

Tenth Activity Report

Office of Administration of Justice

1 January to 31 December 2016

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I. Introduction

1. A new internal justice system for employment-related disputes at the United Nations was established by the General Assembly effective 1 July 2009.
2. 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”. In resolution 61/261, the 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”.
3. In resolution 71/266, adopted on 23 December 2016, the General Assembly noted with appreciation the findings of the Interim Independent Assessment Panel on the system of administration of justice 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”.
4. The Office of Administration of Justice (OAJ) is an independent office responsible for the overall coordination of the formal system of administration of justice, and for contributing to its functioning in a fair, transparent and efficient manner. OAJ provides substantive, technical and administrative support to the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) and the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) through their Registries; provides, through the Office of Staff Legal Assistance, staff members with independent legal advice and representation; and provides assistance, as appropriate, to the Internal Justice Council.¹
5. This tenth activity report prepared by the Office of Administration of Justice provides an overview of the work of OAJ, and aggregate data on the work of the Tribunals and of the Office of Staff Legal Assistance (OSLA). It covers the period 1 January to 31 December 2016. The report also includes summaries of some notable legal pronouncements by the Tribunals in 2016 on a range of subjects.

¹ ST/SGB/2010/3, section 2.1.

II. Office of Administration of Justice

6. During the reporting period, OAJ coordinated the preparation of two Secretary-General's reports:

- Secretary-General's Report on the Findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations, and revised estimates relating to the programme budget for the biennium 2016 - 2017 (A/71/163), in relation to the Panel's report (A/71/62/Rev.1);
- Secretary-General's Report on administration of justice at the United Nations (A/71/164).

7. OAJ provided additional information to the Advisory Committee for Administrative and Budgetary Questions (ACABQ) and the Fifth and Sixth Committees of the General Assembly, as requested, during their deliberations on the above reports. The General Assembly's consideration of the internal system of justice resulted in its resolution 71/266.

8. OAJ provided administrative and technical support, as appropriate, to the Internal Justice Council (IJC) in connection with its mandate, including with respect to its meetings and teleconferences and the preparation of its annual report to the General Assembly (A/71/158). 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. The members of the Council, whose mandate ends on 12 November 2020, are as follows (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 Gaziyev, staff representative
- Justice Yvonne Mokgoro, Chairperson.

9. Based on the public process to identify suitable candidates for judicial vacancies at the UNDT and the UNAT instituted by the IJC in 2015, the General Assembly filled seven judicial vacancies on 18 November 2015 from the candidates recommended by the IJC. The newly appointed judges took up their functions on 1 July 2016. At the request of the Presidents of both Tribunals, OAJ supported the Presidents in organizing induction programmes for the new judges. OAJ also assisted in facilitating the swearing-in ceremonies for the seven new judges in New York, Geneva and Nairobi. The new UNAT judges and the new UNDT half-time judge were sworn in by the Secretary-General in New York on 30 June 2016 and the two new UNDT judges were sworn in by the Directors-General of the United Nations offices at Geneva and Nairobi, on 1 July 2016.

10. OAJ continued to enhance online search capabilities for users of the jurisprudential search engine by making more advanced search features available, enhanced the Court Case Management System platform for electronic filing and data reporting purposes, and updated the OAJ website as

required. There were 108,225 visitors to the OAJ website in 2016, of which nearly 33 per cent were new visitors.

11. OAJ continued to disseminate information about the system of administration of justice through outreach and training activities and the OAJ website. Outreach activities provided valuable opportunities to inform staff members, managers and staff representatives of the internal justice system. It is one observation from the outreach activities that many staff members still appear to have limited awareness of the system, including how to access its available remedies. In organizing outreach activities, OAJ partners with hosting entities.

12. OAJ also organized professional development and skills training for legal officers and legal assistants working in the internal justice system.

III. The United Nations Dispute Tribunal

A. Composition

12. During the reporting period, the Dispute Tribunal was composed of six full-time and two half-time judges. The seven-year mandates of three judges, Judge Vinod Boolell (Mauritius), Judge Thomas Laker (Germany) and Judge Coral Shaw, (New Zealand) expired on 30 June 2016. On 1 July 2016, two new full-time judges, Judge Teresa Maria da Silva Bravo (Portugal) and Judge Agnieszka Klonowiecka-Milart (Poland), and one half-time judge, Judge Alexander W. Hunter Jr. (United States of America), began their seven-year terms.

13. By resolution 71/266, the General Assembly extended the term of the three ad litem judges for one year, from 1 January to 31 December 2017.

14. During the reporting period, the judges of the UNDT held two plenary meetings, one in Nairobi from 16 to 20 May 2016, and one in Geneva from 7 to 11 November 2016. Judge Rowan Downing was elected President of the UNDT for a one-year term commencing on 1 July 2016.

B. Judicial activities

1. Caseload

15. In 2016, 383 new applications² were received and 401 applications were disposed of. As at 1 January 2016, 275 applications were pending with the UNDT. On 31 December 2016, 257 applications remained pending.

16. The new applications included two notable groups: one group of applications related to a periodic salary survey³ remanded back to the UNDT by the United Nations Appeals Tribunal, and another group of applications related to non-renewal of fixed-term appointments because of abolitions of posts in MONUSCO.

17. Table 1 below shows the number of applications received, disposed of and pending for previous years. Table 2 shows the breakdown by duty station.

² For the purpose of this Activity Report, the term “Applications” includes any application, motion or other request brought before the UNDT which results in the registration of a case.

³ This group was described in the Secretary-General’s reports on the administration of justice at the United Nations A/70/187, para. 7, and A/71/164, para. 12.

Table 1: Applications received, disposed of and pending: 2009 to 2016

UNDT	Received ⁴	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	401⁵	257
Total	2648	2391	---

Table 2: Applications received, disposed of, pending by duty station: 2009 to 2016

UNDT	Received			Disposed of			Pending (end of year)		
	GVA	NBI	NY	GVA	NBI	NY	GVA	NBI	NY
2009	108	74	99	57	19	22	51	55	77
2010	120	80	107	101	59	76	70	76	108
2011	95	89	97	119	59	93	46	106	112
2012	94	78	86	106	76	78	34	108	120
2013	75	96	118	77	103	145	32	101	93
2014	209	115	87	67	128	125	174	88	55
2015	182	190	66	285	127	68	71	151	53
2016	215	92	76	147	163	91	139	80	38
Total	1098	814	736	959	734	698	---	---	---

2. Number of judgments, orders and court sessions

18. Table 3 shows the total number of judgments, orders and court sessions from 1 July 2009 to 31 December 2016. 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.

⁴ These figures include applications for suspension of action. There were 56 requests for suspension of action received in 2016.

⁵ This figure reflects 220 judgments, four of which disposed of multiple applications; one additional judgment on an application for interpretation of judgment (221 judgments in total); 56 applications for suspension of action disposed of by order (four of which were withdrawals); 60 other withdrawn applications closed by order (including as a result of informal resolution); 20 applications closed by inter-registry transfer on the basis of UNDT orders; and 25 applications closed for want of prosecution. Of the 401 applications disposed of, 152 were filed in 2016, 163 in 2015, 72 in 2014, 10 in 2013 and 4 in 2012.

Table 3: Judgments, orders and court sessions: 2009 to 2016

UNDT	Judgments	Orders	Court Sessions ⁶
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	221⁷	1036⁸	183
Total	1417	5861	1720

Table 4: Judgments, orders and court sessions by duty station: 2009 to 2016

UNDT	Judgments			Orders			Court sessions		
	GVA	NBI	NY	GVA	NBI	NY	GVA	NBI	NY
2009	44	20	33	39	26	190	21	33	118
2010	83	52	82	93	248	338	54	116	91
2011	86	52	81	224	144	304	54	117	78
2012	79	65	64	172	183	271	24	88	75
2013	41	67	73	201	219	355	32	114	72
2014	37	67	44	197	275	355	31	119	108
2015	48	40	38	272	405	315	58	66	68
2016	64	107	50	250	501	285	55	60	68
Total	482	470	465	1448	2001	2413	329	713	678

3. Sources of applications

19. The categories of applicants who filed applications in 2016 were as follows: Director (20); Professional (113); General Service (153); Field Service (19); Security (16); National Staff (40); others (22).

