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INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: All Heads of Departments and Offices

DATE: 9 February 2011

A:

REFERENCE:

FROM: Andrei Terekhov, Executive Director
DE: Office of Administration of Justice

Terekhov

SUBJECT: **Third Activity Report of the Office of Administration of Justice**
OBJET: **(1 July to 31 December 2010)**

I transmit herewith the Third Activity Report of the Office of Administration of Justice, covering the period from 1 July to 31 December 2010.

cc: The Deputy Secretary-General
Mr. Nambiar
Mr. Kim
Executive Officers
Chiefs of Administration

**Third activity report of the Office of Administration of Justice
1 July to 31 December 2010**

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I. Introduction

1. The third report of the Office of Administration of Justice (OAJ) outlines the activities of the Office for period 1 July to 31 December 2010.
2. As the previous two reports, this report covers the activities of the Office of the Executive Director, the UN Dispute and Appeals Tribunals and the Office of Staff Legal Assistance (OSLA).

II. Executive Summary

3. During the reporting period, the Office of the Executive Director, OAJ, was mainly tasked with the coordination of the preparation of the report of the Secretary-General to the General Assembly, providing a review of the formal system of administration of justice. It also continued to make improvements to the OAJ website, which was launched on 28 June 2010, in particular to the website search capability in order to facilitate research of orders and judgments, and to the fully web-based case management system, which is nearing completion. In keeping with the mandate to negotiate and conclude agreements with entities in the UN Common system wishing to participate in the UN system of administration of justice, two additional agreements were concluded, one with the International Tribunal for the Law of the Sea (ITLOS) and another with the United Nations Joint Staff Pension Fund (UNJSPF). This brings the total of such agreements concluded by the Secretary-General of the United Nations under article 2.10 of the UNAT Statute to six. An agreement with the International Court of Justice (ICJ) is close to finalization. The OAJ also carried out an outreach mission to and held a town-hall meeting at Entebbe Support Base (MONUSCO), Uganda, on 1 and 2 July 2010. Additionally, the OAJ has supported the Internal Justice Council (IJC) in its work, including the preparation of its report to the General Assembly on the implementation of the new system of administration of justice, as well as the preparation of a code of conduct for the judges of the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT), for consideration by the General Assembly.
4. To give a general overview of the first 18 months of operation of the new system of administration of justice (1 July 2009 to 31 December 2010), the UNDT received a total of 588 cases (including cases transferred from the old system) and disposed of 329 cases, rendered 313 judgements, issued 934 orders and held 433 hearings; UNAT received a total of 186 appeals, rendered 103 judgements and disposed of 95 cases; and, OSLA dealt with 1192 cases, 714 of which it has closed or resolved.
5. During the current reporting period (1 July to 31 December 2010), the UNDT received a total of 76 new cases (including four remanded cases). It disposed of 107 cases, including 19 from the former JABs and JDCs (including one remanded case) and 43 from the former UN Administrative Tribunal. It rendered 100 judgements, issued 347 orders and held 113 hearings. As at 31 December 2010, 259 cases were pending, including 108 cases from the old system.
6. During the same period, UNAT received 76 new appeals, including seven against the United Nations Joint Staff Pension Board (UNJSPB), three against UNRWA, one against ICAO, and 51 cases appealing judgements of the UNDT by staff members and 14 by the Administration. It rendered 70 judgments and disposed of 62 cases.
7. Between 1 July and 31 December 2010, OSLA received 254 new cases and closed 204 cases. As of 31 December, OSLA had a total of 478 active cases.
8. Attached to the report (Appendix I) is a summary of the legal pronouncements made in judgments issued by the UNDT in the second half of 2010. Also attached (Appendix II) is a summary of the legal pronouncements made in judgments issued by UNAT at its second and third sessions.

III. Activities of the Office of the Executive Director

9. The main task of the Office of the Executive Director during the reporting period has been the coordination of the preparation of the report of the Secretary-General pursuant to operative paragraph 59 of General Assembly resolution 63/253, by which the Assembly requested the Secretary-General to conduct a review of the new system of administration of justice and to report thereon at its sixty-fifth session. As requested by the General Assembly in the same resolution and in its subsequent resolution on administration of justice 64/233, the report (A/65/373) contains data and information on the functioning of the new system, and highlights elements that require adjustment, strengthening or further consideration, including a number of resource requirements.

10. The OAJ website, which was launched on 28 June 2010, is now available in all six languages. The website, which provides information about the internal justice system at the UN, is easy to navigate and provides practical step-by-step information. The website was visited 7780 times in the month of November 2010, a 41 per cent increase from August 2010, with 5506 visits. Constant efforts are being made to improve the website search capability, in particular the ability to search orders and judgments. The Office is also making progress in putting in place a fully web-based case management system, which is expected to be available in the near future.

11. The Office of the Executive Director also successfully negotiated agreements with the International Tribunal for the Law of the Sea (ITLOS) and the UNJSPF under article 2.10 of the UNAT Statute, allowing those entities access to the UN system of administration of justice. This brings the total of such agreements concluded by the Secretary-General of the United Nations to six. In addition to the two latest agreements, agreements have been concluded with the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the International Seabed Authority (ISA). An agreement with the International Court of Justice (ICJ) is close to finalization.

12. The Office of the Executive Director also provided support to the IJC in its work, including in preparing a report (A/65/304) to the General Assembly, as requested in resolution 62/228, providing its views on the implementation of the new system of administration of justice. In order to comply with this request, the Council closely monitored the new system of internal justice, meeting with the judges and staff of both Tribunals at all three duty stations and having full discussions with management and lawyers of the Secretariat and the Funds and Programmes, as well as with OSLA. While the IJC also met with the Office of the Ombudsman, the Ethics Office and staff unions, the report focuses mainly on the functioning of the formal system of justice.

13. The IJC presented another report to the General Assembly, also requested by resolution 62/228, containing a draft "Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal" (A/65/86).

IV. Activities of the United Nations Dispute Tribunal

A. Composition of the Dispute Tribunal

1. Judges of the Dispute Tribunal

14. The current composition of the UNDT is as follows:

Judge Vinod Boolell (Mauritius), full-time judge based in Nairobi

Judge Memooda Ebrahim-Carstens (Botswana), full-time judge based in New York

Judge Thomas Laker (Germany), full-time judge based in Geneva

Judge Goolam Hoosen Kader Meeran (United Kingdom), half-time judge

Judge Coral Shaw (New Zealand), half-time judge

Judge Jean-François Cousin (France), ad litem judge based in Geneva

Judge Nkemdilim Amelia Izuako (Nigeria), ad litem judge based in Nairobi

Judge Marilyn Kaman (United States), ad litem judge based in New York

15. At its 65th session, the General Assembly decided to extend the tenure of the three ad litem judges and their support staff for an additional six months until 31 December 2011. (See resolution 65/251.)

2. Election of the President

16. At the Nairobi plenary meeting held from 28 June to 2 July 2010, Judge Thomas Laker was elected President for one year, from 1 July 2010 to 30 June 2011.

3. Plenary meetings

17. During the reporting period, the Judges of the Tribunal held one plenary meeting from 13 to 17 December 2010 in Geneva. During the meeting, the Judges discussed and agreed on a wide range of administrative and legal issues concerning their work; presented and discussed a series of practice directions; and, considered and adopted an amendment to article 19 of the Rules of Procedure.

B. Judicial statistics

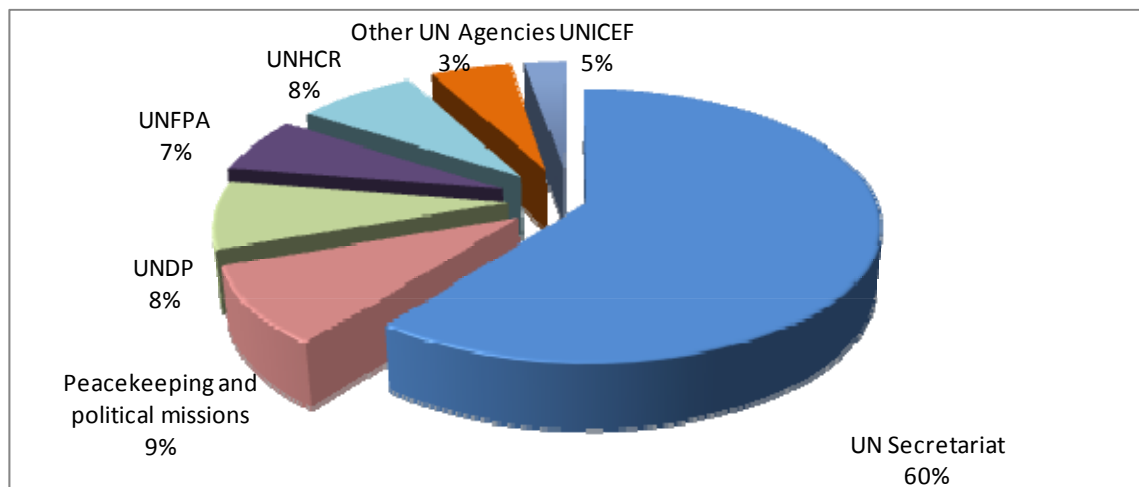
1. General activity of the Tribunal

18. During the first 18 months of operation, the UNDT received a total of 588 cases (including cases transferred from the old system) and disposed of 329 cases. It rendered 313 judgements, issued 934 orders and held 433 hearings.

19. At the beginning of the reporting period, as at 1 July 2010, the UNDT had 290 pending cases. During the period 1 July to 31 December 2010, the UNDT received a total of 76 new cases (including four cases remanded by the Appeals Tribunal) and disposed of 107 cases. As at 31 December 2010, 259 cases were pending, including 108 cases from the old system.

20. Of the 76 cases received during the reporting period, 46 cases originated from the UN Secretariat (excluding peacekeeping and political missions), including the regional commissions, offices away from headquarters, ICTR and ICTY, and various UN departments and offices; 7 cases originated from peacekeeping and political missions; and 23 from UN agencies, including UNHCR, UNDP, and UNICEF.

Chart 1 Distribution of registered cases by clients (1 July – 31 December 2010)



21. The geographical distribution of cases among the three locations of the UNDT has been changed as follows:

(a) Locations covered by the Geneva Registry: Europe and part of Western Asia (including Armenia, Azerbaijan, Georgia, Russia and Turkey);

(b) Locations covered by the Nairobi Registry: Africa, the Arabian Peninsula (including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen), Iran, Iraq, Israel, Jordan, Lebanon, Syria, as well as Palestine;

(c) Locations covered by the New York Registry: the Caribbean, Central and Eastern Asia (including Afghanistan, India, Kazakhstan, Pakistan, Turkmenistan and Uzbekistan), North America, South America and the Pacific.

2. Cases transferred to the UNDT by the JABs and JDCs

22. During the reporting period, 19 of the cases inherited from the JABs and JDCs in Geneva, Nairobi, New York and Vienna had been disposed of: three in Geneva, 12 in Nairobi and four in New York. 20 such cases are still pending: three in Geneva, nine in Nairobi and eight in New York.

