the manner in which UNHCR removed the Applicant from the Deputy Representative position violated UNHCR's Policy and Procedures on Assignments and Promotions.

8. UNDT awarded the Applicant four months' net base salary as compensation for UNHCR's failure to follow its own rules and procedures, which resulted in the Applicant's unlawful removal from his position as Deputy Representative and for harm to his career prospects.

UNDT/2017/062 (NBI, not appealed) – Proposed abolition of post – receivability of application - downsizing

9. The Applicant challenged "procedures used to arrive at the decision to abolish his post and sought rescission of the abolition." By his report A/69/731 (Budget for UNIFIL for the period from 1 July 2015 to 30 June 2016), the Secretary-General proposed to convert one of two FS level posts in the Joint GIS (JGIS) section to a national post. By letter dated 21 April 2015, the Applicant was informed that his post in the JGIS section was being abolished/nationalized in the 2015/2016 budget and that his contract would not be extended beyond 30 June 2015.

10. UNDT considered that the fact that UNIFIL's decision to designate a post for abolition was premised on the anticipated resolution of the General Assembly approving UNIFIL's restructuring. However, in the view of UNDT, a proposed budget was irrelevant for the whether the Applicant's case was receivable, just as it would be irrelevant for any other justification or motive for an administrative decision.

11. In this respect, it would be incorrect to distil from UNAT's holding in 2014-UNAT-481 that only administrative acts which are subsequent to regulatory acts of the General Assembly or Secretary-General may be contested before the UNDT. The gist of the issue contemplated in the UNAT judgment was to distinguish regulatory acts from individual administrative decisions when they remain in a normative or other causal relation. However, whether an individual administrative decision would be taken in advance of the General Assembly's resolution or after, or whether it implements it correctly or incorrectly are matters valid for the question of legality of an administrative decision and not for the question of its receivability for review.

12. Rather, the issue material for receivability was in UNDT's view whether a designation of a specific post for abolition is per se capable of being reviewed for compliance with the staff member's terms of appointment. In this respect, UNDT noted that UNAT took a firm stance that acts prefatory to abolition of a post have no direct effect on the conditions of employment as these only occur when the abolition is being implemented. UNDT observed, however, that applying the UNAT judgment to deny the staff an ability to autonomously challenge a decision on designation of his or her individually identified post for abolition in the proposed budget effectively removes the matter of legality of abolition of that post from UNDT's cognizance. This is because: a) subsequent decisions of the General Assembly which approve the abolition of that specific post are not subject to review before UNDT; b) administrative decisions on non-extension are validated by the General Assembly, which renders the review of legality largely irrelevant since, as held by UNAT in 2015-UNAT-530 paragraph 35, "decisions of the General Assembly are binding on the Secretary-General and therefore, the administrative decision under challenge must be considered lawful."

13. It would be for the parties to test through appellate processes whether the outcome of 2014-UNAT-481 might be revisited by UNAT in relation to designation of a specific post for abolition, considering that it is a decision of individual application and final in the administrative course of the matter, the immediate consequences of which render the status of the appointment precarious. Whereas abolition of post is decided with a large margin of discretion, however, judicial review would be warranted to remedy situations where designation of a specific post for abolition would have contradicted the stated criteria or been tainted by cronyism, discrimination, or other arbitrary and unlawful exercise of the discretion, which are criteria for intervention generally accepted by UNAT in situations of restructuring

14. Pursuant to art. 8 of the UNDT Statute, access to recourse before UNDT is conditioned upon requesting management evaluation of the impugned decision but not upon actually obtaining it. By the same token, a result of management evaluation which does not remove the gravamen of the impugned decision does not bar access to the UNDT. As held by UNAT in 2011-UNAT-135 paragraph 22, an erroneous "[...] refusal by the MEU to consider a request for management evaluation on the basis that the MEU found it not receivable *rationae personae*, must be reviewable by the UNDT and this Court." In the view of UNDT, the same principle applies in a situation where MEU finds the request moot, i.e., non-receivable *rationae materiae*.

UNDT/2017/078 (NY, not appealed) – Compensation for loss of or damage to personal effects attributable to service – duty of care in emergency situations – negligence

15. The Applicant challenged the United Nations Claims Board's (UNCB) recommendation denying his claim for loss of personal effects after all staff in Camp Faouar of the UN Disengagement Observer Force (UNDOF) in Syria, including the Applicant, were relocated/evacuated to Camp Ziouani in the Israeli Occupied Golan Heights on 15 September 2014.