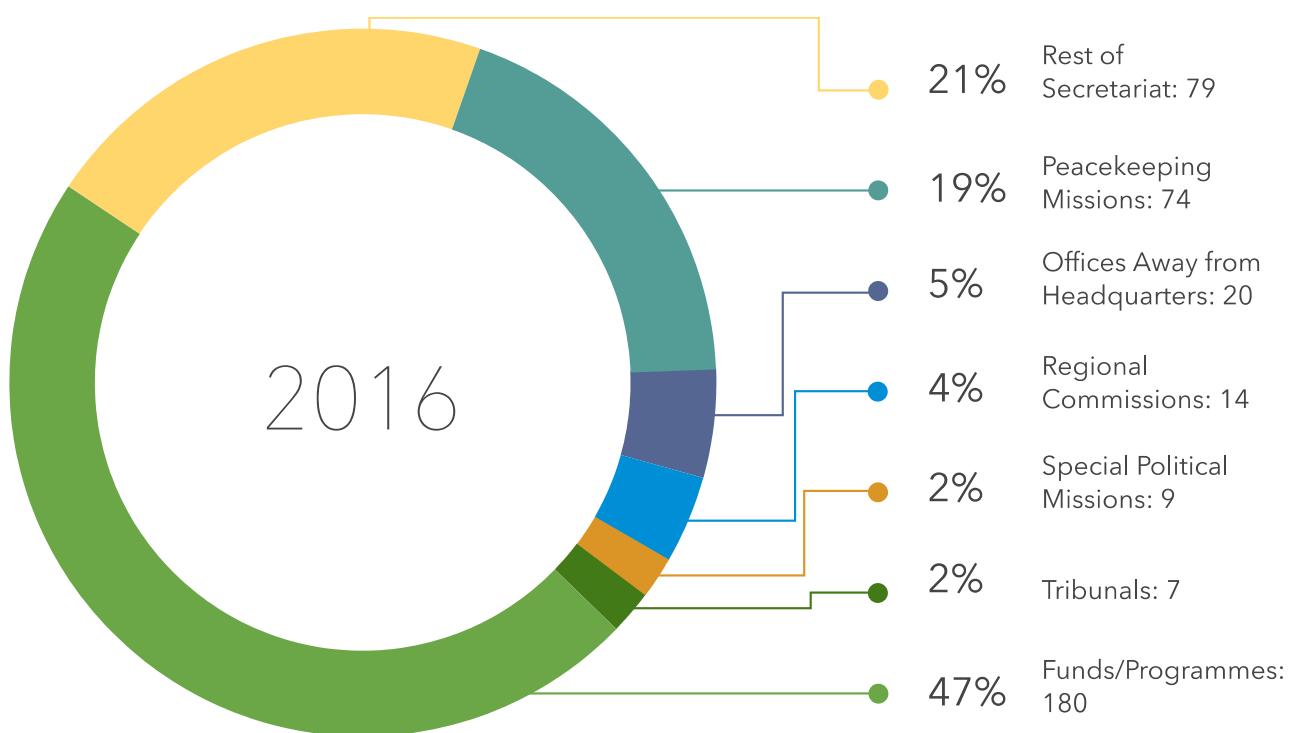
⁶ A “court session” is a statistical unit used to ensure consistency among the three Registries in reporting on hearings. A hearing may consist of up to three daily court sessions (morning, afternoon, evening) and may be held over several days. The court sessions included 66 “case management discussions”.

⁷ The 221 judgments disposed of 247 applications (three judgments disposed of 24 related applications, one judgment disposed of seven applications), one application was disposed of by two consecutive judgments, one judgment disposed of an application for interpretation, and one judgment disposed of one application which was not pursued by the applicant.

⁸ This figure includes orders that disposed of 154 applications (including 56 suspensions of action applications; 44 withdrawals; 20 inter-Registry transfers (technically counted as disposals); 25 applications were closed for want of prosecution; 514 orders relating to case management; 73 orders relating to extension of time and 264 other orders.

20. The 383 applications received during the reporting period were filed by staff members in many UN entities, as illustrated in Chart 1 below.

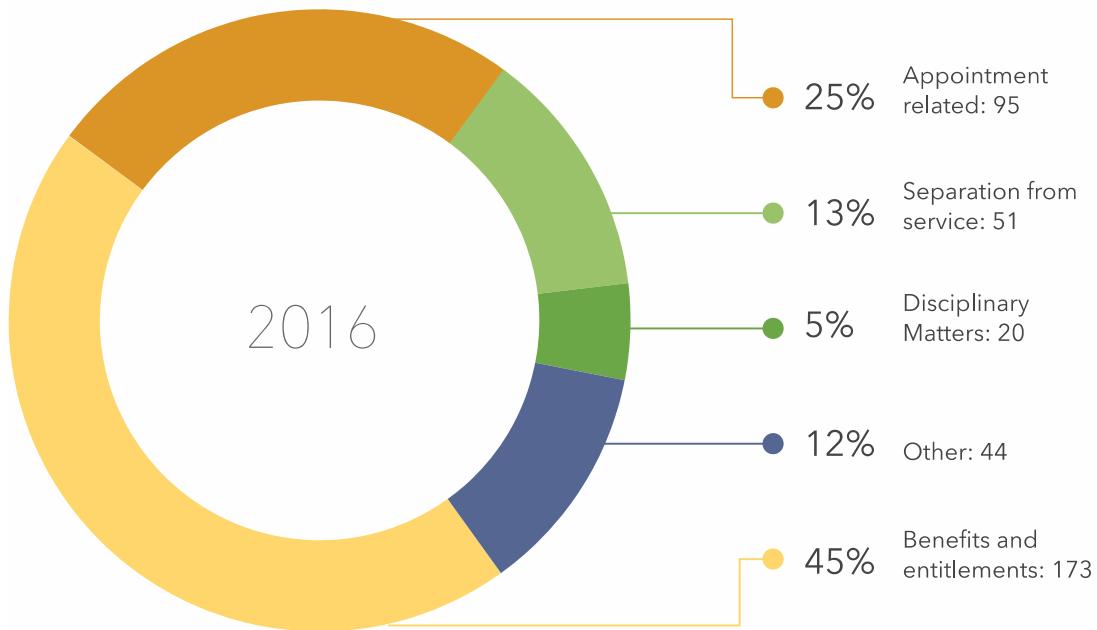
Chart 1: Breakdown of applications received in 2016 by entity of the staff member



21. 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

22. The subject matter of applications received during the reporting period fell into five main categories: (1) benefits and entitlements: 173 applications; (2) appointment-related matters (non-selection, non-promotion and other related matters): 95 applications; (3) separation from service (non-renewal and other separation matters): 51 applications; (4) disciplinary matters: 20 applications; (5) other: 44 applications. This is illustrated in Chart 2 below.

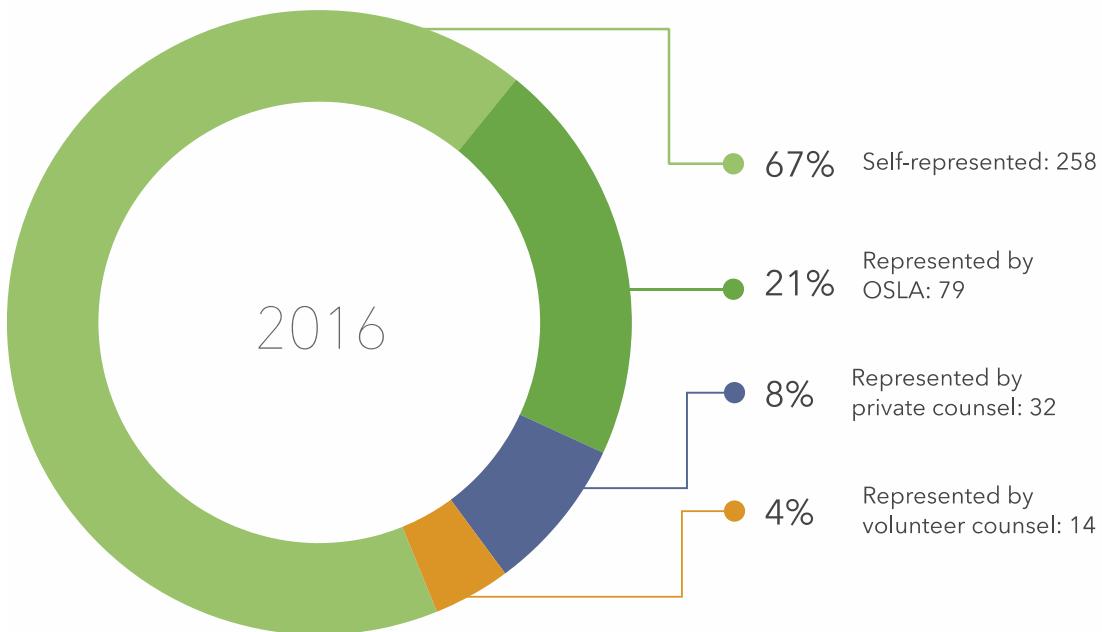
Chart 2: Applications received in 2016 by subject matter

5. Representation of staff members

23. OSLA provided representation before the UNDT in 79 of the 383 applications received in 2016.⁹ Staff members were represented by private counsel in 32 applications, by volunteers who were either current or former staff members of the Organization in 14 applications and were self-represented in 258 applications. This is illustrated in Chart 3 below.

⁹ OSLA's data on representation before the UNDT may differ because OSLA collects its data in a broader manner. OSLA became co-counsel only in 2016 with respect to a number of applications filed with the UNDT in 2015, while OSLA also included cases in its count which were received in earlier years but remain pending.

Chart 3: Representation of staff members for applications received in 2016



6. Informal resolution

24. As a result of the UNDT's case management leading to informal settlement, referrals by the UNDT to mediation by the Office of the Ombudsman and Mediation Services (UNOMS), withdrawal by applicants following informal settlement *inter partes*, or otherwise, 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

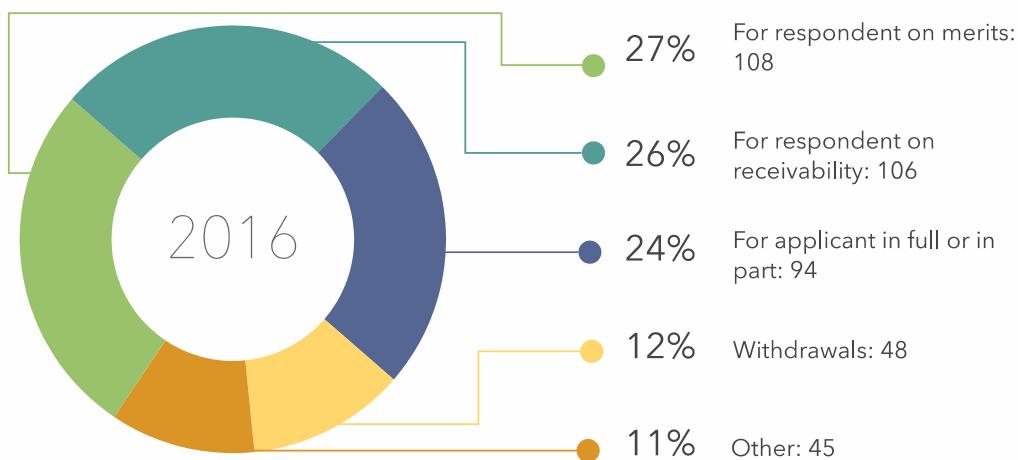
25. In 2016, six applications were successfully mediated by UNOMS following a referral by the UNDT under Article 10.3 of its Statute.