3. Cases transferred to the UNDT by the former UN Administrative Tribunal

23. During the same period, 43 of the cases transferred from the former Administrative Tribunal were disposed of: 14 in Geneva, 12 in Nairobi and 17 in New York. A total of 88 of such cases remains pending: 25 in Geneva, 28 in Nairobi and 35 in New York.

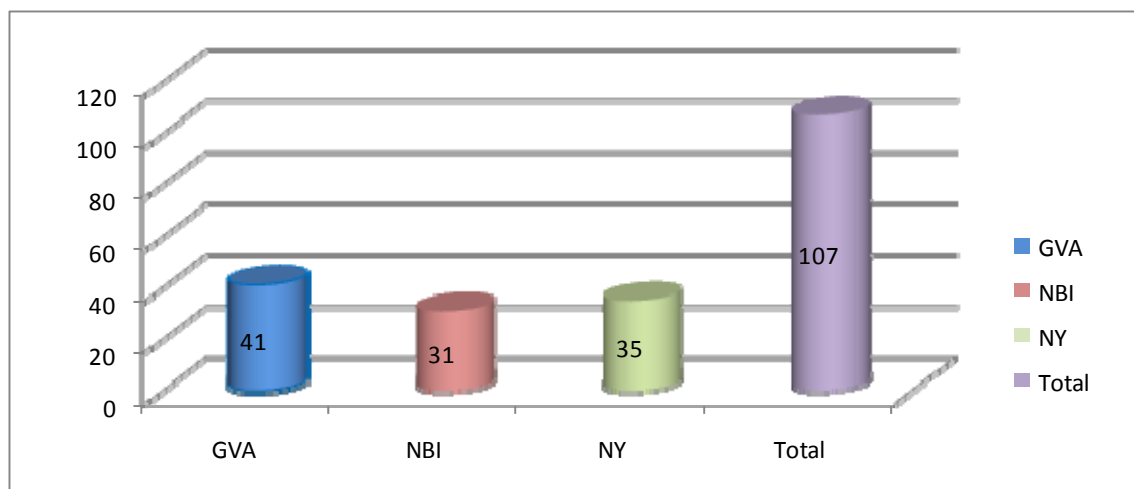
4. New applications received between 1 July and 31 December 2010

24. Between 1 July and 31 December 2010, the UNDT received a total of 72 new applications and four remanded cases, for a total of 76. On average, 12 applications were filed each month with the UNDT. Of the new applications, 26 were received in Geneva, 20 in Nairobi and 26 in New York. One case was remanded to Geneva and three to Nairobi. As at 31 December 2010, 151 new cases (including two remanded cases) are pending: 42 (including one remanded case) in Geneva, 44 in Nairobi (including one remanded case) and 65 in New York.

5. Cases disposed of between 1 July and 31 December 2010

25. The UNDT disposed of 107 cases in the reporting period. Chart 2 below shows that the Geneva Registry disposed of 41 cases, the Nairobi Registry of 31 and the New York Registry of 35 cases. On average, the three Registries disposed of approximately 18 cases per month.

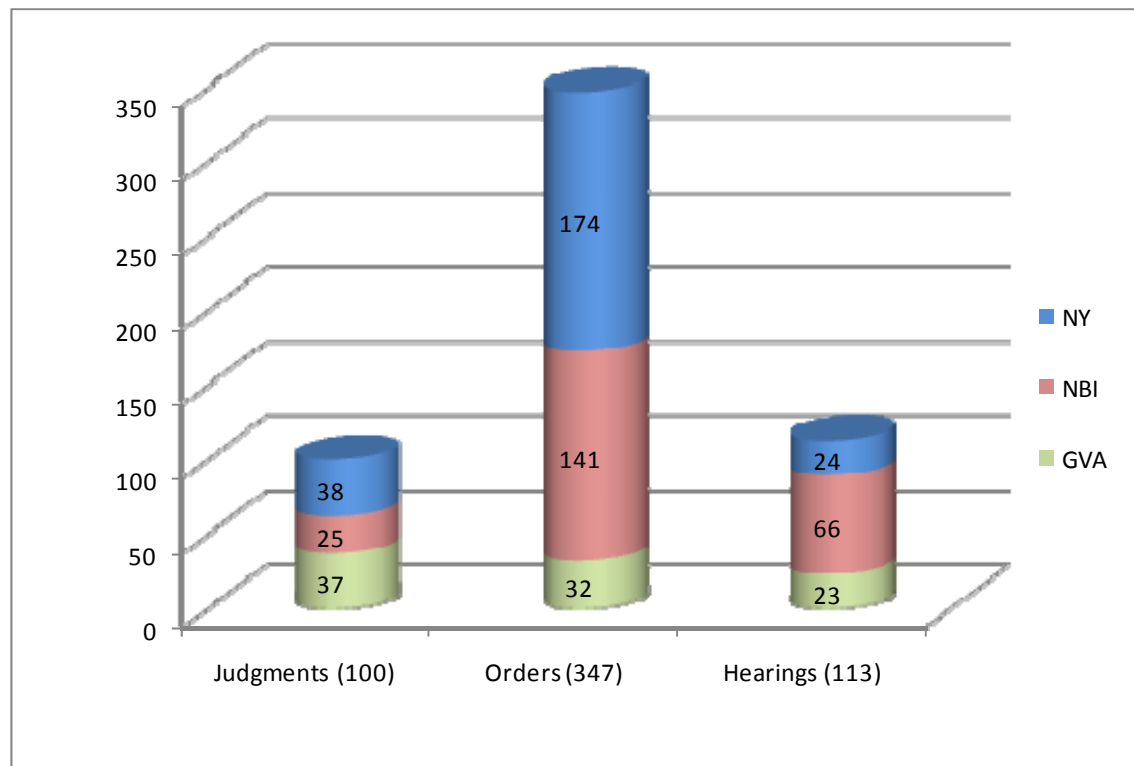
Chart 2 Cases disposed of by the Dispute Tribunal (1 July to 31 December 2010)



6. Number of judgements, orders and hearings

26. During the period 1 July to 31 December 2010, the UNDT issued 100 judgements on both the merits of cases and interlocutory matters. A total number of 347 orders were issued and 113 hearings were held by the UNDT. Chart 3 below details the numbers of judgements rendered, orders issued and hearings held by judges in Geneva, Nairobi and New York.

Chart 3 Number of judgements, orders and hearings in Geneva, Nairobi and New York (1 July to 31 December 2010)

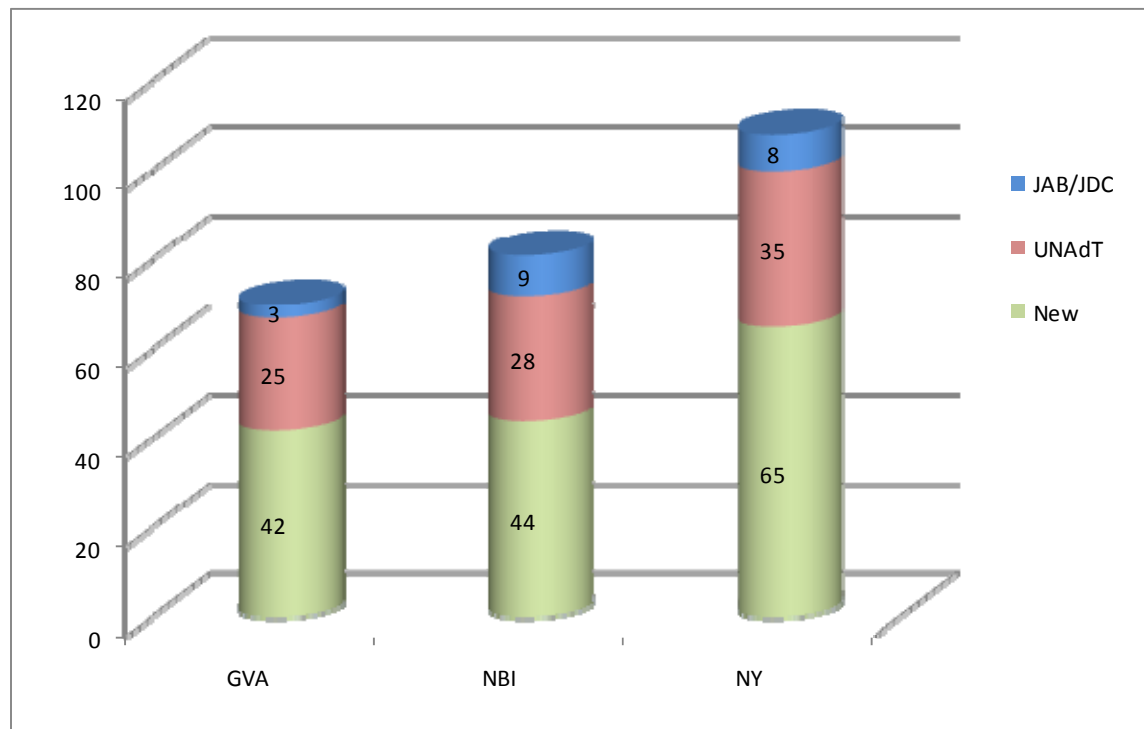


7. Cases referred to the Mediation Division

27. During the period covered by this report, the UNDT identified six cases suitable for mediation and referred them to the Mediation Division in the Office of the Ombudsman. Of these, two cases were successfully mediated.

8. Cases pending before the UNDT as at 31 December 2010

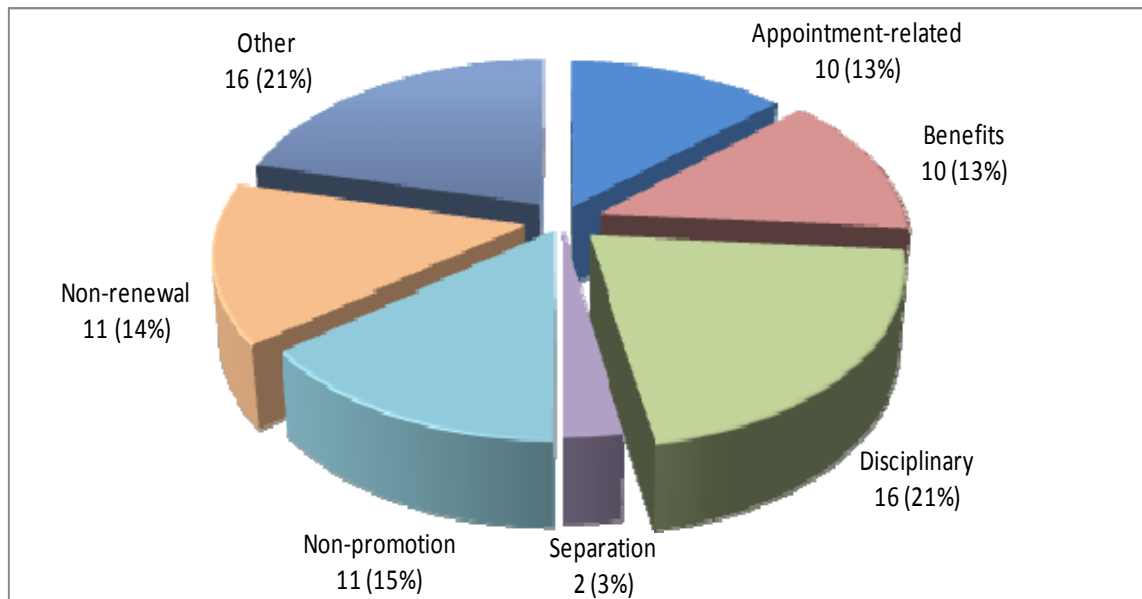
28. As at 31 December 2010, the Dispute Tribunal had 259 cases pending, 151 of them being new cases (including two remanded cases), 20 cases transferred by the former JABs and JDCs (including three remanded cases) and 88 cases transferred by the former Administrative Tribunal. Chart 4 below shows that, as at 31 December 2010, 70 cases were pending in the Geneva Registry, 81 cases were pending in the Nairobi Registry and 108 cases were pending in the New York Registry.