16. The Applicant was tasked with supervising the transfer of UN property and critical equipment, together with the evacuation of up to 200 personnel after the planned relocation transitioned into an emergency due to deteriorating security conditions and imminent threat to the lives of UN personnel, its property and equipment. The Applicant described the circumstances as “[a] dangerous situation within which the activity was being performed, which included rockets (whistling overhead), mortar round and live ammunition strikes in proximity of Camp Faouar”. The Applicant was among the last to leave and did not manage to bring with him any of his personal effects aside from his so-called “run bag” which contained his passports, credit cards and other documents.

17. Subsequently, the Applicant filed a claim for compensation for loss of personal effects of USD14,700 with the UNDOF Local Claims Review Board, which recommended that he be paid USD7,490 for the total depreciated/payable value of the relevant personal effects. The Applicant then filed a claim with the UNCB, which recommended that it be denied in its entirety because, inter alia, for lack of credibility due to a “conspicuous resemblance” between the Applicant’s claim and those of two other claimants, the Applicant having acted negligently, and/or the relevant articles not being reasonably required for day-to-day life in Camp Faouar. The UN Controller approved UNCB’s recommendation.

18. The Applicant filed a request for management evaluation, and the Under-Secretary-General for Management (USG/DM) reversed the decision in part, finding that the claimed items related to articles that can be considered to be reasonably required for day-to-day life at Camp Faouar and also finding the Applicant’s claim credible as it was based on a previous inventory list. The USG/DM did not award the Applicant any compensation for his loss of an iPad and a wristwatch, on the basis he had allegedly been negligent in not securing them in his run bag but left them in his residence.

19. The UNDT held that if the Applicant were to have been required to pack the iPad and wristwatch in his run bag, such instructions would not only have been in direct contravention of the UN Security Management System guidelines on what a run bag is to include, but also lead to the absurd or perverse result that, instead of focusing on saving lives and valuable United Nations equipment in a worsening security situation, the Applicant should have prioritized the recovery of these personal items of a relatively miniscule monetary value of USD2,100. If the Applicant had a duty of care in the given context, it would rather have been not to carry his personal iPad or wristwatch in his run bag, nor to attempt to retrieve them from his residence in the midst of a dangerous emergency evacuation. On the contrary, had the Applicant done so, this may well have amounted to negligence.

20. Based thereon, the UNDT found that, in the exercise of its discretion, the Administration did not take into account, or give due regard to all the aforesaid circumstances surrounding the loss of the Applicant’s property. In particular, there was no requirement, either by law or by reason, or on any

reasonable basis, for the Applicant to pack the said items in his run bag; and consequently, in all the circumstances, he could not have been said to have been negligent. Accordingly, the UNDT granted the Applicant's claim in full, to also include the iPad and wristwatch.

UNDT/2017/080 (NY, partially affirmed by 2018-UNAT-847, award of moral damages vacated for lack of evidence) – Abolition - indefinite appointment - separation from service

21. The Applicant, a former GS-7 Senior Administrative Associate with United Nations High Commissioner for Refugees (UNHCR) challenged the Administration's decision to not make good faith efforts to absorb her on to a new post after it decided to abolish her existing post and to separate her from service as a result.

22. The Applicant received an indefinite appointment in 2011. On 11 January 2016, the Applicant received a letter from the Director of Liaison Office in New York informing her that as a result of a comprehensive review of the office structure, a number of posts, including the Applicant's, were proposed to be abolished. The letter also stated that there will be newly created positions for which the Applicant would be encouraged to apply.

23. Between April and September 2016, the Applicant applied for 18 UNHCR vacancies that she was qualified for. Only one application lead to further assessment. However, on 12 August 2016, the Applicant was informed that a former colleague holding a fixed-term appointment was selected for the post instead of her.

24. On 16 September 2016, the Applicant received a letter from the UNHCR Director of DHRM informing that the Headquarters Assignments Committee met on 25 August 2016 and it undertook a review of the availability of suitable positions in the Liaison Office in New York in which her services could be utilized. The letter stated that the Committee had not found any suitable positions for the Applicant. As such, the letter notified the Applicant that her indefinite appointment would be terminated.

25. On 10 November 2016, the Applicant requested management evaluation of the Administration's decision to not make good faith efforts to absorb her on to a new post after it decided to abolish her existing post. On 8 December 2016, the Deputy High Commissioner informed the Applicant of her decision to uphold the Administration's decision.