8. Outcomes

26. The outcomes of the 401 applications disposed of by the UNDT in 2016 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".

27. In 2016, the applications rejected on receivability included 49 related applications concerning downsizing in a peacekeeping mission, and 24 related applications concerning measures based on the results of a local salary survey.

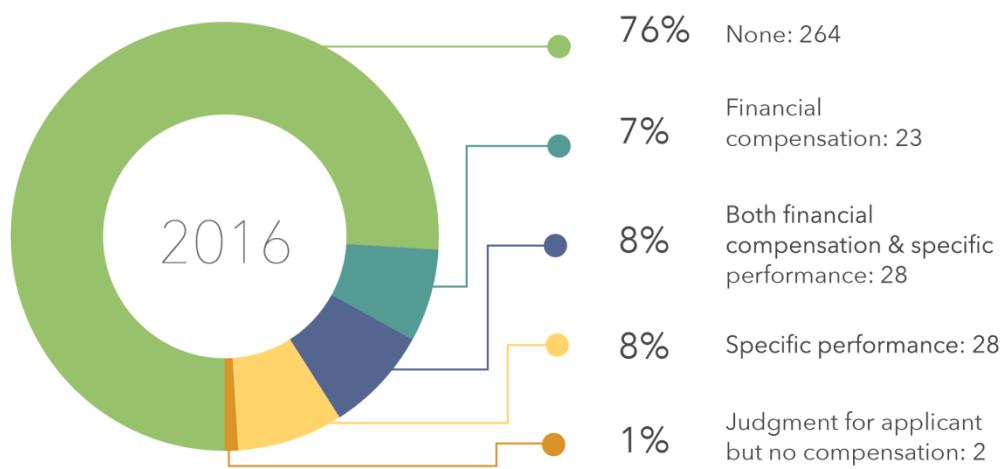
Chart 4: Outcome of applications disposed of in 2016¹⁰



9. Relief

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

Chart 5: Relief granted to applicants in 2016¹¹



¹⁰ This includes applications for suspension of action.

¹¹ This does not include applications for suspension of action as the only relief is the granting or rejection of such an application.

10. Referral for accountability

29. The UNDT made one referral for accountability under article 10.8 of its Statute.¹²

11. Jurisprudence

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

12. Outreach

31. In 2016 the UNDT Geneva Registry conducted a joint outreach mission with OSLA hosted by the United Nations Office at Vienna (UNOV), and participated with OSLA and regional ombudspersons of the Office of the United Nations Ombudsman and Mediation Services (UNOMS) in regular outreach activities organized locally by UN entities for newly on-boarded staff members.

¹² UNDT/2016/094.

IV. The United Nations Appeals Tribunal

A. Composition

32. The Appeals Tribunal is composed of seven judges. The seven-year mandates of four judges, Judge Inés Weinberg de Roca (Argentina), Judge Luis María Simón (Uruguay), Judge Sophia Adinyira (Ghana) and Judge Mary Faherty (Ireland), expired on 30 June 2016. On 1 July 2016, four new judges, Judge John Raymond Murphy (South Africa), Judge Dimitros Raikos (Greece), Judge Sabine Knierim (Germany) and Judge Martha Halfeld Furtado de Mendoça Schmidt (Brazil), began their seven-year terms.

33. 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.

B. Judicial work

1. Sessions

34. UNAT held three sessions in 2016: a spring session (14 to 25 March 2016), a summer session (20 to 30 June 2016) and a fall session (17 to 28 October 2016). 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 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), and the International Tribunal for the Law of the Sea (ITLOS). UNAT held two oral hearings in 2016.

2. Caseload

35. In 2016, 170 new appeals were received and 221 appeals were disposed of. As at 1 January 2016, 147 appeals were pending. On 31 December 2016, 96 appeals remained pending.

36. Table 5 below shows the number of appeals received, disposed of and pending for 2016 and previous years.

Table 5: Appeals received, disposed of and pending: 2009 to 2016

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
Total	1047	951	---

37. Table 6 below shows the number of interlocutory motions received in 2016 and previous years.

Table 6: Interlocutory motions received: 2010 to 2016

UNAT	Received
2010	26
2011	38
2012	45
2013	39
2014	84
2015	81
2016	45
Total	358

3. Sources of appeals

38. The 170 new appeals filed in 2016 included 148 appeals against judgments of the UNDT (105 filed by staff members and 43 filed on behalf of the Secretary-General); four appeals of decisions of the Standing Committee acting on behalf of the UNJSPB; 12 appeals against judgments rendered by the UNRWA Dispute Tribunal (all brought by staff members); one appeal against a decision of the Secretary General of the ICAO; and one appeal against a decision of the Registrar of the ICJ. They also included three applications for revision of UNAT judgments and one application for interpretation of a UNAT judgment.

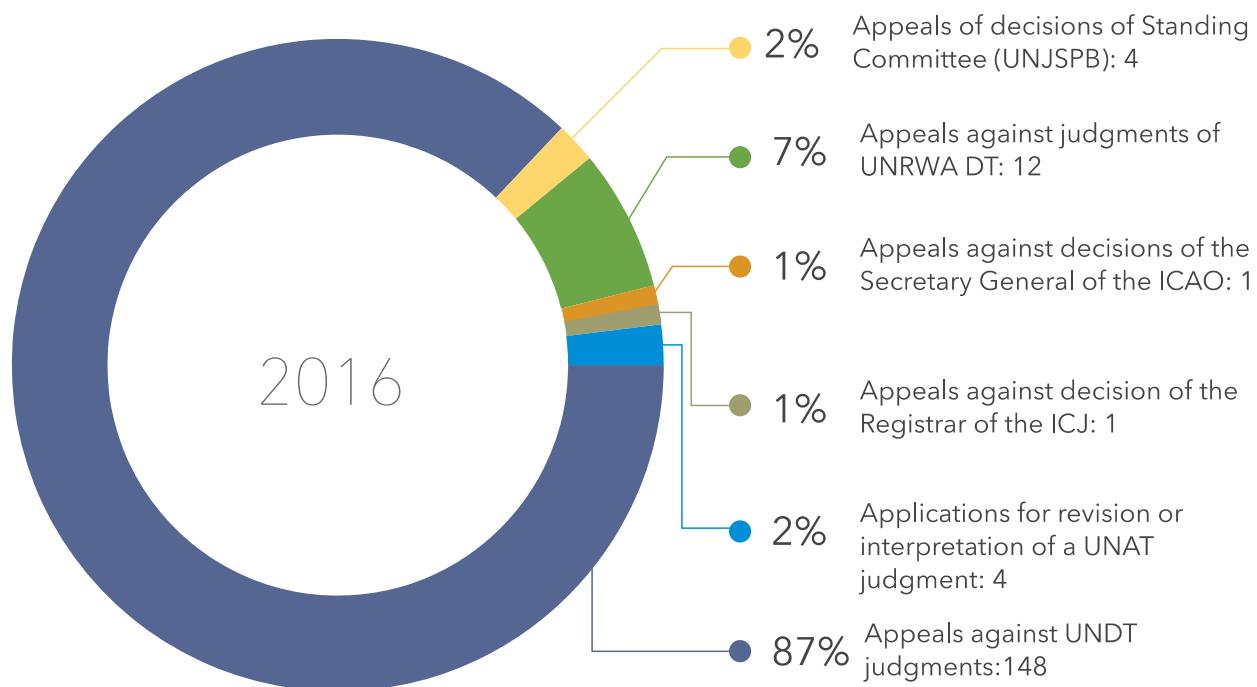
39. The ratio of appeals filed by staff members compared to those filed on behalf of the Secretary-General changed from 2015 to 2016. In 2015, 89 per cent of the appeals were filed by staff members and 11 per cent were filed on behalf of the Secretary-General, while in

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

2016, 71 per cent of the appeals were filed by staff members and 29 per cent were filed on behalf of the Secretary-General.

40. Chart 6 shows the breakdown of the appeals received in 2016.

Chart 6: Breakdown of the appeals received in 2016



41. Table 7 reflects a breakdown of UNAT judgments, orders and hearings for the period 2009 to 2016.

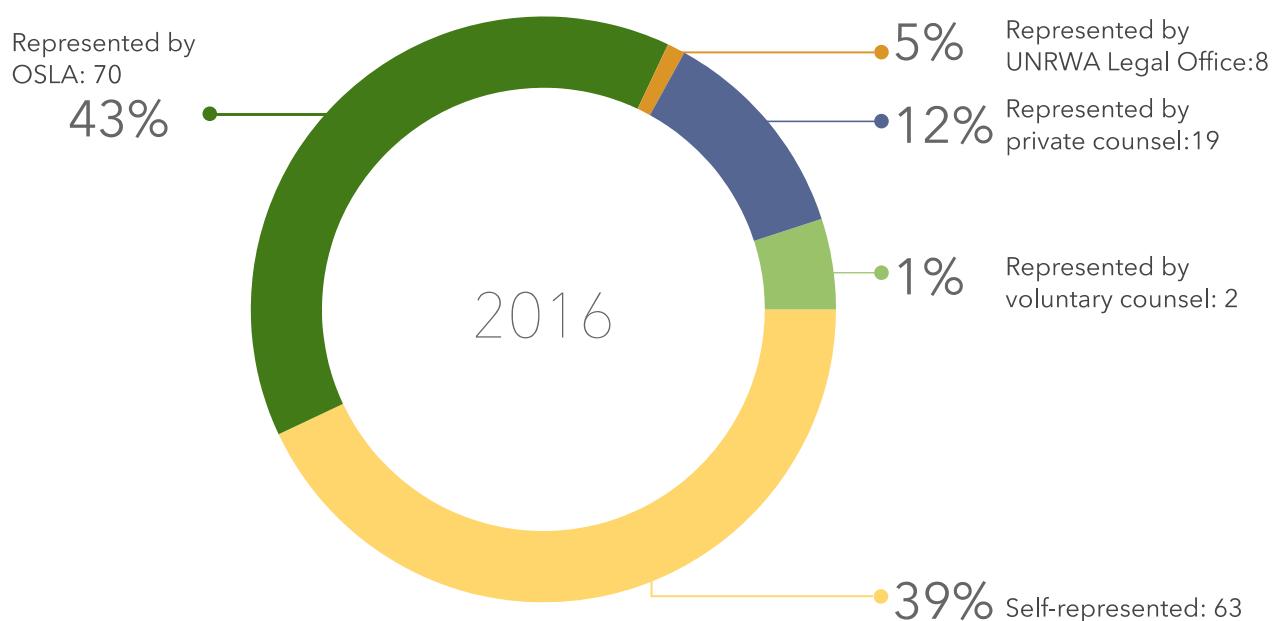
Table 7: UNAT judgments, orders and hearings: 2009 to 2016