Chart 4 Cases pending before the Dispute Tribunal as at 31 December 2010

9. Cases by subject-matter

29. The nature of cases before the UNDT received during the reporting period may be distinguished into seven main categories: (1) appointment-related matters (other than non-renewal and non-promotion), (2) benefit, entitlement and classification, (3) disciplinary matters, (4) non-promotion, (5) non-renewal of contract, (6) separation other than non-renewal and disciplinary, and (7) other.

Chart 5 Cases registered between 1 July and 31 December 2010 by subject-matter (combined data for the three Registries)



10. Legal representation of applicants before the UNDT

30. During the period covered by this report, OSLA provided legal assistance in 25 of new cases before the Tribunal, 12 staff members were represented by private counsel, nine staff members were represented by volunteers who were either current or former staff members of the Organization and 30 staff members represented themselves (see Charts 6 and 7).

Chart 6 Legal representation of applicants, registered cases by Registry (1 July to 31 December 2010)

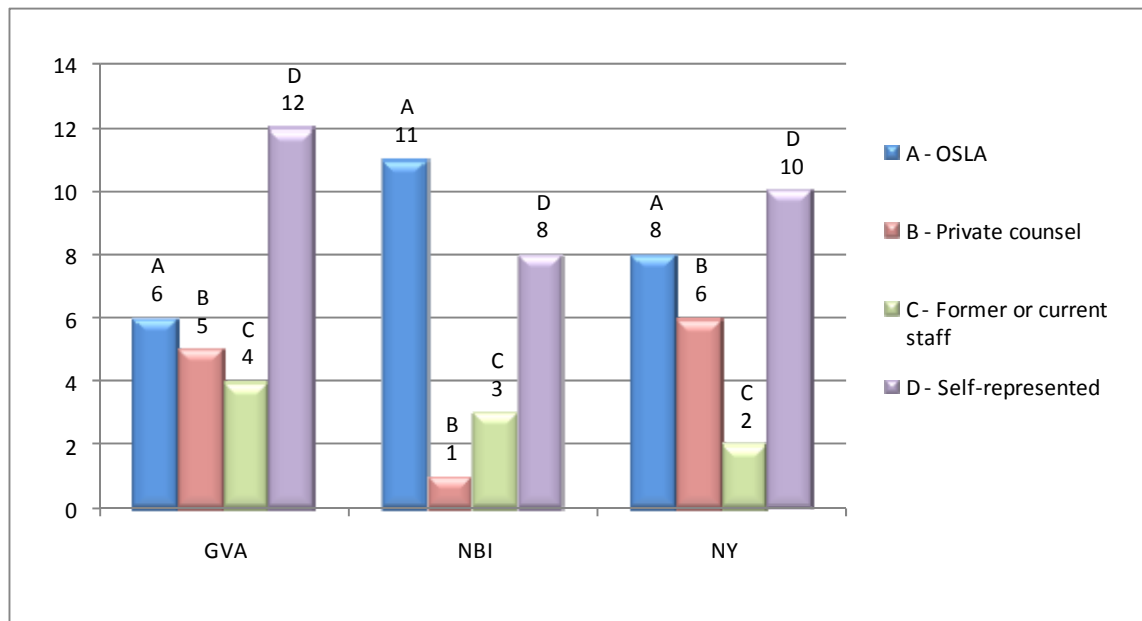
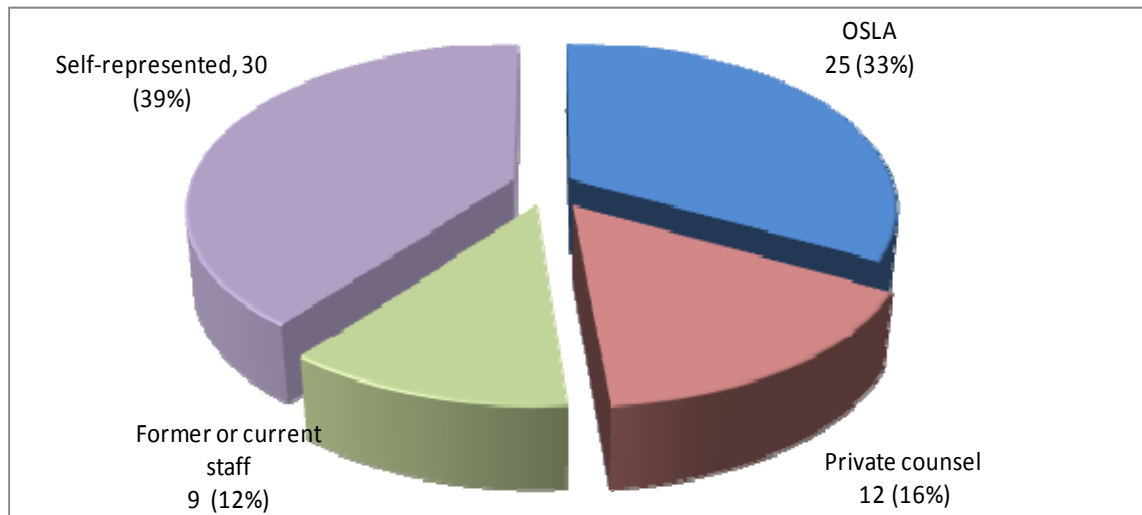


Chart 7 Legal representation of applicants (combined data for the three Registries)



11. Outcome of disposed cases

31. During the period covered by this report, 107 cases were disposed of. Of these cases, 52 judgements were in favour of the respondent (i.e., application rejected in full), 14 judgements were in favour of the applicant in full and 24 judgements were in favour of the applicant in part (i.e., some claims on liability). A total of 17 applications were withdrawn, including cases successfully mediated or settled (see Charts 8 and 9).

Chart 8 Outcome of closed cases, by Registry (1 July to 31 December 2010)

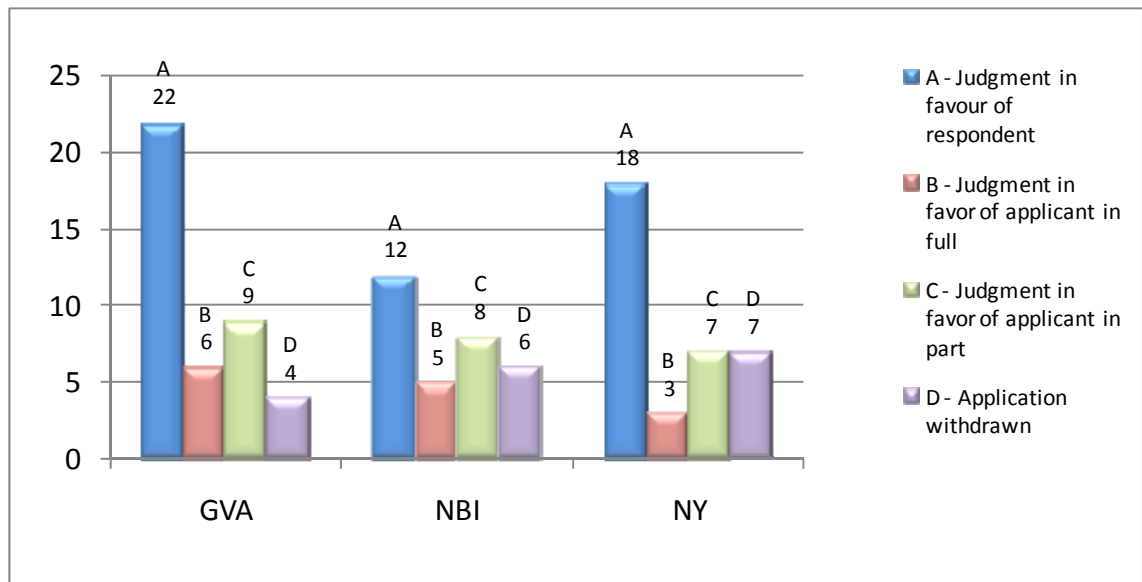
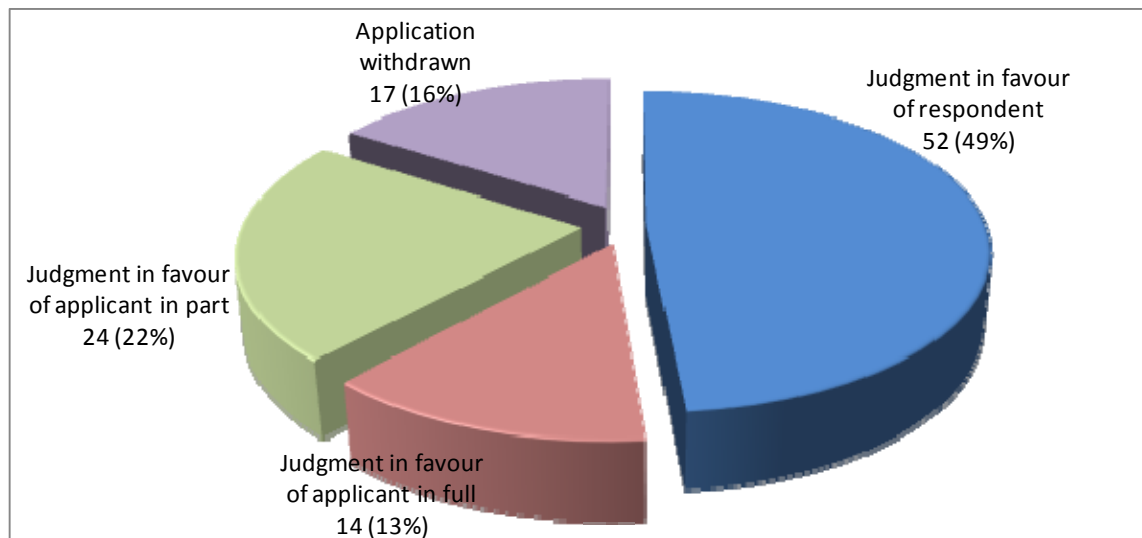
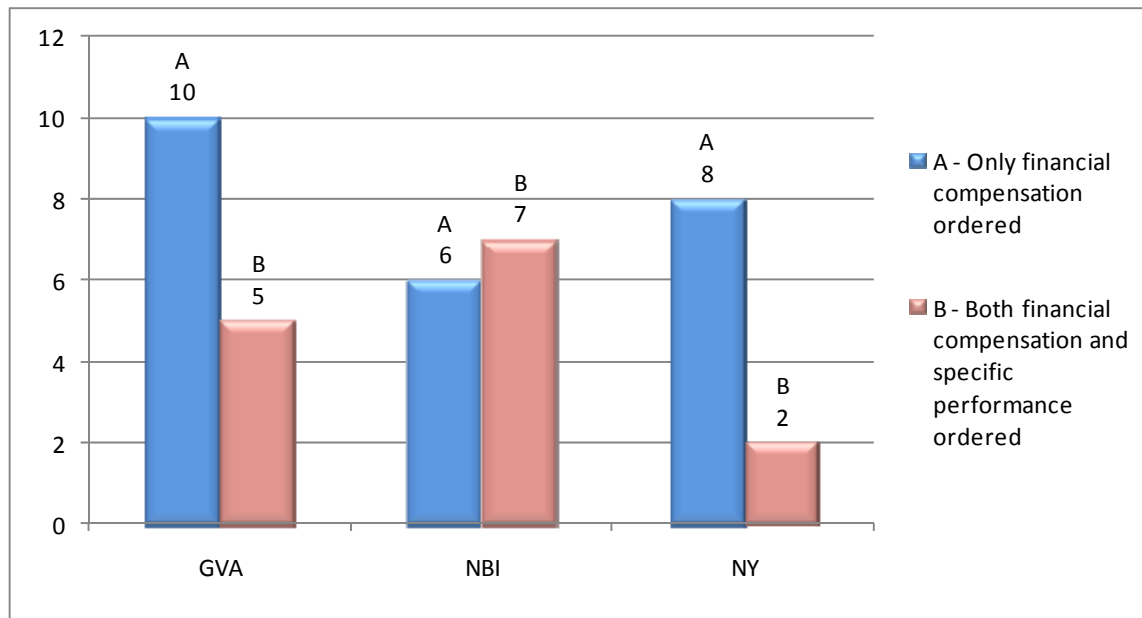