26. The Applicant argued that by failing to make good faith efforts to find her a suitable alternative post upon abolition, the Administration violated its obligation to her as the holder of an indefinite appointment under staff rule 9.6(e) and (f). The Respondent argued that the Administration fully complied with its obligation under the staff rules and the Applicant failed to establish that the contested decision was unlawful, unfair or otherwise flawed.

27. UNDT determined that staff rule 9.6(e) provides a staff member holding a continuing/indefinite appointment the highest level of legal protection from being terminated as compared to those serving on fixed-term or temporary appointments. The staff member has the right to be retained either in any suitable positions vacant at the same level or at lower level at the date of abolition or reduction of

staff, or in any suitable positions occupied at the date of abolition, or reduction of staff. Staff members retained pursuant to staff rule 9.6(e) are required to have relative competence for new suitable post. A staff member who is to be retained in the order of preference established in staff rule 9.6(e) is therefore not required to be fully competent for the alternative post where s/he is to be retained, but to have a relative competence for the new suitable post. Further the staff member is to be retained in another position(s) on a non-competitive basis without having to go through a full competitive selection process, including by applying, for any of the suitable posts available. For the Administration to fully respect its obligation pursuant to staff rule 9.6(e), it has the duty to timely provide staff member(s) affected by abolition of posts or reduction of staff with a list of: (1) all posts, at the staff member's duty station, occupied at the date of abolition by staff members with a lower level of protection than the one of the staff member(s) affected, if any; and (2) all the vacant suitable positions, if any, in order for the staff member to be able to evaluate all the options and to timely express his/her interest.

28. UNDT found that the Administration did not respect its obligation pursuant to staff rule 9.6(e) and 9.6(f) to retain the Applicant and the Applicant's correlative right to be retained in any available suitable post at her level (G7 step 10) or at a lower level in UNHCR New York, or at her Professional level or lower in the parent Organization. The UNDT granted the Applicant's claim in part, rescinding the contested decision and ordering the Respondent to retain the Applicant with retroactive effect from 31 December 2016 in any current suitable available post(s), or in alternative, the Respondent to pay compensation of 12 months net-base salary. In addition, the UNDT ordered the Respondent to pay compensation of 3 months of net base salary as moral damages.

Judgment UNDT/2017/091 (GVA, not appealed) – Organization's privileges and immunities – duty to cooperate with national authorities - exercise discretion – duty of care

29. The Applicant challenged the decision to release a UN Board of Inquiry ("BOI") report to German authorities, in relation with the prosecution of an individual involved in his kidnapping in Syria in 2013 ("the accused") as he believed this would endanger his life.

30. A Headquarters BOI had been constituted and issued a report ("BOI report") around the circumstances surrounding the Applicant's disappearance, abduction and return from captivity. In the context of criminal proceedings against the accused, German authorities requested the UN to provide them with information on whether it had conducted an investigation of the Applicant's abduction and any relevant documents or other elements on this event. At the end of a consultative process, the UN Legal Counsel decided to release a partially redacted BOI report to the Permanent Mission of the Federal Republic of Germany, for further transmittal to the German Federal Prosecutor.

31. The *Note Verbale* transmitting the report stressed that it was shared on a strictly voluntary basis and requested that it be treated confidentially and not be publicly disclosed to the extent possible under the applicable law. The BOI report contained, inter alia, the name of the Applicant's wife, the name of the city where she and their son resided, as well as the city of residence of Applicant's ex-wife, first son and parents.

32. In 2017, the High Regional Court in Stuttgart, Germany, convicted the accused as an accessory to (i) deprivation of liberty; (ii) attempt of extortion under threat of force, and (iii) (aggravated) kidnapping, thus sentencing him to three and a half years of imprisonment.

33. At the time of the proceedings before UNDT, the Applicant published a book in which he described his captivity in Syria. In its first edition, the name of the Applicant's wife and her city of residence were provided, and the book disclosed, inter alia, that the Applicant gave his captors his wife's phone number and that they called her as well as the Applicant's parents several times.