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
Total	711	274	25

4. Representation of staff members

42. In 70 of the 170 appeals received during the reporting period, OSLA represented 70 staff members.¹⁴ In eight of the appeals, staff members were represented by the UNRWA Legal Office – Staff Assistance, in 26 appeals staff members were represented by private counsel, in three appeals by voluntary counsel, and in 63 appeals staff members were self-represented. This is illustrated in Chart 7 below.

Chart 7: Representation of staff members



5. Outcomes

43. The 101 judgments rendered by UNAT in 2016 disposed of 218 appeals. The Appeals Tribunal disposed of 187 appeals against Dispute Tribunal judgments (in 74 UNAT judgments), two appeals against ICAO decisions, one appeal against an ITLOS decision, two appeals against decisions of the Standing Committee of the UNJSPB and 22 appeals against UNRWA Dispute Tribunal judgments (in 19 UNAT judgments). The Appeals Tribunal also rendered four judgments on applications for interpretation and revision, which are included in the count of 218. UNAT further considered three cross-appeals, which it disposed of in the respective judgments on the appeals; the cross-appeals are not counted separately.

¹⁴ UNAT counts appeals by applicant, 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.

44. Overall, UNAT disposed of 218 appeals by judgment (two applications from ICAO staff; one application from ITLOS staff; 187 appeals against UNDT judgments; two applications against UNJSPB Standing Committee decisions; 22 appeals against UNRWA Dispute Tribunal judgments and four interpretation/revision cases), and closed three appeals by judicial order or administratively.

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

46. UNAT rendered 19 judgments, disposing of 21 appeals filed by UNRWA staff members and one appeal filed by the UNRWA Commissioner-General.

47. UNAT rendered two judgments disposing of appeals filed by ICAO staff members.

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

49. UNAT rendered four judgments disposing of four applications by staff members for interpretation or revision of judgments.

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

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

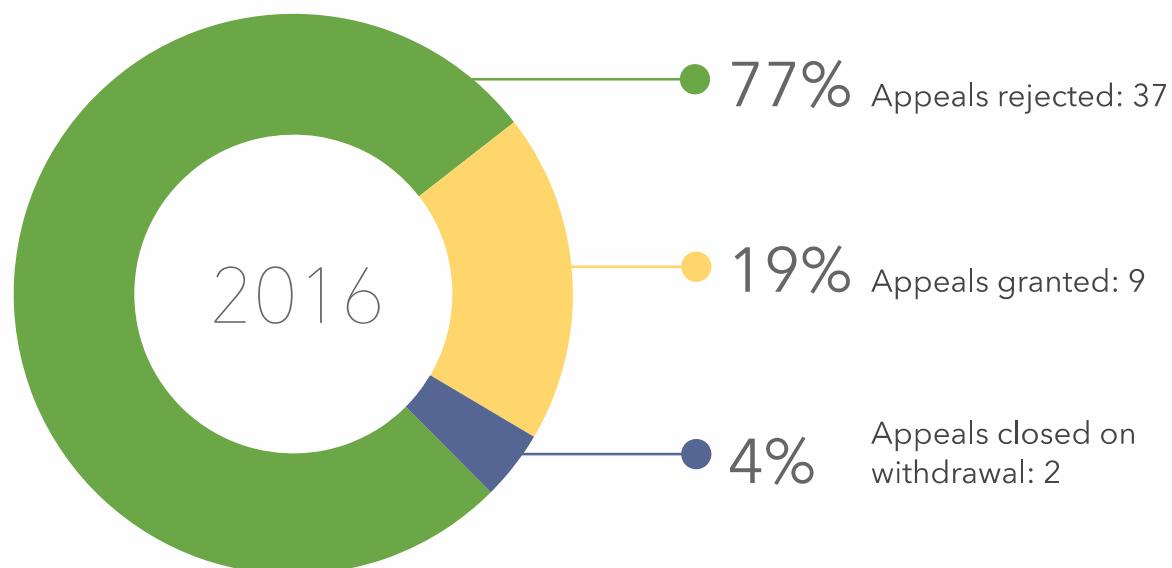
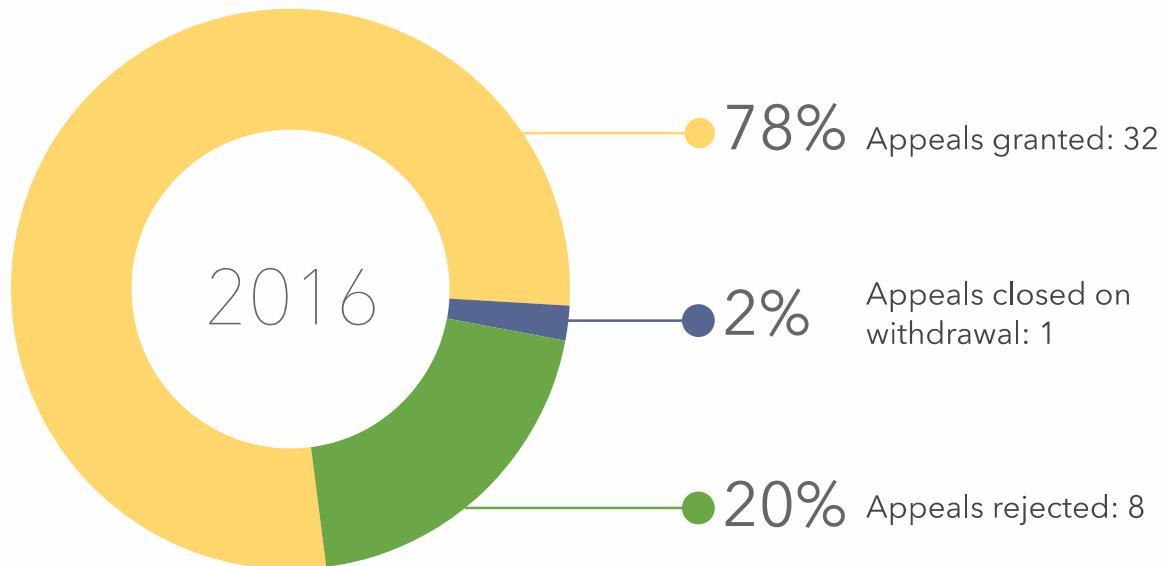


Chart 9: Outcome of appeals against UNDT judgments filed on behalf of the Secretary-General



6. Relief

Appeals against UNDT judgments

51. In two appeals, UNAT vacated or modified the award of compensation and vacated the specific performance ordered by the UNDT. In 35 appeals, UNAT vacated or modified the compensation awarded by the UNDT and in five appeals UNAT vacated the UNDT's specific performance order.

52. UNAT remanded 108 appeals to the Dispute Tribunal. This included the remand of one cluster of 98 appeals.

Appeals against decisions of the Standing Committee of the UNJSPB

53. In two judgments, UNAT dismissed the appeals against decisions of the Standing Committee of the UNJSPB.

Appeals against decisions by the Secretary General of ICAO

54. In two judgments, UNAT dismissed the appeals against decisions by the Secretary General of ICAO.

Appeal against decision by ITLOS

55. In one judgment, UNAT dismissed the appeal against the decision by ITLOS.

Appeals against UNRWA DT judgments

56. In one judgment, UNAT ordered compensation where none was ordered in the first instance.

Costs

57. In three judgments, UNAT vacated an order of costs against staff members. In one appeal, UNAT awarded costs against UNRWA staff members. In one appeal, UNAT affirmed the orders of costs against the concerned staff member.

7. Jurisprudence

58. In 2016, the UNAT rendered a number of legal pronouncements on a range of subjects, some of which are summarized in Appendix III.

V. The Office of Staff Legal Assistance

A. Framework

59. OSLA continued to provide legal advice and representation to UN staff at all levels world-wide. A wide range of employment matters, from non-appointment to termination, claims of discrimination/harassment/abuse of authority, pension benefits, disciplinary and misconduct cases, and other rights and entitlements under the staff rules.

B. Outreach and training activities

60. In 2016, OSLA visited one peacekeeping mission, as well as the United Nations Office at Vienna. OSLA participated in regular outreach and training activities for UN staff members in the five duty stations with an OSLA presence in addition to outreach and training activities organized by staff associations at those duty stations.

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

62. During 2016, OSLA explored possibilities for targeted outreach in 2017, continuing to focus on areas where there are large numbers of UN staff with little or no visible presence of the internal justice system, to include Latin America and Asia, and West and Central Africa.