Chart 9 Outcome of closed cases (combined data for the three Registries)



12. Relief ordered and compensation awarded

32. During the period covered by this report, 38 judgements were rendered in favour of the applicant either in full or in part. In 24 instances, only financial compensation was ordered. In 14 instances, both financial compensation and specific performance were ordered.

Chart 10 Relief ordered by Registry (1 July to 31 December 2010)

V. Activities of the United Nations Appeals Tribunal

A. Composition of the Appeals Tribunal

1. Judges of the Appeals Tribunal:

33. The current composition of UNAT is as follows:

Judge Jean Courtial (France)

Judge Sophia Adinyira (Ghana)

Judge Kamaljit Singh Garewal (India)

Judge Mark P. Painter (United States of America)

Judge Inés Weinberg de Roca (Argentina)

Judge Rose Boyko (Canada)

Judge Luis María Simón (Uruguay)

34. On 11 October 2010, Judge Rose Boyko tendered her resignation from the Appeals Tribunal, for personal reasons, effective 15 January 2011. The IJC has recommended three candidates for the position in question and the General Assembly is expected to fill the vacant post in the early part of 2011¹.

2. Election of the President and Vice-Presidents

35. On 30 June 2010, the UNAT elected Judge Courtial as President and Judge Adinyira and Judge Garewal as First and Second Vice-presidents, respectively, for the year from 1 July 2010 to 30 June 2011.

¹ On 28 January 2011, the General Assembly elected Judge Mary Faherty (Ireland) to replace Judge Boyko.

B. Judicial statistics

1. General activity of the Tribunal

36. This report includes statistics from the summer 2010 session of the Appeals Tribunal (held from 21 June to 1 July) which were not yet available when the prior report was prepared and from its fall session, which was held from 18 to 29 October 2010. At these two sessions, the Tribunal heard and passed judgement on appeals filed against judgements rendered by the UNDT (see article 2.1 of the UNAT Statute); against decisions of the Standing Committee acting on behalf of the UNJSPB, alleging non-observance of the Regulations of the UNJSPF (see article 2.9 of the UNAT Statute); and, on appeals from entities that have concluded a special agreement with the Secretary-General of the United Nations under article 2.10 of its Statute².

37. During the first 18 months of operation, UNAT received a total of 186 new appeals, rendered 103 judgements and disposed of 95 cases. It issued 30 orders.

38. During the reporting period, from 1 July to 31 December 2010, UNAT received a total of 76 new appeals, including seven against the Fund, three against UNRWA, one against ICAO, and 51 cases appealing judgements of the UNDT by staff members and 14 by the Administration. The Tribunal issued 28 orders.

2. Outcome of disposed cases

39. During the period covered by this report, 70 judgments were issued and 62 cases were disposed of.

40. One judgement was rendered in appeal against the UNJSPB, in which the Appeals Tribunal upheld the impugned decisions taken by the Standing Committee, acting on behalf of the UNJSPB.

41. Five judgements were rendered on appeals filed by UNRWA staff members against decisions by the UNRWA Commissioner-General. All five appeals were rejected.

42. As for appeals against UNDT judgements, 56 judgements were rendered. 37 appeals were filed by staff members and 19 on behalf of the Secretary-General. In addition, two cross-appeals were filed, one on behalf of the Secretary-General and the other by staff member, which were considered by UNAT in the same judgement as the corresponding appeal. Of the 37 appeals filed by staff members, 32 were rejected, three were entertained in full and two were remanded to the UNDT. Of the 19 appeals filed by the Secretary-General, 10 appeals were entertained in full or in part, and nine were rejected.

3. Relief ordered and compensation awarded, modified or set aside

43. In four cases, the UNDT's order for payment of compensation was either annulled or modified.

44. In one case, UNAT annulled the UNDT's judgment affirming the impugned decision of summary dismissal and fixed the amount of compensation at 12 months' net base salary as an alternative to the rescission of the summary dismissal.

45. In another case, UNAT set aside the UNDT's order to pay the applicant six months' net base salary and remanded the case for a retrial.

4. Legal representation of applicants before UNAT

46. During the period covered by this report, OSLA provided legal assistance in 11 cases before the Appeals Tribunal.

² To date, six such entities have concluded special agreements with the UN Secretary-General accepting the competence of UNAT: ICAO, IMO, ISA, UNRWA, ITLOS, and the UNJSPF. It is anticipated that an agreement will be concluded with the ICJ in the near future.

VI. Activities of the Office of Staff Legal Assistance

A. Introduction

47. During the first 18 months of operation, OSLA dealt with 1192 cases, 714 of which it has closed or resolved. As at 31 December 2010, OSLA had a total of 478 active cases.

48. During the current reporting period (1 July 2010 to 31 December 2010), OSLA received 254 new cases and closed 204 cases.

49. These numbers reflect OSLA representing staff members before a body in the formal system, assisting in informal dispute resolution, or providing summary advice. OSLA principally assists staff in cases involving formal system mechanisms (the Management Evaluation Unit (MEU), the UNDT and UNAT). However, OSLA may also assist staff members in resolving disputes where there was no clear administrative decision which would allow for initiation of a case before formal bodies in accordance with relevant rules, but where there is nonetheless a valid grievance. These cases involved consultations with the staff member and discussions and negotiations with third parties, or referral to other actors in the system, including the Office of the Ombudsman or staff unions. OSLA may act as legal counsel throughout these informal processes. OSLA also provided summary legal advice to staff members which did not involve written submissions to a formal body or negotiations with a third party. During the last six months OSLA provided summary legal advice to 117 staff members.

B. Activities and resources of the Office of Staff Legal Assistance

50. Staffing the Office and addressing the demands of an ever-increasing caseload continued to be challenges during the reporting period. In October 2010, OSLA hired a full-time legal officer for its office in Addis Ababa which substantially increased its human resources presence in Africa. The OSLA office in Nairobi has greatly benefited from two volunteer lawyers working full-time in addition to OSLA's one regularly budgeted legal officer. In December 2010, the General Assembly approved the addition of a second P-3 Legal Officer post in Nairobi to support staff in field missions.

51. In order to augment its limited professional human resources, OSLA has benefited from a continuing arrangement of UNHCR which has provided a staff member on loan to the OSLA Geneva Office and an additional lawyer staff member based in Accra, Ghana, over a six-month period. It is anticipated that UNHCR will continue this arrangement in Geneva during the first half of 2011 with another full-time lawyer being provided at no cost to OSLA. OSLA has also benefited from the contribution of a major law firm, which has provided *pro bono* legal assistance to individual UN staff members or acted as co-counsel with OSLA lawyers in complex cases.

52. In addition, OSLA has affiliation with some ten volunteer part-time counsel, who are either current or retired staff members, from throughout the UN system.

C. Challenges and observations after 18 months of operations

53. Funding limitations continue to present many challenges for OSLA's ongoing operations. In his report to the General Assembly on the functioning of the system (A/65/373), the Secretary-General emphasized the need to strengthen OSLA with a number of additional posts, both at the professional and general service level.

54. The OSLA Trust Fund was created in January 2010 to enhance the ability of OSLA to provide legal advice and/or representation to UN staff members within the new internal system of justice. OSLA continues to make concerted efforts to obtain contributions from staff unions, individual staff members, former clients and external parties. However, to date, contributions have been very modest, with the current balance amounting to several thousand dollars.

55. OSLA continues to develop and strengthen its ties with the representatives of UN staff unions and associations and staff-at-large, and with the Office of the Ombudsman and Mediation Services, Ethics Office and MEU. OSLA is also working to strengthen its liaisons with

counterparts in the legal offices of the Secretariat and UN agencies, funds and programmes. Positive and good progress has been made in this regard, both through resolving individual cases and through joint training opportunities and formal and informal exchanges with colleagues.

56. Against this background OSLA continues to achieve a great deal with limited resources. In summary, this achievement is demonstrated by: the number of cases resolved, either directly by OSLA or with OSLA's contributions and assistance, by the continued development of office structures, policies and internal guidelines, through the establishment of an internal database and on-line resources for use by legal counsel, and the establishment and coordination of a reliable network of volunteer and *pro bono* counsel and legal interns working with the Office. Other hallmarks of OSLA's progress include its positive contacts with UN staff unions and associations, members of the IJC, academic and legal institutions, and other UN entities. OSLA has completed several successful outreach/field missions to staff and managers serving in field missions in the period 1 July to 31 December 2010, including in Uganda (Entebbe Support base (MONUSCO)); Goma, DRC (MONUSCO); N'djamena, Chad (MINURCAT); Baghdad, Iraq, and Amman, Jordan (UNAMI); Naqoura, Lebanon (UNIFIL); Accra, Ghana (UNHCR and other UN entities); and, Cairo, Egypt (UNHCR and other UN entities).