34. The UNDT found that the decision to release the BOI report constituted an administrative decision for the purpose of art. 2.1(a) of its Statute. It stressed that despite its obligations under the Convention on Privileges and Immunities of the United Nations ("the Convention"), the Organization could have refused disclosing the BOI report on the basis of the inviolability of its archives. It further noted that while, under the Convention, privileges and immunities are granted to the Organization and not for the benefit of individual staff members, a decision by the Organization to disclose to national authorities a document containing information about a staff member and/or his/her family could potentially affect his/her terms of appointment, to the extent that it may impact on the Applicant's right to safety and security arising from the Organization's duty of care.

35. With respect to the merits of the case, UNDT examined, inter alia, the extent and limits of the Organization's duty to cooperate with judicial authorities of Member States under sec. 21 of the Convention; how that duty relates to the Organization's duty of care towards the Applicant; and whether the Organization duly took the latter into account when it decided to disclose the redacted BOI report to the German authorities.

36. It noted that the extent and scope of the Organization's duty to cooperate under the Convention is limited first and foremost by the Organization's privileges and immunities, which extend to its assets and archives. As the *Note Verbale* correctly stated, the BOI report was shared on a "strictly voluntary basis". In sharing the BOI report, the Organization exercised its discretion under the Convention and had to weigh its duty to cooperate against other factors, including its duty of care vis-à-vis the Applicant.

37. The Organization's duty of care towards its staff implies, first and foremost, that it must provide a healthy and safe working environment for and to ensure the safety of its staff. That may encompass a duty to protect its staff against outside risks, e.g., when divulging information, including personal data, that may impact on the safety and security of a staff member or his immediate family.

38. After hearing evidence from witnesses involved in the consultation process prior to the release of the BOI report, UNDT was satisfied that the Organization legally exercised its discretion and duly assessed the Applicant's safety, and that of his family, when it decided to share the BOI report, as well as the level of redaction of the BOI report. The UNDT recalled that in making that risk assessment, the Organization had to balance its duty to cooperate with German authorities, its duty of care vis-à-vis the Applicant, and the interests of the Organization.

39. On the basis of the evidence heard at the hearing, UNDT was further satisfied that it was a reasonable exercise of discretion not to share other sources of information with the German

authorities, including proof of life videos and names of negotiators, to protect the interests of the Organization and the security of its staff, including those who had acted as negotiators in situations like the one the Applicant endured. Contrary to what the Applicant suggested, the UN did not exercise its discretion in an arbitrary way with respect, on the one hand, of the disclosure of the BOI report and, on the other hand, of the non-disclosure of the proof-of-life videos and the names of the negotiators. In light of all the circumstances, UNDT was satisfied that the disclosure of the BOI report, and its level of redaction, were not arbitrary, unreasonable or unfair towards the Applicant.

40. UNDT was also satisfied from the evidence provided at the hearing that by releasing the BOI report, the Organization had no intention to undermine the Applicant's reputation or credibility and noted that the accused was convicted by the German Court. Hence, while it may have made it more difficult and stressful for the Applicant to provide his evidence in light of the BOI report, ultimately the conviction of the accused demonstrates that the release of the BOI report had either no impact or a positive one on the outcome of the criminal proceedings against the accused. Within the realm of judicial control of discretionary decisions, the UNDT therefore found that the disclosure of the BOI report was the result of a proper assessment undertaken by the Organization and did not violate its duty of care towards the Applicant.

41. Finally, UNDT found that any alleged violation of the internal BOIs policy or the Standard Operating Procedures on BOIs were not relevant for its finding that the decision to share the BOI report was a legal exercise of administrative discretion, which did not violate the Applicant's terms of appointment; it also stressed that the Organization was not obliged to inform or consult with the Applicant before releasing the BOI report. The application was rejected.

Judgment UNDT/2017/097 (GVA, vacated by 2018-UNAT-840) – Conversion of a portion of the salary into an allowance - Acquired rights

42. Five Applicants, who all have a non-dependent spouse and at least one dependent child, challenged the decision to reduce their salary in implementing a new Unified Salary Scale introduced on 1 January 2017 ("USS"). They took issue with the fact that a decision of the Secretary-General reduced their salary as of that date by removing the portion that was previously paid to them in view of their entitlement to be paid at the dependency rate (due to fact of having a dependent child), and that the transitional allowance introduced to mitigate their loss did not fully compensate for the salary reduction.

43. Prior to the introduction of the new USS on 1 January 2017, the Applicants, as staff members in the Professional and higher categories were paid their net salary at either a single or a dependency rate depending on their family status. Staff members who, like the Applicants, had a non-dependent spouse and at least one dependent child were paid at the dependency rate on account of their first dependent child.