C. Case statistics

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

1. Requests for legal assistance

63. In 2016 OSLA's workload included 2,034 requests for legal assistance. Of these, 1,756 were newly opened in 2016 and 278 were carried over from previous years. 1,802 were closed or

resolved in 2016. As at 31 December 2016, there were 232 requests pending. The numbers of requests received by year and their breakdown by recourse body is illustrated in the table below.

Table 8: Numbers and types of requests for legal assistance received: 2009 to 2016

Year	Summary Advice	Management Evaluation	UNDT	UNAT	Disciplinary	Other Recourse Bodies	Total requests by year	Pending Requests
2009	171	62	168	13	156	31	601	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	1029	234
2013	491	116	70	33	37	18	765	213
2014	798	210	102	15	44	11	1180	222
2015	830	196	415	16	33	12	1502	278
2016	1006	319	71	322¹⁵	35	3	1756	232
Total	4596	1310	1114	490	475	125	8108	

64. The nature of “Summary Advice” requests vary. They often result in informal resolution of issues. They involve gathering information; conducting legal research; identifying strengths and weaknesses of a case; 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 MEU or the Tribunals, or in cases of alleged misconduct, writing to the Administration, or otherwise representing a staff member.

65. “Management Evaluation” cases are those requests where OSLA holds consultations and provides legal advice to staff members; drafts management evaluation requests on their behalf; holds discussions with the MEU or equivalent entity within the Funds and Programmes; and negotiates settlements or agreed outcomes. “Disciplinary” cases are those where OSLA provides assistance to staff members in responding to allegations of misconduct under the staff rules.

66. In cases before the Tribunals, OSLA holds consultations and provides legal advice to staff members, drafts submissions on their behalf, provides legal representation at oral hearings, holds discussions with opposing counsel and, to the extent possible, negotiates settlements. OSLA similarly provides advice and assistance in submissions and processes before other formal bodies, and represents staff in mediation.

¹⁵ There were a total of 28 appeals before UNAT, but these included two joinder cases, one with 245 staff members and one with 51. OSLA counts each staff member client as a separate “case” or request.

2. Breakdown of requests

67. The charts and tables below provide a breakdown of the 1,756 requests OSLA received in 2016.

Chart 10: New requests by recourse body in 2016¹⁶

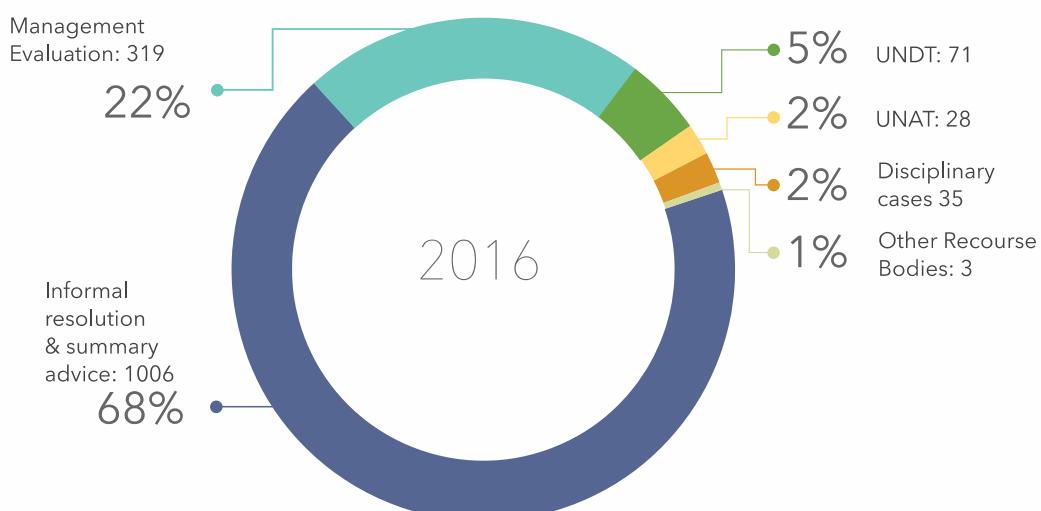
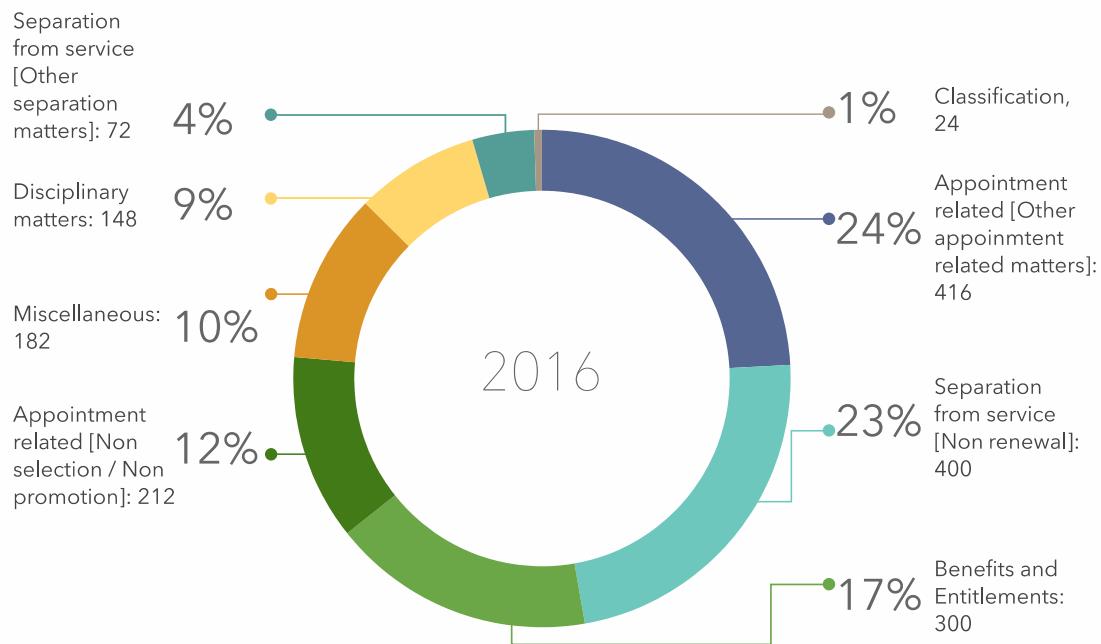
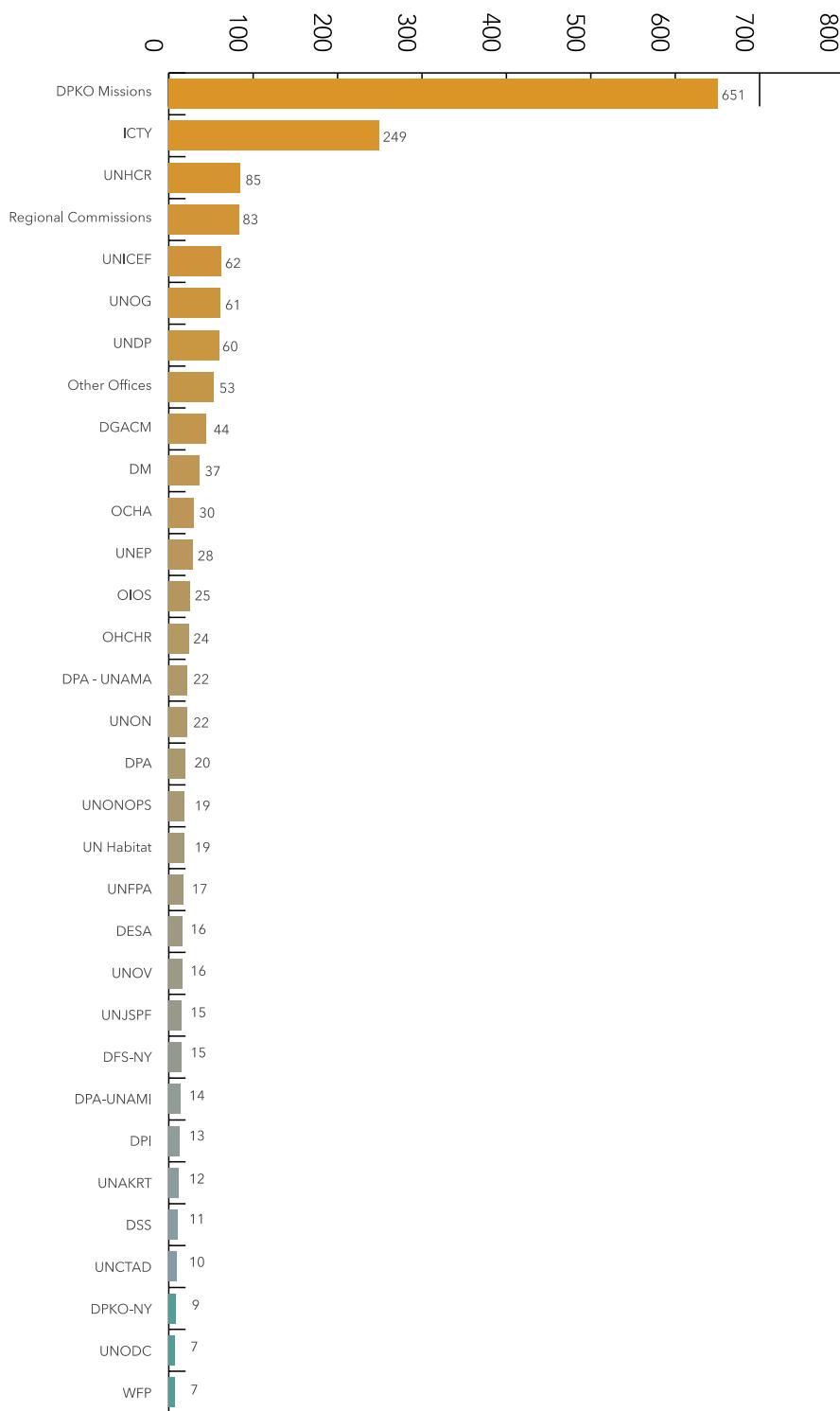