D. Statistics

1. Number of cases received in OSLA in the period 1 July to 31 December 2010

57. As at 1 July 2010, OSLA had 428 pending cases. From 1 July to 31 December 2010, 254 additional cases were brought by staff members (including former staff members or affected dependants of staff members) to OSLA. During the reporting period, 204 cases were closed or resolved, bringing the number of cases pending before OSLA to 478 as at 31 December 2010.

2. Advice and legal representation to staff appearing before recourse bodies

58. Table 1 below provides further details of the 254 new OSLA cases for the period 1 July to 31 December 2010, including a breakdown of formal cases before each recourse bodies, those not before formal bodies or where summary advice was provided, and the number of closed or resolved cases for each recourse body or category.

59. In Table 1, "Disciplinary cases" indicate those cases where OSLA provided assistance to staff members in responding to allegations of misconduct. In cases before the UNDT and UNAT, as well as the former UN Administrative Tribunal, OSLA held consultations and provided legal advice to staff member clients, drafted submissions on their behalf, represented them in hearings (UNDT), held discussions with opposing counsel, and negotiated settlements. OSLA similarly provided advice and assistance in submissions and processes before other formal bodies listed in the table below.

Table 1 OSLA cases

Cases by recourse body:	New cases	Cases closed/resolved
Disciplinary cases	28	18
UN Dispute Tribunal	27	41
Management Evaluation	35	30
UN Appeals Tribunal	11	20
Medical Board	1	-
Sexual Harassment Procedures	1	-
Harassment investigation	-	1
Rebuttal Panel	-	-
ABCC	-	-

UNICEF OIA	-	-
UNJSPF	-	-
Cases before formal body	103	110
Cases not before formal body	34	18
Summary legal advice	117	76
Total	254	204

3. Representation before the Dispute Tribunal

60. Chart 11, below, shows a breakdown of new OSLA cases before the UNDT by UNDT venue. Chart 12 shows those OSLA cases which have been closed or resolved through the issuance of a judgement, negotiated settlement, withdrawal by the staff member or by OSLA or loss of contact with the staff member are indicated.

Chart 11 OSLA new cases before UN Dispute Tribunal by venue (Geneva, Nairobi and New York)

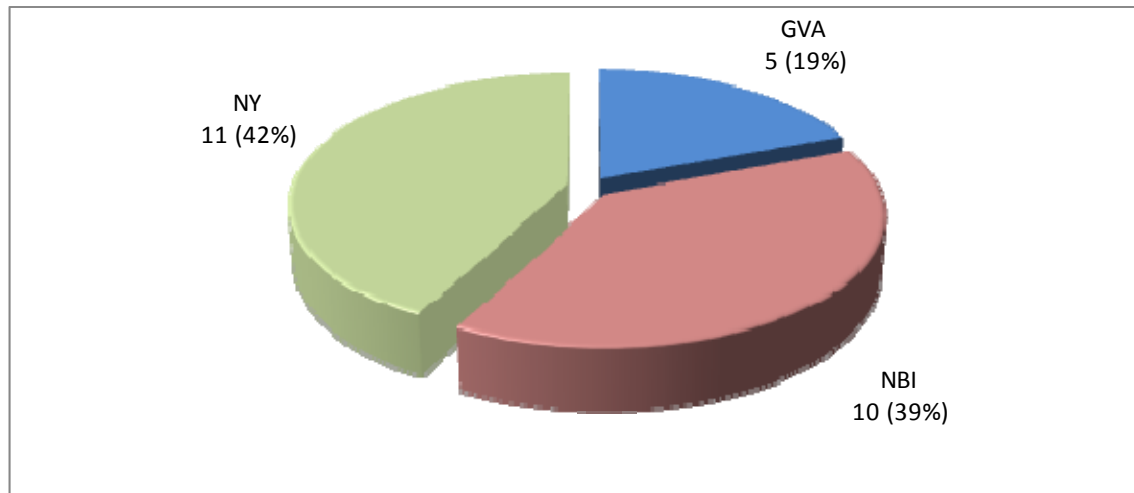
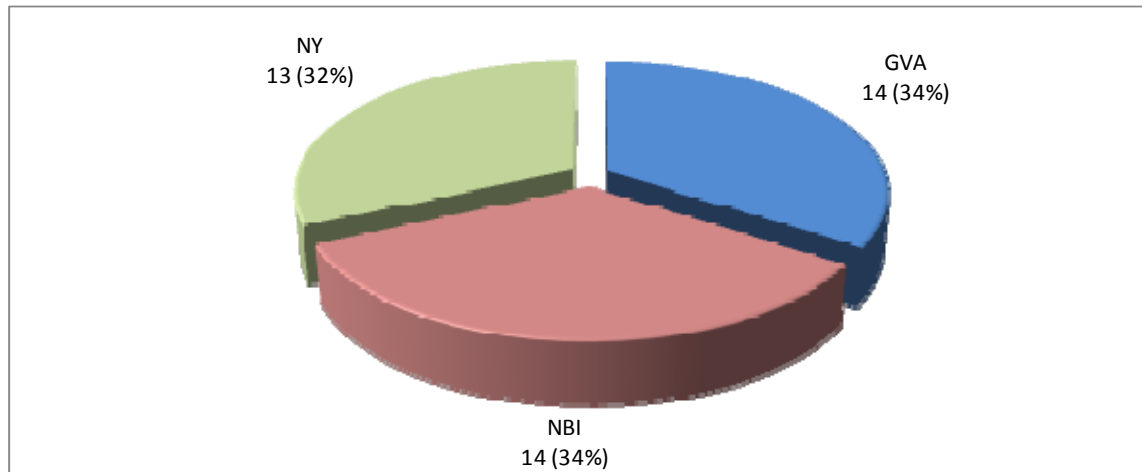


Chart 12 OSLA closed/resolved cases before UN Dispute Tribunal by venue (Geneva, Nairobi and New York)



4. Cases by subject-matter

61. Charts 13 and 14, below, provide an overview of new and closed OSLA cases by subject-matter for the period 1 July to 31 December 2010. The bulk of the cases handled by OSLA for the reporting period concerned disciplinary matters, followed closely by cases involving non-promotion, non-renewal of contract, and termination of contract. The reasons for resolution or closure of cases are described above.

Chart 13 New cases by subject matter for the period 1 July to 31 December 2010

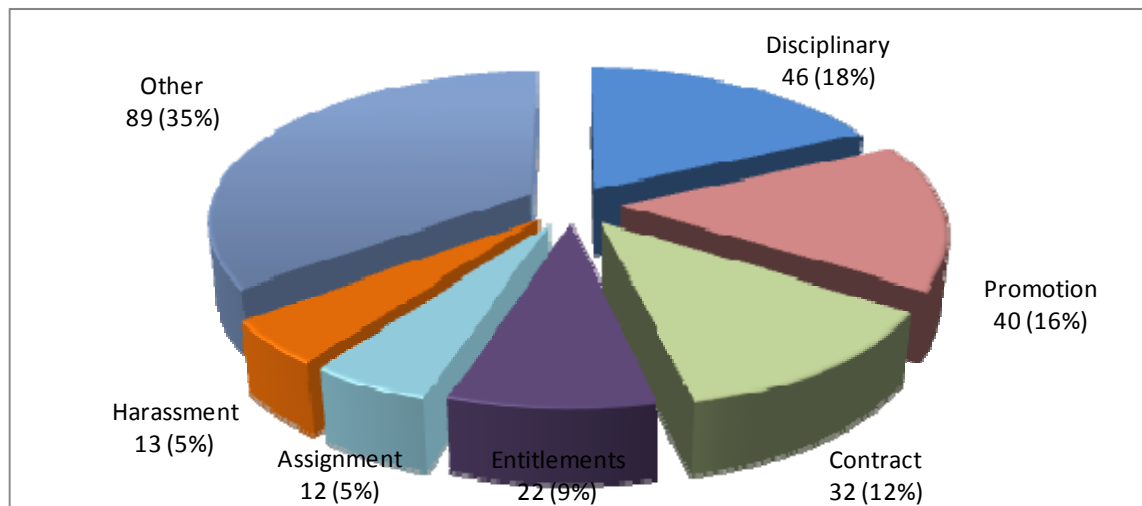
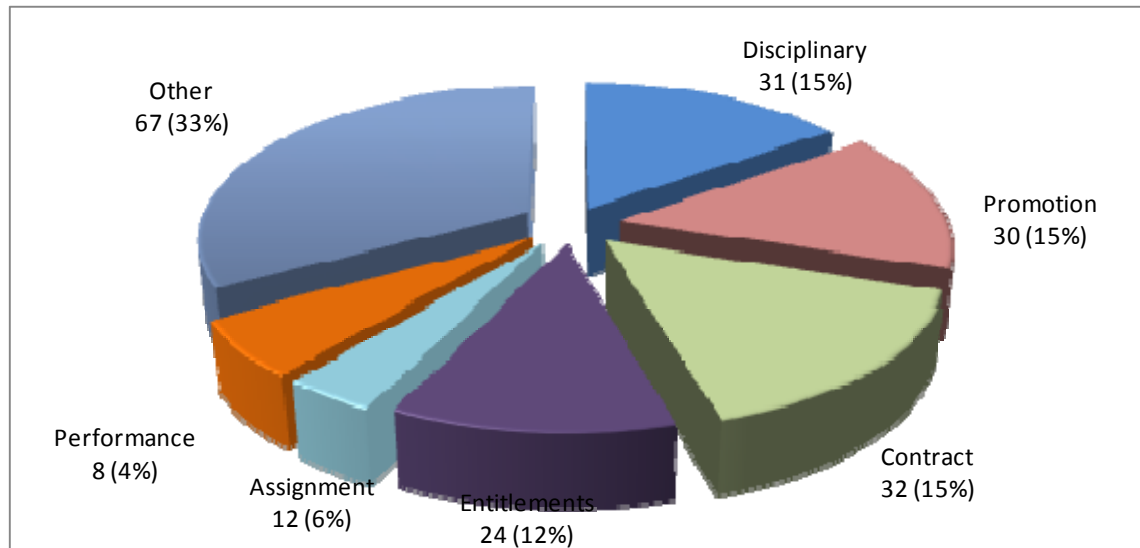


Chart 14 Closed/resolved cases by subject matter for the period 1 July to 31 December 2010



5. Cases by client (Department, Agency, Fund or Programme)

62. Charts 15 and 16, below, provide an overview of OSLA cases received from Secretariat departments or UN agency, peacekeeping and political missions, and funds or programmes between 1 July and 31 December 2010.