44. Following a review initiated by the International Civil Service Commission ("ICSC") and its subsequent recommendations, the General Assembly decided to introduce one net USS for all staff members in the Professional and higher categories without regard to family status. Support provided

for dependent family members was then separated from the salary and, therefore, the gross and net base salaries of staff members previously paid at the dependency rate were reduced. Changes were also made to the eligibility criteria for the support provided to families.

45. The Applicants, who were previously paid at the dependency rate on account of their first child because they had a non-dependent spouse, are eligible under the new regime for a child allowance, a fixed amount per annum. Because the amount of the child allowance is less than the reduction in the net base salary provided by the new USS, they are also eligible to receive a six-year transitional allowance. This transitional allowance, calculated at 6% of the net base salary and post adjustment, is equivalent to the difference between the new unified rate of salary and the dependency rate of the previous salary scale. However, over time, the transitional allowance does not fully compensate for the reduction of the Applicants' net base salary as it will be reduced by one percentage point every year, starting from 1 January 2018, and it will be discontinued when the child in respect of whom the transitional allowance is payable is no longer recognized as a dependent child, e.g., upon the child reaching the age of 21.

46. The Applicants' payslips at the end of January 2017 showed a reduction of their net base salary and the introduction of the transitional allowance which, for the year 2017, compensated for their loss. The Applicant's payslips also showed a slight increase of their net take home pay in 2017. This was not due to the modification of the remuneration scheme but to an adjustment due to inflation and the application of the *Noblemaire* principle, which led to an overall increase of the salary scale in January 2017 as it is regularly the case at the beginning of each year.

47. According to an estimation tool made available to staff members by the Administration, which factors the impact of the USS, the Applicants will suffer losses over the coming years. Taking into account the yearly reduction of the transitional allowance and its discontinuation when the Applicants' oldest child will turn 21, it was estimated that each of the five Applicants will overall receive between approximately USD28,598.88 and 65,563.48 less than what they would have been entitled to under the previous regime, depending on their individual situation.

48. UNDT rejected the Respondent's challenge to the receivability of the applications and found that it had jurisdiction to entertain them insofar as they challenged the implementation of the new USS in the Applicants' individual cases.

49. In examining the receivability of the applications, UNDT held that it shall take into consideration the Organization's duty to provide access to justice to its staff members in interpreting the jurisdiction that is vested in it by virtue of its Statute, notably in light of the absence of an alternative remedy to address alleged violations of the staff members' contractual rights. UNDT held that the contested decisions constituted "administrative decisions" within the meaning of its Statute, because the reduction of the Applicants' salary and the loss of their entitlement to be paid at the dependency rate negatively impacted their terms and conditions of appointment. The UNDT also took into account that the Applicants were not challenging the legality of the new USS but rather its implementation in their individual situations, which they claimed was in breach of their contracts of employment and their acquired rights.

50. UNDT further found that it had jurisdiction to review the contested decisions although they stemmed from the implementation by the Secretary-General of regulatory decisions taken by the General Assembly. UNDT acknowledged that the Secretary-General was bound by the General Assembly resolutions adopting the salary scale and the consequent modifications to the Staff Regulations and Rules. However, it found that the Secretary-General was equally bound by his contractual obligations towards staff members and preceding resolutions adopted by the General Assembly that formally protect their acquired rights. The UNDT held that this conflict of norms or obligations can neither be ignored by the Secretary-General nor by UNDT, notably in light of the Applicants' right to access to justice. It further stressed that the Secretary-General had opportunities in the process leading to the approval of the new USS to bring any issues of conflicting obligations before the ICSC and the General Assembly.

51. Turning to the merits, UNDT held that staff members' acquired rights are protected by staff regulation 12.1, which takes precedence over other regulations and rules governing conditions of employment. Hence, conditions of employment that constitute acquired rights are not to be unilaterally changed by the Organization without the consent of the staff members.

52. The Applicants' salary was explicitly set out in their letters of appointment and goes to the root of their contract of employment. In UNDT's view, the salary is a fundamental and essential term of the Applicants' employment and thus constitutes an acquired right. Furthermore, the right to salary necessarily extends to its quantum and as the Applicant's salary increased over time, they accrued a right to be paid the newly determined salaries. As their letters of appointment stated, the Applicants' salary was subject to increase, and thus cannot be reduced unilaterally by the Organization.