Chart 11: New requests by subject matter in 2016

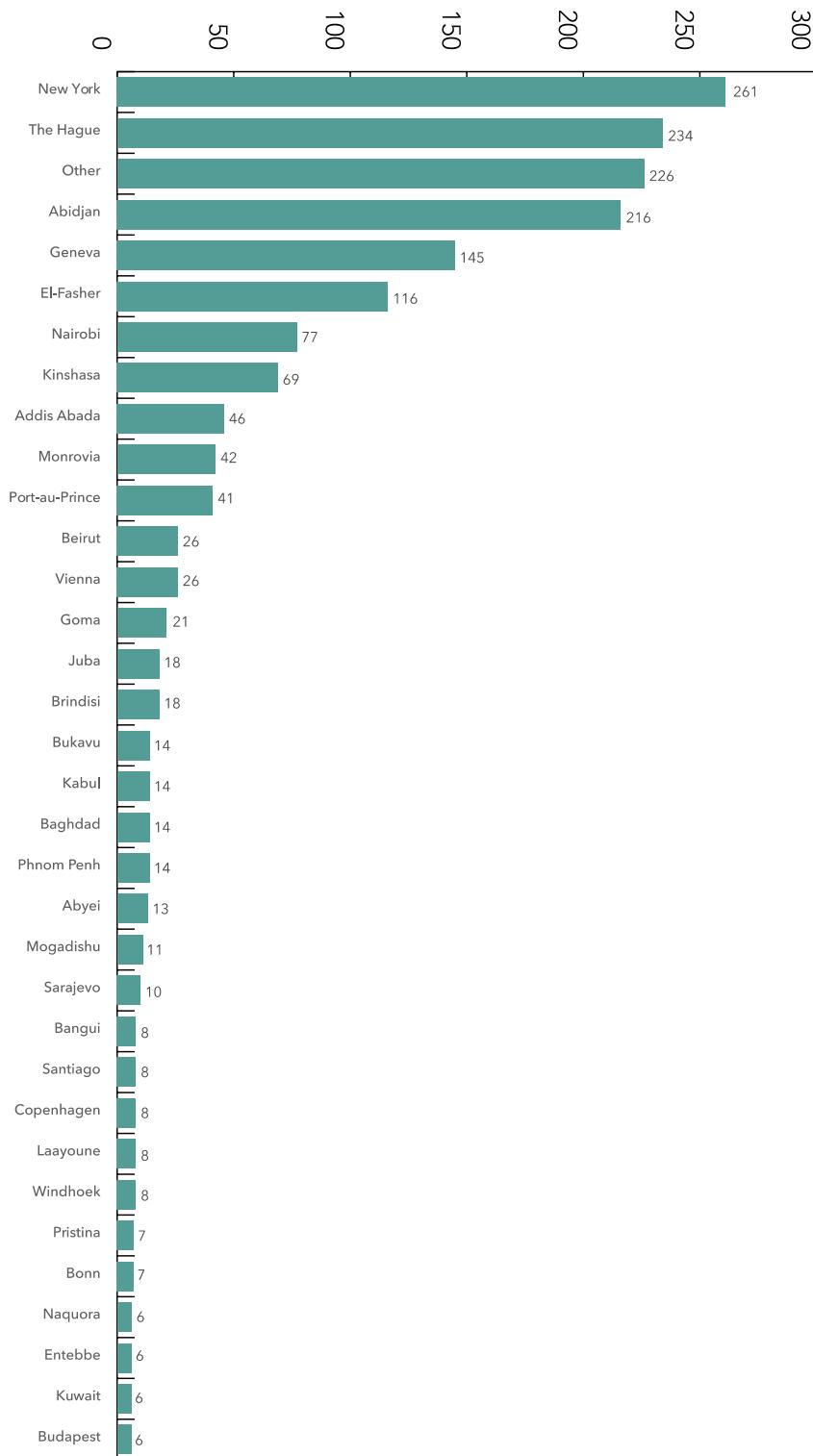


¹⁶ In contrast to Table 8 above, in Chart 10 each appeal to UNAT is counted as one, even where there are multiple joined cases; this better represents the proportion of OSLA's work relating to UNAT.

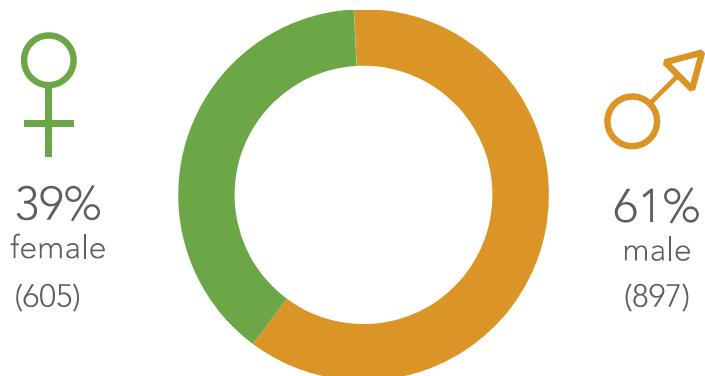
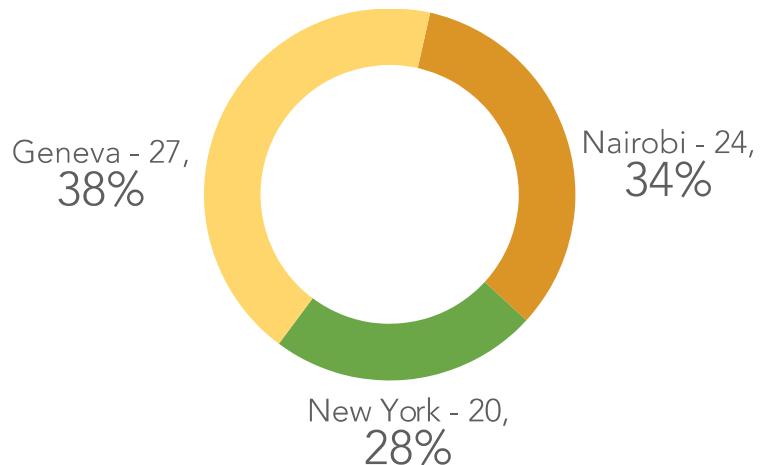
Chart 12: New requests by employing office¹⁷



¹⁷ The column “Other Offices” includes other UN offices with five or fewer requests during the reporting period.

Chart 13: New requests by duty station¹⁸

¹⁸ The column “Other Offices” refers to duty stations with five or fewer requests.

Chart 14: New requests by gender**Chart 15: New requests before the UNDT by location**

3. Informal resolution and settlement

68. In 2016, 68 per cent of requests were resolved informally and 58 requests were settled by formal means. Formal “Settlement” means a negotiated agreement and does not include cases where, for example, the Respondent conceded or the Management Evaluation Unit declared a case moot. This figure includes requests which were opened in previous years but were closed in 2016 as a result of settlement, as well as new requests opened and closed in 2016 as a result of settlement. Table 9 shows the breakdown by the forum (i.e., relevant recourse body) in which they settled.

Table 9: Requests settled and closed in 2016 by recourse body

Recourse Body	Total Number of Cases in 2016	Total Number of Cases Settled in 2016	UNDT
UNDT	71	15	21.12%
Management Evaluation Unit	319	27	8.46%
Administration – Disciplinary Cases	35	1	2.85%
Ombudsman – Mediation Cases	2	1	50%
Summary Advice	1006	14	1.39%
Total	1433	58	

APPENDIX I: UNDT APPLICATIONS RECEIVED IN 2016 – BY EMPLOYMENT ENTITY

UN Secretariat (Headquarters)	DESA	3
	DGACM	4
	DM	3
	DPI	7
	DFS	2
	DSS	12
	DPKO	1
	OCHA	1
	OIOS	18
	DPA	2
	OLA	1
	UN-OHRLLS	2
Total		56
UN Secretariat Offices Away from Headquarters	UNOG	14
	UNOV	5
	UNON	1
	Total	20
Peacekeeping missions	MINUSTAH	7
	MONUSCO (former MONUC)	18
	UNAMID	4
	UNDOF	2
	UNIFIL	2
	UNLB	4
	UNMIK	1
	UNMIL	4
	UNMISS	8
	UNOCI	4
	MINURSO	1
	MINUSMA	1

	UN SOS	2
	Other	16
	Total	74
Regional Commissions	ECA	6
	ECE	1
	ECLAC	3
	ESCAP	3
	ESCWA	1
	Total	14
Special political missions	UNAMA	6
	UNSMIL	2
	Other political	1
	Total	9
Tribunals	ICTR	3
	ICTY	2
	UNAKRT	2
	Total	7
Agencies/Funds/Programmes/Other UN entities	UNCTAD	6
	UNDP	50
	UNEP	1
	UNFPA	39
	UNFCCC	3
	UNHCR	38
	UNICEF	47
	UNODC	1
	UN-Women	6
	UNOPS	4
	WFP (local staff)	1
	Other	7
	Total	203
Grand total		383

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 2016 are provided below. They are for illustrative purposes only and are not authoritative, representative or exhaustive. The complete set of UNDT judgments issued in 2016 is available on the OAJ website (<http://un.org/en/oaj/dispute>). 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/2016/020 - Non-renewal – non-reassignment - due process - procedural flaw – lack of full and fair consideration