Chart 15 Cases by client (department, agency, fund or programme)

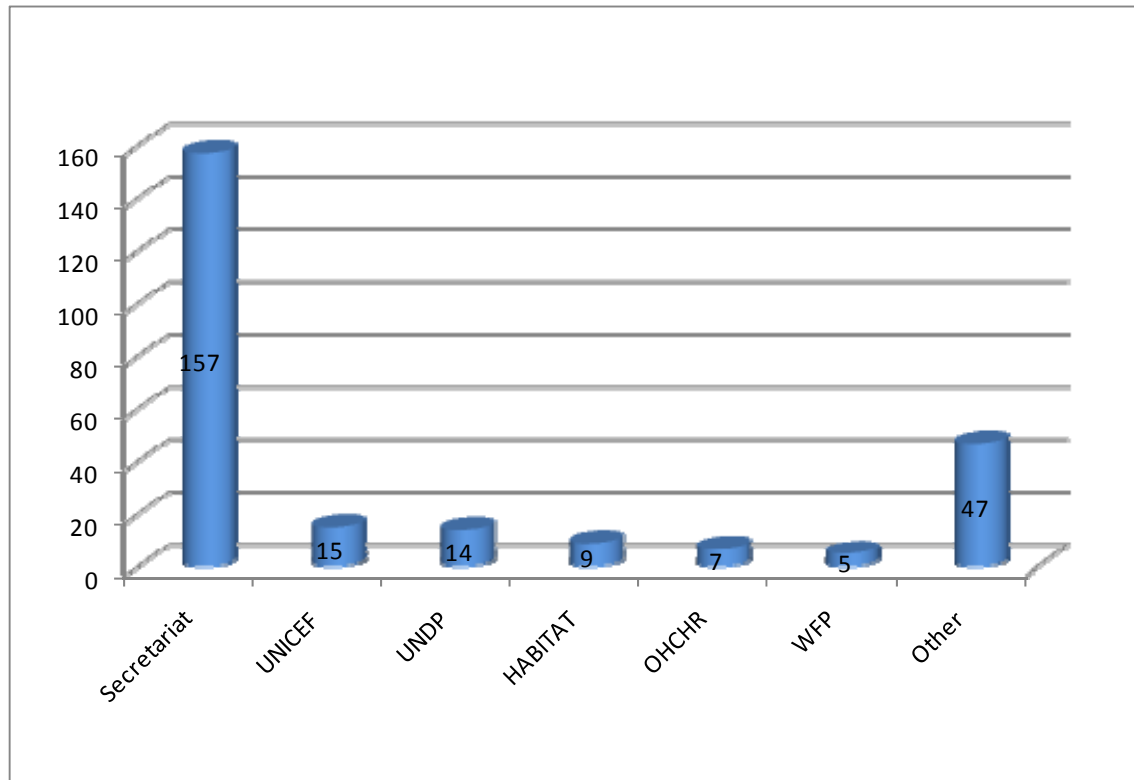
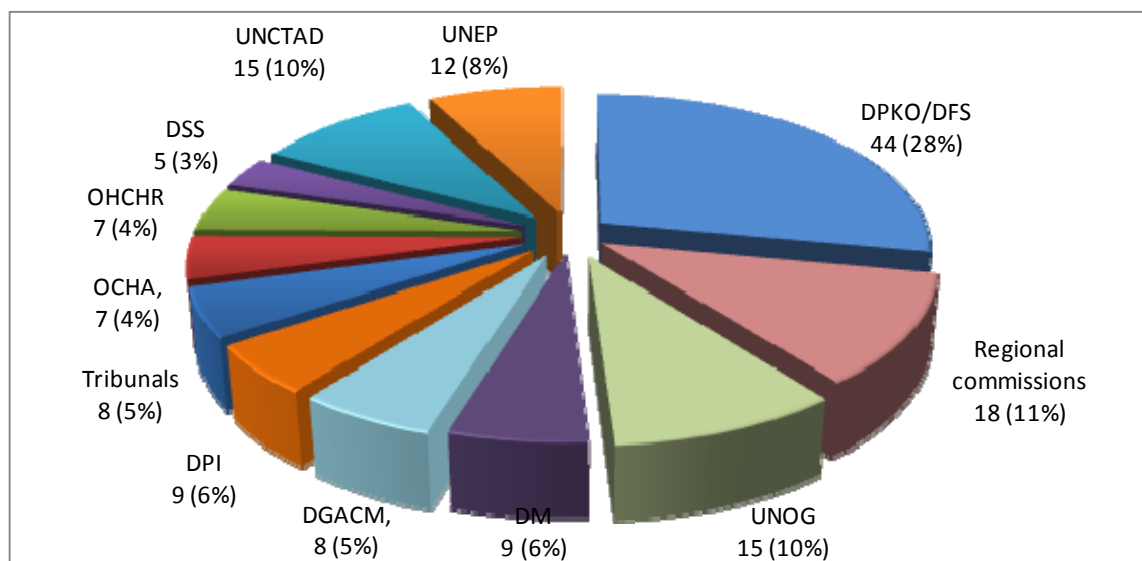


Chart 16 Cases by office in UN secretariat



6. Cases by gender

57. Of the 254 new cases, 149 were brought by male staff members and 105 by female staff members. Of the cases closed/resolved during the reporting period, 114 were from male staff members and 90 from female staff members.

APPENDIX I

Proceedings of the UNDT

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Introduction

1. A summary of major legal pronouncements made by the UNDT in judgments rendered from 1 July to 31 December 2010 is provided below. The summaries are not authoritative and the judgments cited below are not comprehensive. For a complete set of the judgments issued during the period covered by this report by the UNDT, the website of the UNDT (<http://un.org/en/oaj/dispute/>) should be consulted. It should also be borne in mind that, at the time of the writing of the report, a number of UNDT judgments were being appealed before the UNAT by either the applicant or the respondent. Therefore, the findings made by the UNDT in a number of the judgments mentioned below should not be considered final and the website of the UNAT should be consulted for the final determination made in the cases being appealed.

1. Non-promotion/non-selection

2. In *Liarski* UNDT/2010/134, the Tribunal held that job requirements differing from those expressed in a generic job profile which are seen as necessary or desirable for a particular post are permitted, provided that the drafters of the vacancy announcement are not influenced by extraneous or ulterior motives. The Tribunal also stated that, although it will not substitute its decision for that of the Administration in the discretionary matters of appointment and promotion, it will examine whether the selection process was carried out in an improper, irregular or otherwise flawed manner, and assess whether the resulting decision was tainted by undue considerations or was manifestly unreasonable.

2. Non-renewal/non-extension of contract

3. In *Eldam* UNDT/2010/133, *Dzintars* UNDT/2010/150 and *Applicant* UNDT/2010/211, the Tribunal reiterated that, while decisions on the renewal of fixed-term appointments are within the Secretary-General's discretionary power, they must not be improperly motivated and must not violate due process and that when the Administration gives a justification for the exercise of its discretionary power, especially as regards non-renewal of a contract, the reason must be supported by the facts. In these cases, the reason for the non-renewal of the Applicants' contracts was poor performance. The Tribunal held that while its control over supervisors' assessment of staff members' performance is limited to cases of manifest error, it is for the Tribunal to check, on the one hand, that supervisors have complied with the procedural rules for performance appraisal and, on the other, that the rating given warranted the Administration's not renewing a contract on the ground of performance.

4. It was stated in *Eldam* that the Administration bears the burden of proving that it respected the prescribed procedure in deciding on non-renewal of a fixed-term appointment.

5. The Tribunal further stated in *Eldam* and *Dzintars* that while it follows from the provisions of administrative instruction ST/AI/2002/3 (Performance Appraisal System) that the Administration cannot refuse to renew a staff member's appointment when s/he first receives the rating "Partially meets performance expectations", the Administration is entitled to refuse renewal when, after it has taken steps to try to improve his/her work, the staff member receives that rating for the second consecutive year. The Tribunal ruled that, though the Administration is not bound to apply administrative instruction ST/AI/2002/3 to evaluate the performance of 300 series staff members (in *Applicant* UNDT/2010/211) and of staff members holding a fixed-term appointment for a period of less than one year (in *Eldam*), once it has decided to apply the administrative instruction, the latter must be fully complied with.

6. In *Abdalla* UNDT/2010/140, the Tribunal held that while there is no right to renewal for staff members serving on a temporary appointment, it is for the Tribunal to examine whether improper motives or countervailing circumstances existed which may have tainted the contested decision with illegality.

7. In *Hepworth* UNDT/2010/193, the Tribunal held that no promise could override the clear words of the letters of appointment signed by the Applicant which stated that fixed-term appointments do not carry any expectancy of renewal. The Tribunal reiterated that the Organization was not bound to give any justification for not extending a fixed-term appointment.

8. In *Zúñiga Rojas* UNDT/2010/218, the Tribunal held that comments relating to a performance appraisal, made in the course of the performance evaluation process, do not give rise to an expectation of renewal. In *Jennings* UNDT/2010/213, the Tribunal held that, if a decision not to renew an appointment on grounds of poor performance is reasonably made on the material available and is not significantly affected by an irrelevant matter or the omission of a relevant consideration or by the making of an error of fact or law, then it cannot be held to be made in breach of the contractual obligations of the Organization.

3. Appeals in connection with disciplinary processes (including separation from service as a disciplinary measure or placement on SLWFP or decision not to investigate)

9. In *Yapa* UNDT/2010/169, the Tribunal clarified that "[i]n reviewing disciplinary cases, the Tribunal must examine: (a) whether the procedure followed was regular, (b) whether the facts in question are established, (c) whether those facts constitute misconduct and, (d) whether the sanction imposed is proportionate to the misconduct committed".

10. In *Zerezghi* UNDT/2010/122, *Yapa* and *Zoughy* UNDT/2010/204, the Tribunal reiterated that only when a staff member is charged with misconduct does s/he become entitled to specifically enumerated due process rights, i.e. the right to be informed in writing of the charges, the right to receive a copy of the documentary evidence and the right to seek the assistance of counsel in his or her defence. No such rights exist during the investigation.

11. In *Ryan* UNDT/2010/174, the Tribunal held that pursuant to paragraph 3 of administrative instruction ST/AI/371 (Revised disciplinary measures and procedures), it falls within the managerial discretion of the head of office or responsible officer to draw conclusions from the preliminary investigation report. While s/he is bound by the facts as established by the investigation, s/he is not bound by their legal characterization and it falls within his/her discretion to determine whether or not the investigation produced sufficient evidence of misconduct. Such discretion is not unfettered, however, and the Tribunal must examine whether the head of office or responsible officer drew clearly erroneous conclusions from the investigation report. The Tribunal further stated that it is not competent to order the Secretary-General to initiate disciplinary proceedings.

12. In *Zoughy*, the Tribunal also held that, in deciding whether the facts amount to misconduct, the Tribunal is not bound by the characterizations of the Administration but only by the facts alleged against the staff member. Also, in the same case, the Tribunal ruled that it is not sufficient

for an Applicant to allege procedural flaws in the disciplinary process, s/he must also demonstrate that such flaws have affected his/her due process rights.