53. As a result of the implementation of the new salary scale, the Applicants lost 6% of their net base salaries on account of their family situation. Because this additional payment made to the Applicants was initially embedded in their salaries, which UNDT deemed an acquired right, it could not be unilaterally reduced or discontinued by the Organization, irrespective of the reason for the change or its impact.

54. UNDT further found that the introduction of a transitional allowance to mitigate the Applicants' losses is insufficient to safeguard their acquired right as it does not compensate for the financial loss that the Applicants will incur over time, starting from 1 January 2018. Likewise, the child allowance, which will be paid to the Applicants instead of receiving their salary at the dependency rate, is significantly lower. Moreover, the two allowances are not part of the Applicants' salary and may be subject to further change. They will also not be taken into account in the determination of other entitlements in case of separation, such as termination indemnity, repatriation grant, indemnity in case of death and commutation of accrued annual leave, which are all based on the Applicants' net base salary.

55. UNDT concluded that the Secretary-General's implementation of the new salary scale for the Applicants, which resulted in their being paid reduced gross and net base salaries from 1 January 2017, violated their acquired rights and was thus unlawful.

56. UNDT then examined the Applicant's claim that the Secretary-General misinterpreted the General Assembly resolution introducing the transitional allowance when he transposed it into the staff rules

insofar as the staff rules prevent the transitional allowance to be transferred to a second dependent child when the one in respect of which the transitional allowance is paid turns 21. UNDT found that it was clear from the General Assembly resolution that by granting the transitional allowance, at the moment of the introduction of the new USS, to the child in respect of whom the staff member was paid at the dependency rate as of 31 December 2016 and providing that it would cease when “the child in respect of whom the allowance is payable loses eligibility”, which is the case when the child turns 21, the General Assembly intended that it would not be transferable to any other child. UNDT found this matter was beyond the scope of its review powers.

57. UNDT rescinded the Secretary-General’s decisions to pay the Applicants a salary reduced from the portion that was previously paid on the basis that they have a dependent child entitling them to be paid at the dependency rate, and clarified that the effect of the rescission entails that the 6% reduction of the Applicants’ net salary plus post adjustment should be reintegrated as part of their salary from 1 January 2017 onwards. It further ruled that this amount should not be subject of reduction as long as the Applicants continue to meet the eligibility criteria for payment at the dependency rate, as defined under the former USS. UNDT also found that this amount shall be considered in the calculation of other entitlements or benefits based on the net base salary. UNDT found that the Applicants would not be entitled to the transitional allowance.

58. UNDT rejected the Applicant’s claim for compensation for harm and retroactive payment of salary as it found that any prejudice is compensated by the rescission of the contested decisions and by their receipt of a transitional allowance for 2017, which will not be subject to recovery.

APPENDIX III: PRONOUNCEMENTS OF UNAT**Introduction**

1. A summary of major legal pronouncements made by UNAT in judgments rendered during its 2017 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 website of the internal justice system (<http://www.un.org/en/internaljustice/>).

Judgment No. 2017-UNAT-742 - Claims for moral damages supported by only the complainant's testimony satisfies the burden of proof if found to be reliable and credible

2. A staff member at the United Nations Stabilization Mission in Haiti (MINUSTAH) contested, before the UNDT, two administrative decisions to remove his designation as Chief Procurement Officer (CPO) at MINUSTAH and to deny him the required designation to take up the post of CPO at another duty station. The UNDT rescinded the two decisions finding they were taken in reaction to allegations that the staff member failed to properly exercise his delegated authority and without due process or substantiation. The UNDT declined to reinstate the applicant's designations but ordered USD 50,000 in non-pecuniary damages with interest for the stigmatization, reputational damage, stress, anxiety, and moral injury to the staff member.

3. UNAT, sitting *en banc*, upheld by majority the UNDT's findings that the contested decisions were substantively and procedurally flawed. As for the UNDT's moral damages award, the majority noted that the purpose of the amendment to the UNDT's statute Article 10(5)(b) made following General Assembly resolution 69/203 is to introduce an express requirement that compensation for harm can be awarded only when there is a sufficient evidentiary basis. The majority held that evidence of moral injury consisting exclusively of the testimony of the complainant if credible, reliable and satisfactory in material respects, and may be sufficient to discharge the evidentiary burden. The dissenting and concurring opinions took the view that evidence consisting exclusively of the complainant's testimony is not sufficient without corroboration by independent evidence (expert or otherwise). The majority thus upheld the UNDT's award of moral damages finding that the staff member's testimony was sufficient. While the applicant did not adduce expert or independent evidence to support his allegations of stress and anxiety, the evidence of the applicant, the egregious nature of the violation of his substantive and procedural rights, the self-evident damage to his professional reputation and his career, together provided a sufficient and convincing basis for the reasonable inference that he suffered a significant degree of stress and anxiety.