2. The Applicant challenged the decision of the United Nations Mission in Liberia (Mission) to not renew his fixed-term contract and to separate him from service on 9 August 2013. At the time, the Applicant was Chief Judicial Affairs Officer at the D-1 level heading the Legal and Judicial Systems Support Division (LJSS). He was also a rostered candidate for the D-1 position of Chief, Rule of Law.
3. In September 2012, the Special Representative of the Secretary-General (SRSG) decided that the Mission undertake a comprehensive review of its civilian staff in line with Security Council resolution 2066 (2012) and General Assembly resolution 66/264 with a view to aligning the Mission's staffing structure to support the requirements of the Mission's mandate.
4. The report of the Secretary-General on the proposed restructuring of the Mission was reflected in the 2013/14 budget in February 2013 and submitted to the General Assembly. The report included a proposal to dissolve the LJSS Division and restructure the Rule of Law component of the Mission according to three thematic areas: access to justice and security, training and mentoring, and legal and policy reforms. The report proposed the creation of a Director, Rule of Law post in the Office of the Deputy SRSG, to be accommodated through the reassignment of the Applicant's post from the LJSS Division. The report further proposed the reassignment of two P-5 posts in LJSS and the redeployment of 32 posts under the proposed structure.
5. The Advisory Committee on Budgetary and Administrative Questions endorsed the budget proposal in April 2013. In anticipation of General Assembly approval of the budget, the Mission reassigned the two P-5's and the 32 other staff members, and proceeded to not renew the Applicant's contract by communication of 22 May 2013 to him. The Mission also issued a vacancy announcement for the new D-1 Principal Rule of Law Officer.
6. The Applicant requested management evaluation of the non-renewal decision on 20 June 2013. On 9 August 2013, the Under-Secretary-General, Department of Management informed the Applicant of his decision to uphold the decision.

7. The UNDT determined that the Applicant's former post of Chief Judicial Affairs Officer effectively did not cease to exist but was reassigned to fund the new D-1 position in the office of the Deputy SRSG, Rule of Law. A comparison of the functions of the new D-1 position with the functions performed by the Applicant as Chief of the LJSS Division, and taken together with the functions of the generic position of Chief Rule of Law and Security Institutions Support Office in Peacekeeping missions for which the Applicant was rostered, showed that there was a significant degree of similarity.

8. In the view of the Tribunal, the Respondent failed to show why he made no effort to consider reassigning the Applicant to the new position, given the latter's relevant prior professional experience as Chief of the LJSS Division and given that all other staff from his Division had been reassigned or redeployed. Neither the Applicant nor the LJSS Division which he headed posed any obstacle to any changes and reforms aimed at greater integration in the Rule of Law pillar. In fact, evidence showed that the Applicant had actively worked towards integration of the thematic issues.

9. No comparative review or any review at all was conducted to determine the suitability of the Applicant or any of the incumbents of the reassigned posts for new positions. The Guidelines from the Field Personnel Division of the Department of Field Support which the Respondent's witnesses claimed were used to conduct the review were not produced and the UNDT concluded they do not exist.

10. In the view of the UNDT, the evidence indicated that a promise by the SRSG to conduct a fair and objective review process did not include the Applicant. There was a lack of transparency and credibility in the non-renewal decision. The Mission acted contrary to the Secretary-General's report attached to the 2013/2014 budget approved by the General Assembly when it ignored the intention expressed therein to leverage existing expertise, to meet priorities through existing resources and to maintain experienced staff during the transition process. The decision to not reassign the Applicant to the new position created from his old post was unlawful.

11. The UNDT ordered rescission of the contested decision and ordered the Respondent to reinstate the Applicant and deploy him to the next similar position as at the time of his separation. Should the Secretary-General decide, in the interest of the Organization, not to reinstate the Applicant, the UNDT set compensation in the amount of USD74,559, consisting of four months' net base salary at the D-1 level, and the difference, for eight months, between the Applicant's D-1 salary and his salary as a prosecutor in his home country.

12. The UNDT also awarded the Applicant two months' net base salary of compensation for the substantive and procedural irregularities occasioned by the failure of the Mission to conduct a comparative review to determine his suitability for reassignment to a new position.

13. The judgment was appealed by the Respondent in 2016. The UNDT judgment was upheld by UNAT in Judgment 2016-UNAT-698, with the exception of the method of calculating the

compensation in lieu of rescission of the non-renewal decision. This element was remanded to the UNDT in order to state its reasons and relevant law for the calculation.

Judgment UNDT/2016/030 - Non-promotion – procedural flaw – lack of full and fair consideration

14. The Applicant challenged the decision of the United Nations High Commissioner for Refugees (UNHCR) not to promote him from P-4 to P-5 during the 2013 UNCHR Promotions Session (Session).

15. The Applicant joined UNHCR as a GS staff member in 1990. After moves to several posts at GS, FS and P-levels with UNHCR, the Applicant was promoted to the P-4 level in 2007 and served as a Senior Investigation Officer, P-4, and as a Senior Resources Manager, P-5, with his personal grade being P-4. In April 2014 the Applicant was informed that he was eligible to be considered for promotion to the P-5 level during the 2013 Session and he participated in it.

16. UNHCR's Policy and Procedures for the Promotion of International Professional Staff Members (UNHCR/HCP/2014/2) (Promotions Policy), promulgated on 5 February 2014, provides that the High Commissioner is to make available a number of promotions slots to the P-4, P-5 and D-1 levels, and to award them to the most meritorious staff members based on recommendations made by a panel (Panel) composed of senior UNHCR staff members. The Panel's recommendations are the result of three rounds of evaluations of all eligible staff members.

17. The Applicant passed the First Round, but his comparative ranking in the Second Round was not sufficient for him to advance to the Third Round. In October 2014 UNHCR published a list of promoted staff members, which did not include the Applicant. Upon his request for a review of his candidacy, the Division of Human Resources Management (DHRM) provided the Applicant with a copy of his fact sheet as reviewed by the Panel, and a reiteration of the steps of the Session. The Applicant's request for recourse by the Panel was unsuccessful, and the Applicant requested management evaluation of his non-promotion in May 2015. The response by the Deputy High Commissioner provided in August 2015 upheld the decision.

18. The UNDT rejected the Applicant's challenge to the legality of the Promotions Policy absent any allegation that it does not comply with a higher norm. It was not its role to examine whether a policy adopted by the Organization is well founded or appropriate. The focus of the UNDT's review was the implementation of the Promotions Policy.

19. To pass the First Round, a candidate must satisfy at least three out of five evaluation criteria; language proficiency, number of rotations, service in D, E or U duty stations, functional diversity and performance records. The Second Round entails a comparative assessment of candidates by the Panel members based on performance, managerial accountability and exemplary leadership

qualities. The Third Round focuses on a collective review of the substantially equally meritorious candidates by the Panel based on the Second Round criteria.

20. The UNDT clarified that the standard of review for whether an Organization's decision is legal is essentially the same for appointments and promotions as it is for downsizing exercises. The UNDT determined that it had to examine whether the applicable rules were followed and applied in a fair, transparent and non-discriminatory manner.

21. The UNDT determined that the separate consideration of male and female candidates, allocating an equal number of slots to female and male candidates, contradicted the terms of the Promotions Policy even though it was legitimate to seek gender parity. The Promotions Policy referred to consideration of a single pool of candidates only, but made no reference to gender considerations until the very end of the process, where it is required that "[a]t grade levels where gender parity has not yet been achieved, at least 50% of the promotion slots ... be awarded to substantially equally meritorious female staff".

22. The UNDT noted that DHRM did not provide the Panel members with a complete version of the candidates' performance evaluations (e-PADs) by removing the ratings provided by the supervisors, which it considered "unreliable". In the view of the UNDT, this violated the Promotions Policy as it required that the Panel consider the candidate's e-PAD's and not an edited version of them.

23. The UNDT further determined that in advising the Panel members to take into account the suitability of the candidates for appointment to positions at a higher level, DHRM introduced a criterion extraneous to the Promotions Policy for consideration during the Second Round. This criterion had the potential to subvert the entire promotion exercise, introducing an operational criterion into a merit-based exercise.

24. In the UNDT's view, by advising the Panel members to take into account additional information they may know about the candidates but not reflected in the documents for their review, DHRM practically invited Panel members to take into account information which might be unsubstantiated or irrelevant, and opened the door to bias and nepotism. Taking into account such information was not foreseen in the Promotions Policy which provided that the Panel members would base their assessment on the candidates' fact sheets and e-PAD's and specifically excluded unsubstantiated information.

25. The UNDT found that DHRM introduced a ranking methodology that permitted the allocation of the same rank to more than one candidate, without any administrative issuance and any consideration of the impact on the candidates' consolidated rankings. This led some Panel members to engage in a de facto grouping exercise rather than a comparative one, without any consideration of the impact of such different methodology on the candidates' overall rankings. Numerous and significant errors in the rankings by some Panel members were also identified. In the UNDT's view, this raised a concern as to the reliability of the rankings and the underlying methodology of some

Panel members. The UNDT also noted excessive divergence in the rankings provided by some Panel members with regard to the same candidates. These discrepancies suggested that procedural errors concretely impacted the results, or that the comparative and ranking exercise was overall not suitable to review and assess the large number of candidates properly on the basis of the information provided and within the short time frame given.

26. The UNDT found that the contested decision was unlawful and that the Applicant was deprived of a significant and real chance for promotion as a result. The UNDT rejected his request for retroactive promotion and his claim for material and moral damages. The UNDT also rejected his request for his candidacy to be remanded to the Organization with specific instructions for a fresh selection exercise as the UNDT did not have the authority to make operational amendments to the Promotions Policy. The UNDT rescinded the non-promotion decision and awarded compensation in lieu of rescission in the amount of CHF6,000 for the lost chance of promotion.