13. In *Buendia et al.* UNDT/2010/176, the Tribunal held that it could not uphold the findings and conclusion of a disciplinary process where due process rights were breached, and rescinded the decisions to impose disciplinary sanctions against the Applicants. In *Applicant* UNDT/2010/148, the Tribunal held that, in cases where allegations of impropriety are made against staff members, ST/AI/371 contains a requirement for programme managers to undertake an initial inquiry, which has to be adequate and timely, to determine whether there was “reason to believe” that the identified staff members had “engaged in an unsatisfactory conduct for which a disciplinary measure may be imposed”. In *Applicant* UNDT/2010/171, the Tribunal held that, given the range of permissible sanctions for serious misconduct, it is necessary to consider the totality of the circumstances, including any mitigating factors, to assess where to pitch the appropriate sanction.

4. Appeals in respect of benefits/entitlements/salaries/allowances/classifications

Home leave

14. In *Wang* UNDT/2010/132, the Tribunal held that the change of the country of home leave referred to in administrative instruction ST/AI/367 is subject to the Secretary-General being satisfied of the three specified conditions, which include its consistency with the purposes and intent of staff regulation 5.3. Staff members have the right to enjoy entitlements acquired by the application of an exception, but only for as long as the circumstances meet the conditions of the exception; if those circumstances materially change, the staff member may lose those acquired rights.

Special leave with full pay (SLWOP)

15. In *Kamunyi* UNDT/2010/214, the Tribunal pointed out that staff rule 105.2 confers a general power on the Secretary-General to grant special leave in exceptional cases. While the rule does not specify what the scope of that power is, this can be ascertained from the specific context of the words which precede it and the wider context of this and other Staff Rules and Regulations. The tribunal noted that the rule about special leave is found in Chapter V of the Staff Rules which deals with annual and special leave, not disciplinary measures and procedures, and it concluded that “exceptional cases” is not a catch-all which extends to Chapter X disciplinary measures.

16. In *Lauritzen* UNDT/2010/172, the Tribunal held that while former staff rule 105.2(a) allowed the Secretary-General to place, at his own initiative, a staff member on SLWFP if he considers such leave to be in the interest of the Organization, such measure should only be taken in exceptional cases and for a limited period of time. Staff members, as long as they remain in the service of the Organization, have the right not only to be remunerated, but also to be given work.

Classification

17. In *Meesukul* UNDT/2010/141, the Tribunal dismissed the Applicant’s appeal of the decision not to reclassify her post, holding that where an applicant raises general complaints of unfairness and denial of due process, it is incumbent upon the applicant to provide sufficient detail and evidence to sustain the complaint. In *Jaen* UNDT/2010/165, the Tribunal held that it would not be proper to circumvent the established budgetary procedures by shifting the posts approved by the General Assembly for specific functions to create other posts with different functions without the General Assembly’s approval. In *Bhatia* UNDT/2010/157, the Tribunal held that where a special post allowance had been paid for a period, withdrawn, and then paid again for a later period where no change in functions had been documented, it should have been paid for the entire period. Alternatively, it could be correctly argued that the Applicant had a legitimate expectation of the continuing payment, in the context of the pattern of retroactive grants and the failure to consult with the Applicant on the change in functions.

5. Other appointment-related appeals (including reassignment of staff, appointment beyond retirement age, withdrawal of offer of appointment, etc)

Reassignment

18. In *Lauritzen* and *Znamenski* UNDT/2010/208, the Tribunal recognized that, pursuant to former staff regulation 1.2 (c), the Secretary-General has wide discretion over the organization of work, which includes the authority to remove a staff member from his/her position in the interest of the service and to make reassignment decisions. Such discretion, however, is not unfettered but is subject to the Tribunal's supervision, the extent of which has been explained by the Appeals Tribunal in Judgment 2010-UNAT-021, *Asaad* (see also *Allen* UNDT/2010/212). While the Tribunal cannot substitute its judgment for that of the Secretary-General regarding the appropriate organization of work, it must verify that a decision in this respect has not been taken for unlawful reasons. In *Lauritzen*, the Tribunal found that removing the Applicant from her post was a way to put an end to a dysfunctional situation and it is not for the Tribunal to determine whether another measure could have been taken. However, when an organizational measure affecting a staff member is taken based on the personal circumstances of that staff member, s/he must have the possibility to present observations before the decision is taken.

6. Separation from service

19. In *Jemai* UNDT/2010/149, the Tribunal held that an agreed termination on terms negotiated free from any duress or misrepresentation is an essential feature of good employment relations and should be given effect and honoured by the contracting parties.

7. Suspension of action pending management evaluation

Prima facie unlawfulness

20. In *Corna* Order No. 90 (GVA/2010), the Tribunal set out some criteria for determining whether “[a] decision appears prima facie to be unlawful” based on previous jurisprudence. The combination of the words “appears” and “prima facie” shows that this test is undemanding and that what is required is the demonstration of an arguable case of unlawfulness, notwithstanding that this case may be open to some doubt (see *Buckley* UNDT/2009/064 and *Miyazaki* UNDT/2009/076). Put differently, since the suspension of action is only an interim measure and not the final decision of a case it may be appropriate to assume that prima facie unlawfulness in this respect does not require more than serious and reasonable doubts about the lawfulness of the contested decision (see *Corcoran* UNDT/2009/071). As long as the Applicant can demonstrate that the decision was contrary to the Administration's obligations to ensure that its decisions are proper and made in good faith, the test for prima facie unlawfulness will be satisfied (see *Utkina* UNDT/2009/096).

21. In *Fernández de Córdoba Briz* Order No. 186 (NY/2010), the Tribunal held that the Applicant had not established a *prima facie* case of unlawfulness concerning his imposed transfer to another duty station, finding that, under administrative instruction ST/AI/2006/3/Rev.1, there are no limitations concerning duty stations on the Administration's decision to transfer a staff member. In *Philippart* Order No. 338 (NY/2010), the Tribunal held that, where an applicant's letter of appointment states that s/he is employed in respect of a particular project, the Respondent will have to show that that project has actually been terminated if such termination has been used as a stated reason for non-renewal.

Irreparable harm

22. In *Fernández de Córdoba Briz*, the Tribunal held that, to obtain a suspension of action, the Applicant must—as a necessary minimum—be able to refer to some specific, albeit non-pecuniary, damage.

8. Other matters

Request for review/Management evaluation

23. In a number of judgments, the Tribunal reiterated that requests for administrative review or management evaluation are mandatory first steps in the appeal process (*Znamenski* UNDT/2010/208, *Ryan* UNDT/2010/174, *Osman* UNDT/2010/158, *Ibekwe* UNDT/2010/159, *Dualeh* UNDT/2010/187, *Leboeuf et al.* UNDT/2010/206, *Jennings* UNDT/2010/213)

Time limits

24. In *Muratore* UNDT/2010/139, *Ryan* and *Zia* UNDT/2010/198, the Tribunal reiterated what it had previously held on several occasions, i.e., that exceptional circumstances are circumstances beyond the control of the Applicant that prevented him/her from submitting an appeal in time.

25. In *Ryan*, the Tribunal reiterated that negotiations between the parties do not normally have the effect of suspending the time limits for the filing of an internal appeal or an appeal with the Tribunal and that they do not constitute exceptional circumstances. Furthermore, when the contested decision is an implied or implicit decision, the Tribunal held that for the purpose of calculating time limits, it is for the Tribunal to determine, based on the facts of the case, when it was clear to an Applicant that such decision was made.

26. In *Vangelova* UNDT/2010/179, the Tribunal held that, on the “assumption that the two ... legal instruments are contradictory”, it “cannot be challenged that the legal force of the Statute of the Dispute Tribunal is superior to that of the Staff Rules”. Thus, the Tribunal decided to assess the “receivability of the application only in light of its own Statute”. The Tribunal further held that although the Statute requires staff members to file their application with the Tribunal within 90 days following the expiry of the 45-day period for the management evaluation if no response to the request for management evaluation was provided, when the Administration replies after the 45-day period but before the expiry of the next 90-day period, a new 90-day period to contest the decision before the Tribunal will start to run.

Confirmative decisions

27. In *Ryan*, the Tribunal held that when a staff member repeats the same request to the Administration, only the first decision denying it is subject to appeal and the time limits for appeal start running from that first decision. Subsequent refusal decisions are confirmative decisions which are not subject to appeal. The Administration has the obligation to examine a new request only when it is supported by new circumstances; the resulting decision is not a confirmative decision. See also *Bernadel* UNDT/2010/210.

Damages

28. In *Fröhler* UNDT/2010/135, the Tribunal held that in order to obtain compensation, it is not enough for the Applicant to claim that a procedural irregularity was committed in a selection process; s/he should also establish that this irregularity caused her/him a direct prejudice. The Applicant must therefore prove that, if no irregularity had been committed, s/he had serious chances to be selected to the post. Similarly, in *Tsoneva* UNDT/2010/178, *Vangelova*, *Akyeampong* UNDT/2010/189, and *Bofill* UNDT/2010/190, the Tribunal held that apart from the compensation granted in accordance with article 10.5(a) of its Statute, in cases of non-promotion, it will only grant compensation for moral damage if it considers that the Applicant would have had a chance of promotion had no irregularity been committed.

29. In *Lauritzen*, the Tribunal held that moral injury arising from a lawful decision cannot be compensated and that moral injury arising from an unlawful decision may be compensated provided evidence of the injury suffered is provided.

Legal assistance

30. In *Borg-Oliver* UNDT/2010/155, the Tribunal reiterated its jurisprudence in *Abu-Hawaila* that it cannot and should not, except in rare situations, excuse an Applicant for the failure of his/her Counsel to successfully defend his/her case.

Privileges and immunities

31. In *Bekele* UNDT/2010/175, the Tribunal held that:

- it was “not in the Organization’s interests that its standards are compromised in any way and for its staff or agents, to be treated below such standards by the authorities of a host country which clearly subscribes to and is bound by United Nations standards. For a host country to blatantly disregard its obligations by submitting UN staff, be they national or international, to degrading treatment, is a situation that this Organization must not be confronted with.”
- “Despite the abusive treatment occasioned to the Applicant, the Secretary-General made no representations to the Ethiopian Government through the appropriate channels. In actual fact, to illustrate the disregard of the applicable Staff Regulations and Staff Rules, the Respondent presented oral evidence that the applicant was advised by the UNECA Security Officer to file his complaints with the Addis Ababa Police Commission. (...) How did the Respondent expect the applicant to file a complaint to the very police force that he was accusing of cruelty and inhuman treatment, treatment that the Respondent in the person of the same Security Officer, had seen evidence of and expressed shock at?”
- “UNECA failed to assist the applicant in arranging legal counsel for his bail application and possible defence and failed to appear in the legal proceedings for the applicant’s bail to defend any United Nations’ interest that may have been affected by the applicant’s arrest and detention. The testimony of the Officer-in-Charge on the role of the UN in respect of ‘local staff’ in such situations, and his candor in saying as much, is unfortunate for the staggering lack of care that it showed.”

32. In *Kamunyi* UNDT/2010/214, the Applicant was arrested by the Kenya police without an official waiver of his immunity by the Secretary-General or protest by the organization as provided for by relevant rules and regulations. The Tribunal held that, while the ultimate responsibility for arrest lies with the local police, this does not relieve the Respondent from responsibility for the harm, both mental and physical, which was suffered by the Applicant due to the Respondent’s “failure to follow the correct process for a request for waiver of immunity”.