Judgment No. 2017-UNAT-750, Judgment No. 2017-UNAT-751, Judgment No. 2017-UNAT-752, Judgment No. 2017-UNAT-753, Judgment No. 2017-UNAT-754, Judgment No. 2017-UNAT-755, Judgment No. 2017-UNAT-756 - Non-renewal of appointment not appealable when properly implemented in consequence of General Assembly's decision to abolish posts

4. The fixed-term appointments of 51 appellants, all former Language Assistants at the General Service level with MONUSCO, expired on 30 June 2015 and were not renewed because the posts they encumbered had been abolished by a decision of the General Assembly with effect from 1 July 2015. The appellants challenged the non-renewal of their appointments and several ancillary matters before the UNDT.

5. The UNDT issued 51 individual judgments, dismissing the applications. The UNDT found that the claims regarding the non-renewal of the appointments were not receivable because the appellants had no standing to challenge a decision by the General Assembly and the decision of the General Assembly was binding on the Secretary-General who properly implemented it. The UNDT also held that the re-engaging by UNOPS of the appellants as individual contractors following their separation was not unlawful and that there had been no inequality of treatment in the implementation of the Mission's restructuring efforts.

6. UNAT consolidated the 51 appeals into seven groups heard by seven panels, the first group being heard by the full bench. UNAT dismissed the appeals. It confirmed the UNDT's finding that the claims regarding the abolition of posts made pursuant to a decision of the General Assembly were not receivable and upheld the UNDT's conclusion that the appellants lacked standing to challenge the non-renewal of their appointments. UNAT further found that the UNDT had no authority to review the re-engaging of the appellants by UNOPS as individual contractors as this was not an administrative decision subject to judicial review.

Judgment 2017-UNAT-759, Judgment 2017-UNAT-763, Judgment 2017-UNAT-764, Judgment 2017-UNAT-765, Judgment 2017-UNAT-766, Judgment 2017-UNAT-767, Judgment 2017-UNAT-768 - Organization's obligation to give priority consideration to permanent staff members facing termination due to abolition of post

7. Several former staff members in the Publishing Division of the Department for General Assembly and Conference Management (DGACM) filed applications before the UNDT challenging the decision to terminate their permanent appointments following the abolition of posts in DGACM. UNDT ordered compensation for emotional distress and – in all cases in which staff members had not secured another position with the Organization at the time of their application with UNDT – rescission of the termination decision and in-lieu compensation.

8. UNAT vacated UNDT's compensation orders in the cases in which staff members had secured alternative employment, finding that the applications had become moot. In the remaining cases, UNAT considered that any permanent staff member facing termination due to abolition of post must show an interest in a new position (for which he or she is suitable and qualified) by timely and completely applying for that position. However, once the application process is completed, the Administration is required by Staff Rule 13.1(d) to consider the permanent staff member on a preferred or non-competitive basis for the position in an effort to retain the permanent staff member, which the Administration failed to do in this case.

9. Accordingly, UNAT upheld UNDT's findings that the termination decisions were unlawful in cases in which the respective staff members had complied with the aforementioned requirement to apply for alternative positions and vacated the UNDT's findings in cases where the staff members had failed to submit timely and complete applications for positions for which they were suitable and qualified. In the former cases, UNAT upheld the award of in-lieu compensation, albeit, unlike the UNDT, not reducing the total amount by the termination indemnity paid but vacated the award of moral damages for lack of evidence of harm; in the latter cases, UNAT vacated UNDT's order of in-lieu compensation and moral damages.

Judgment No. 2017-UNAT-785 - Temporary job opening announced internally – restriction limiting recruitment to staff members at a particular duty station is lawful

10. A staff member, who at the relevant time worked with the Department for Field Support in New York challenged before the UNDT the Administration's decision that he was not eligible for the temporary job opening (TJO) he applied for, since the TJO was advertised internally within UNMISS and was therefore only open to UNMISS staff.