Demotion

33. In *Gaskins* UNDT/2010/119, the Tribunal considered the issue of whether it was consistent with the high standards set by the Charter of the United Nations, bulletins and issuances of the Secretary-General and the staff regulations, particularly staff regulation 1.2(c), to remove a staff member from his position and to deprive him of performing essential aspects of his duties solely as a response to an ultimatum by a project partner, in this case the Sudan Judiciary. The Tribunal held that “the conduct of the Administration in UNDP Sudan in reorganising the Applicant’s duties was not done in the interests of economy and efficiency but in response to a peremptory demand by the senior judiciary in Sudan based on what appears to be an unjustified sense of grievance against the Applicant who, it has to be observed, implemented proper financial control procedures in relation to the disbursement of DSA”.

Status of defence counsel at UN ad hoc Tribunals

34. In *Turner* UNDT/2010/170, the Tribunal held that counsel assigned by the Registrar to represent indigent accused persons before the International Criminal Tribunal for Rwanda were not staff members and did not hold the status of international civil servants. Counsel are not “appointed” by the Secretary-General, and are not subjected to the basic rights and obligations set

out in the Staff Regulations and Rules. They are free to engage in any outside occupation or employment, one of the pre-requisites being that counsel should be practising lawyers or University professors. The Applicant could not therefore successfully claim that she is a “staff member” or “staff” of the Secretariat, within the meaning of Article 97 of the Charter of the United Nations.

Compensation

35. In *Kamunyi* UNDT/2010/214, the Tribunal held that the remedy of rescission is not appropriate where the unlawfulness relates to procedural failures such as those which occurred in the handling of the request for waiver of immunity. However, the Applicant was entitled to compensation under Article 10.5 (b) for the negative effects of both the breaches and the failures of procedure.

36. In *Applicant* UNDT/2010/148, the Tribunal held that it is more appropriate to express compensation for emotional distress and injury in lump sum figures, not in net base salary, since such damages, unlike actual financial loss, are generally not dependent upon the applicant’s salary and grade level. The Tribunal also held that when basic fundamental human rights are at stake, a failure by the Organization to afford adequate consideration and protection of such rights may be an aggravating factor. In *Fayek* UNDT/2010/194, the Tribunal held that in assessing compensation only reasonable assumptions can be allowed, and that a staff member cannot have an unqualified legitimate expectation to work in any organization until her/his retirement age. In *Aly et al.* UNDT/2010/195, the Tribunal granted compensation for excessive delay in responding to the Applicants’ original request for reclassification and for the breach of their procedural rights.

Accountability

37. In *Kamunyi*, the Tribunal concluded that the actions of several UN officials were unlawful, careless or negligent but left it to the Secretary-General to take any disciplinary or other steps in the light of the findings in the judgment and in the interests of the maintenance of the rule of law in the United Nations.

Definition of an administrative decision

38. In *Jaen*, the Tribunal held that for an appeal against an administrative decision to be receivable, the contested decision has to affect the applicant’s—and not someone else’s—rights. In such instances, the application will generally be receivable, regardless of whether the alleged breach affected one or several staff members. In *Bernadel*, the Tribunal held that reiterations of the same decision in response to a staff member’s repeated requests to reconsider the matter do not reset the deadlines for appealing the decision.

Receivability

39. In *García* UNDT/2010/191, the Tribunal held that it is not the case that the only document capable of creating legally binding obligations between the Organization and its staff has to be called a “letter of appointment”. The Tribunal further held that parties may enter into a binding contract on a particular date with a future date for commencement of duties. In *Appleton* Order No. 289 (NY/2010), the Tribunal noted that from a due process standpoint it would be unfair to allow the Administration to avoid potential challenge of an administrative decision by merely cancelling a selection exercise until the staff member is no longer able to challenge the process as a result of separation from the Organization. In *O’Neill* UNDT/2010/203, the Tribunal held that it is its duty to examine receivability issues *ex officio*.

Abandonment of proceedings

40. In *de la Fayette* UNDT/2010/137, having been advised that the Applicant had passed away since filing and after having sent a letter to the Applicant’s Estate with no response, the Tribunal noted the importance of ensuring that only current proceedings be maintained before it and closed

the proceedings on the basis of lack of prosecution. In *Li* UNDT/2010/163, the Tribunal dismissed the case for want of prosecution, having found that the Applicant had failed to file her application within the time limits granted by the Tribunal and had demonstrated a lack of vigilance and diligence, and that she must be deemed to have abandoned the proceedings.

Conditions of work

41. In *Leboeuf et al.*, the Tribunal examined in detail the definitions of “scheduled workday” and “hours of work” in order to determine the scope and application of compensation for overtime.

Secretary-General’s discretion to withhold OIOS investigation reports

42. In *Klein* UNDT/2010/207, the Tribunal found for the Applicant on the basis that the discretion to withhold or modify an OIOS investigation report pursuant to General Assembly resolution 59/272 exists for reasons which include avoiding or minimising harm in circumstances such as where an OIOS report has been improperly concluded, and must be exercised reasonably.

Performance evaluation

43. In *Jennings*, the Tribunal held that, as soon as performance shortcomings are identified, appropriate steps to rectify the situation should be taken, in consultation with the staff member. Accordingly, performance improvement measures may be instituted based on the ongoing performance evaluation and prior to the finalization of the e-PAS report. The Tribunal also held that rebuttal proceedings constitute part of the performance evaluation process and must be completed with maximum dispatch. The rating resulting from the rebuttal process cannot be appealed.

Specific performance

44. In *Aly et al.*, the Tribunal held that the Secretary-General’s decision to allow the Applicants to resubmit their cases to the Classification Appeals Committee (CAC) within 90 days was reasonable and fair. The Tribunal ordered that, under its statutory provisions relating to specific performance, the case be remanded to the CAC for classification decisions.

Retaliation

45. In *Applicant* UNDT/2010/115, the Tribunal held that a number of adverse decisions which are justifiable do not constitute institutional retaliation. In *Shkurtaj* UNDT/2010/156, the Tribunal found that *prima facie* case of retaliation means there was an arguable—as distinct from proven—case that the Applicant was retaliated against.

APPENDIX II

Proceedings of the UNAT

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Introduction

1. A summary of the major legal pronouncements made by the UNAT in judgments rendered during its second and third sessions held from 21 June to 1 July and from 18 to 29 October 2010 is provided below. The summaries are not authoritative and the judgments cited below are not comprehensive. For a complete set of the judgments issued during the period covered by this report by the UNAT, the website of the UNAT (<http://un.org/en/oaj/appeals/>) should be consulted.

1. Anonymous evidence in disciplinary proceedings

2. In *Liyanarachchige* (2010-UNAT-087), the Tribunal determined that the UNDT erred in law by upholding the decision to summarily dismiss the staff member, which was taken in violation of the requirements of adversarial proceedings and due process. The Tribunal held that, while the use of statements gathered in the course of an investigation from witnesses who remain anonymous throughout the proceedings, including before the Tribunal, cannot be excluded as a matter of principle from disciplinary matters, a disciplinary measure may not be founded solely on anonymous statements.

2. Power to award interest and rate of interest to be awarded

3. In *Warren* (2010-UNAT-059), the Tribunal found that both the UNDT and the Appeals Tribunal have the power to award interest in the normal course of ordering compensation. Noting the inconsistent approach of the UNDT in several of its judgments, the Appeals Tribunal decided to award interest at the US Prime Rate applicable at the due date of the entitlement, calculated from the due date of the entitlement to the date of payment of the compensation awarded by the UNDT. The Appeals Tribunal further decided that its judgments must be executed within 60 days of the date the judgment is issued to the parties. If the judgment is not executed within 60 days, 5 per cent must be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment of the compensation.

4. One judge dissented, expressing the opinion that the UNDT exceeded its jurisdiction on the grounds that it did not have the statutory authority to impose interest and therefore erred in making an award of interest.

3. Interlocutory appeals

5. In *Bertucci* (2010-UNAT-062), the Tribunal determined that, generally, only appeals against final judgments are receivable. It observed that an interlocutory appeal is receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence, citing *Tadonki* (2010-UNAT-005), *Onana* (2010-UNAT-008), and *Kasmani* (2010-UNAT-011). The Appeals Tribunal would not interfere lightly with the broad discretion of the UNDT in the management of cases. Further, one of the goals of the new system of administration of justice is rendering timely judgments and cases before the UNDT could seldom proceed if either party were able to appeal interlocutory decisions. One judge dissented on the grounds that privilege, if claimed, is a threshold issue and must be determined finally before the trial may proceed. To do otherwise could lead to error by the trial judge that would result in a new trial. If the evidence in question is truly

privileged, it cannot be ordered to be produced as this would destroy the privilege. Also, if truly privileged, the trial judge would err in drawing an adverse inference against its non-production.

6. In *Wasserstrom* (2010-UNAT-060), the Tribunal, applying its Judgment in *Bertucci*, held that the interlocutory appeal from the decision of the UNDT, that the determination by the Director of the Ethics Office that no retaliation occurred constituted an administrative decision falling within the jurisdiction of the UNDT, was not receivable. The alleged lack of jurisdiction of the UNDT was not clearly established in this case: the question of whether there was an administrative decision required adjudication on the merits of the case and could not be the subject of an interlocutory appeal.

7. The Appeals Tribunal also held in *Wasserstrom* that the appeal against the UNDT's order for production of documents was also not receivable because it was interrelated with the alleged lack of jurisdiction. Interlocutory appeals on matters of evidence, procedure, and trial conduct were not receivable.

4. Payment of and maximum amount of compensation

8. In *Crichlow* (2010-UNAT-035), the Appeals Tribunal noted that the Secretary-General had already paid the damages awarded by the UNDT. By paying the judgment award, the Secretary-General accepted the UNDT Judgment and his cross-appeal was therefore moot.

9. In *Mmata* (2010-UNAT-092), the Appeals Tribunal affirmed the UNDT award of compensation for loss of earnings for the seven months from the date of his separation to the date of the UNDT Judgment (as an alternative to the order for reinstatement of the staff member) plus an additional amount in the sum of two years' net base salary. Because the total of these amounts exceeded the compensation limit of two years' net base salary, the UNDT gave reasons to justify an increased award under article 10.5 (b) of the UNDT Statute. In the opinion of the Appeals Tribunal, article 10.5 (b) of the UNDT Statute does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation. In addition to finding that the staff member was unfairly dismissed for serious misconduct, the UNDT found evidence of blatant harassment and an accumulation of aggravating factors that supported an increased award.

5. Damages awarded without evidence of economic loss

10. In *Abboud* (2010-UNAT-100), the Appeals Tribunal noted that the UNDT found that the irregularities did not create any economic loss or actual damage for the appellant. It also noted that the appellant had not requested any damages. Nonetheless, the UNDT awarded him damages. The Appeals Tribunal vacated the award of damages.