11. The UNDT found that the decision to consider the staff member ineligible for the TJO was unlawful and breached his right to be fully and fairly considered. Since the TJO stated that it was open to internal candidates, it was open to all internal candidates, including the staff member, because he was recruited after a competitive examination under Staff Rule 4.16. The UNDT awarded moral damages for loss of career prospect, in that his prospects for career development and opportunities for professional growth were reduced by the restriction.

12. UNAT found that the Secretary-General had the lawful authority to impose such a restriction, which objectively furthered the operational purposes of efficiency and short-term convenience and was proportional in its effects. It found that the decision of the Administration to limit the appointment to UNMISS staff members was reasonable and that there was insufficient evidence to support a finding of discrimination or improper motive. Accordingly, UNAT vacated the UNDT Judgment.

Judgment No. 2017-UNAT-787 - Testimonial evidence without corroboration by independent evidence (expert or otherwise) is not satisfactory proof to support an award of moral damages

13. Staff member within the Department for General Assembly and Conference Management (DGACM) filed an application before the UNDT contesting an administrative decision to close an investigation of the staff member's complaint filed under the Secretary-General's Bulletin on Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5). The UNDT concluded that the decision to close the complaint without further action was improper as the investigation was tainted by serious procedural breaches. The UNDT awarded USD 5,000 in moral damages compensation to the staff member for the harm suffered to the staff member's reputation and general well-being.

14. UNAT found no error and upheld both UNDT's finding that the decision was improper and as well as the UNDT's refusal to order rescission on account of the subject of the investigation having separated from the Organization. UNAT, however, vacated the UNDT's moral damages award on grounds that the staff member did not present any evidence, apart from his own unsworn testimony to support the claim. UNAT held that "generally speaking, the testimony of an applicant alone without corroboration by independent evidence (expert or otherwise) affirming that non-pecuniary harm has indeed occurred is not satisfactory proof to support an award of damages." As the staff member's testimony was the only evidence presented to support his allegation of harm to his reputation and general well-being, the UNDT committed an error of law in stating that this alone was sufficient to sustain an award of compensation under Article 10(5)(b) of the UNDT Statute.

Judgment No. 2017-UNAT-801 and Judgment No. 2017-UNAT-807 – Staff members of the Pension Fund duly elected to the UNSPC have same rights/privileges as other elected members

15. Two staff members of the Pension Fund were elected to the Pension Fund's Staff Pension Committee (UNSPC). Following the elections, they were given two options: i) to remain on the UNSPC and accept to be moved to an appropriate post elsewhere in the Secretariat outside the Fund; or (ii) to continue to work in the Fund's secretariat and resign from the UNSPC and the Pension Board. The staff members rejected both options.

16. The staff members were subsequently informed that the Pension Board had discussed the conflict of interest arising from the fact that they had been elected to the UNSPC while staff members of the Pension Fund and that it had decided that they would not be given access to the Pension Board documents nor could they participate in any formal preparations for the Pension Board session and meetings until such time the conflict of interest had been resolved. Both staff members appealed the decisions to UNAT.

17. UNAT considered that at the time of the elections, there was no law which prevented the appellants from being elected to the UNSPC once they met the prerequisite requirements which they did. UNAT held that both staff members were duly elected members of the UNSPC and that as a direct consequence of their election, they had the same rights and privileges which are bestowed upon other elected members and which could not be restricted or denied. UNAT granted the appeals and ordered that the appellants be given access to all relevant Pension Board documents and be allowed to participate and function as elected member in all relevant areas including the preparations for the Pension Board sessions, meetings of the Pension Board and of its constituent groups, committees and working groups.

Judgment No. 2017-UNAT-802 – No need for interview panel to consider e-PAS of applicants and reflect consideration of e-PAS in assessment report

18. A staff member challenged before the UNDT the decision of UNCTAD not to recommend him for the position he applied for because he was not given a full and fair assessment by the assessment/interview panel.

19. UNDT found that there was a material failure by the interview panel to consider the applicant's e-PAS reports which were relevant material, especially in the context of the disparity between its ratings and those of his reporting officers on the same competencies and within the same organization. UNDT concluded that the staff member's application was not given full and fair consideration and awarded compensation.

20. UNAT vacated UNDT judgment, finding that it erred in law and exceeded its competence by ruling that the interview panel was under a duty to consider the staff member's e-PAS reports and reflect that consideration in its own assessment report, even after the staff member had failed the interview. In finding so, UNDT improperly assumed the role of deciding which evaluation method should have been used and adopted an approach which is not provided for in the existing staff selection system.