UNDT/2016/094 - Non-renewal – unsatisfactory performance – constructive dismissal – extraneous factors - abuse of authority – harassment – accountability

27. The Applicant challenged a decision of the Chief of the Regional Service Centre Entebbe (RSCE) dated 5 May 2014 to not renew her fixed-term appointment on the grounds of unsatisfactory performance. The Chief also directed the Applicant to no longer act in her professional capacity on behalf of the RSCE. Pending the rebuttal of her performance evaluation, the Applicant's contract was extended on a month-to-month basis.

28. In August 2014 the Chief requested the discontinuation of the Applicant's access to the UMOJA ERP system. In response, the Chief was informed by the UMOJA team and the MONUSCO Supervisor of Technology Operations that this required the Applicant's signature.

29. In October 2014 the Applicant filed a complaint for abuse of authority against the Chief to the then Under-Secretary-General for the Department of Field Support (DFS).

30. On 1 April 2015 the UNDT issued an order referring the matter to the Office of the Ombudsman and Mediation Services (UNOMS) for mediation.

31. On 22 June 2015 the Rebuttal Panel took the decision to set the Applicant's performance rating to "meets performance expectations" and on 15 July 2015 the Applicant's appointment was extended for one year. A few days later UNOMS reported that the parties were unable to resolve the matter informally. Subsequently the parties filed further submissions up until March 2016. In her final submission the Applicant requested compensation in the amount of two years' net base salary.

32. Based on the documents before it and the hearing on the merits, the UNDT concluded that the Applicant began experiencing professional challenges when she refused to comply with a request

from her First Reporting Officer (FRO), the Chief, to sign a document which, in her view, she had no authority to sign. Her refusal led to the imposition of a Performance Improvement Plan (PIP) only three months after she took up her post at the RSCE. The Applicant's Second Reporting Officer was neither involved in nor aware of the PIP.

33. The UNDT found that the Applicant was gradually deprived of the staff assigned to her and of her own functions and responsibilities. The Chief ceased to communicate with her. Between May and October 2014, the Applicant received only one email from the Chief. This was in stark contrast to the approximately 70 emails per month she used to receive.

34. The evidence also indicated that the Applicant was physically isolated in a building half a kilometre away from the rest of the team and was excluded from work-related developments, meetings, and training opportunities that directly related to her responsibilities by the Chief.

35. The UNDT noted that the Respondent initially submitted that the application was not receivable on grounds that it was time-barred, especially since the Applicant could not specifically identify when she was stripped of her functional responsibilities. On the merits, the Respondent's case was that the Applicant had provided no evidence to substantiate her claim that the Administration had been taking steps to "constructively dismiss her" from the Organization.

36. The UNDT further noted that following DFS's referral of the matter to the Office of Human Resources Management (OHRM) for disciplinary action against the Chief, the Respondent conceded liability for the unlawful actions of the Chief harming the Applicant. This concession did not result in a meaningful settlement of the dispute between the parties.

37. In the view of the UNDT, the case record indicated repeated violations of the UNDT's orders by the Respondent. Additionally, the actions of the Chief were not only condoned, but repeatedly defended as being in the interest of the Organization. The UNDT concluded that had the Respondent exercised more diligence and circumspection, the case would not have come to litigation.

38. The Tribunal held that the Chief's actions towards the Applicant amounted to a clear breach of authority within the definition contained in ST/SGB/2008/5 which is "the improper use of a position of influence, power or authority against another person". The UNDT also found that the Chief either deliberately or negligently ignored the principles governing the role of a manager or supervisor contained in the 2014 Standards of Conduct for the International Civil Service.

39. Having found that the Applicant's fundamental rights as an employee of the United Nations had been breached and that the breach was of such a fundamental nature as to cause considerable damage to the Applicant's health, the UNDT awarded compensation in the amount of 20 months' net base salary. The UNDT also referred the Chief to the Secretary-General for accountability pursuant to art. 10.8 of the Statute of the UNDT.

Judgment UNDT/2016/181 – Abolition - permanent appointment - separation from service - staff union function - termination indemnity

40. The Applicant challenged the decision to abolish his G-4 post effective 1 January 2014 and the decision of Department of General Assembly Conferences Management (DGACM) to terminate his permanent appointment as a result. The post was abolished based on a decision of the General Assembly approving the abolition of 59 posts in the Publishing Section of the Meeting and Publishing Division of DGACM, including the Applicant's post.

41. The Applicant received a permanent appointment in 1995. He was active in the Staff Association and sometime before his post was abolished he had been elected First Vice-President of the 45th Staff Council. On 6 January 2014, the Applicant received a letter from the DGACM notifying him of the termination of his appointment and encouraging him to apply for available positions for which he believed he had the required competencies and skills.

42. He applied for four positions. The Applicant was informed that his applications for two positions were submitted post deadline. His application for the third position was rejected as he was not eligible for temporary positions more than one level above his grade. With regard to the fourth position he was informed within 48 hours after applying that based on the overall review of the applications received his application would not be considered.

43. The Applicant argued that the impugned decisions breached General Assembly resolution 54/249 which emphasized that "the introduction of new technology should lead neither to the involuntary separation of staff nor necessarily to a reduction of staff". He further argued that the Secretary-General lacked authority to terminate his permanent appointment prior to his separation. He also took the view that the Organization breached the obligations of good faith and fair dealing by shifting the responsibility for finding alternative employment onto him contrary to staff rules 13.1(d) and (e). The Applicant also argued that he was targeted for termination because of his history of advocacy on behalf of staff against the Administration.

44. The UNDT found that there was no breach of resolution 54/249 as it was limited to the biennium 2000-2001. In the view of the UNDT, the Secretary-General has the legal authority to terminate permanent appointments per staff regulation 9.3(a)(i), staff rule 13.1(a), and staff rule 13.1(d) provided it is lawfully done, i.e., that relevant conditions concerning preferential retention are satisfied. Under the framework envisaged by staff rules 9.6 and 13.1, it is incumbent upon the Organization to review all possible suitable posts vacant or likely to be vacant in the future, and to assign affected staff members with a permanent contract on a priority basis.

45. In assessing whether this was complied with, the UNDT considered that the termination letter sent to the Applicant indicated that the Administration viewed the primary responsibility for finding

alternative employment as resting with the Applicant. Requiring the Applicant to apply competitively for vacant positions, let alone compete for them with non-permanent staff, was a breach of staff rule 13.1. Permanent staff on abolished posts, if they are suitable for vacant posts, should only be compared against other permanent staff, but less senior and non-permanent staff members were placed or retained in preference to the Applicant. The UNDT therefore concluded that the Organization committed material irregularities and failed to act fully in compliance with the requirements of staff rule 13.1(d) and (e) and 9(6)(e).

46. The UNDT found further that the Organization failed to give proper consideration to the Applicant's status as a newly elected representative to the Staff Council. The Applicant's termination was also unlawful because he did not receive proper consideration as an elected high-level official of the Staff Union.

47. The UNDT did not find sufficient evidence to support the claim that the Applicant's termination was influenced by any animus against him.

48. The UNDT ordered the rescission of the decision to terminate his permanent appointment or, alternatively, the Organization was ordered to compensate him in the amount of three years' net base salary, minus any termination indemnity paid to him upon separation. The Applicant was further awarded USD20,000 as compensation for emotional distress.

49. An appeal against the judgment is pending before UNAT.

Judgment UNDT/2016/183 - Abolishment of post – permanent staff member – non-selection – bias – compensation – loss of chance – non-pecuniary harm

50. The Applicant, a former Chief of Staff and Chief of Directorate, Bureau of Management at the D-1 level on a permanent appointment challenged the decision of the United Nations Development Programme (UNDP) not to select him for the post of Directorate Manager, Bureau of Programme and Policy Support at UNDP. The Applicant's former post had been abolished as a result of a structural change exercise at UNDP. The Applicant had been considered for a number of vacant posts at the D-1 level as part of the exercise.

51. UNDP conducted a desk review with regard to the contested post. No test or interviews were conducted and another person was recommended for the post. Shortly after being appointed to the post, the other person left for another position and as a result the post became vacant again. UNDP advertised the vacancy on 1 April 2015 as a regular vacancy open to internal and external applicants with a deadline of 15 April.

52. In June 2015 the vacancy was reopened upon request of the hiring manager so as to increase the pool of candidates. The new deadline was 9 June 2015. In August, one of the three short-listed

candidates withdrew from the process, leaving only the Applicant and a female candidate short-listed. The female candidate indicated to UNDP that she was considering withdrawing from the process. In August, the hiring manager requested UNDP's office of human resources management to accept two applications which were submitted late in order to have at least three candidates available for interviews. The additional female candidate was permitted to submit her application while the additional male candidate withdrew his application. The other female candidate, who had indicated earlier that she might withdraw, withdrew. That left the Applicant and the one female candidate, newly added, in the running.

53. The Applicant and the female candidate were interviewed in late August 2015. The female candidate was recommended and the Applicant was not. The female candidate was selected. The Applicant was informed of the decision that he was not selected in September 2015. After several temporary extensions the Applicant's permanent appointment was terminated at the end of July 2016.

54. The UNDT considered whether UNDP had complied with the staff rules on retention of permanent staff. It determined that consistent with the requirements of staff rule 13.1(d) on permanent appointments, one of the purposes of a structural change exercise is finding alternative employment for staff on permanent appointments whose posts had been abolished or otherwise become unavailable. If a permanent staff member remains displaced after an exercise, UNDP was still obliged to make good faith efforts to retain the staff member. UNDP was fully aware that the Applicant was a displaced permanent staff member in need of a post; there was an available post and UNDP should have considered his suitability without opening the process to external candidates and conducting a full-scale selection exercise.

55. The UNDT found that an exercise to retain a permanent staff member on a matching post under staff rule 13.1(d) was distinct from a regular competitive selection process open to external candidates. Staff rule 13.1(d) envisaged a matching exercise taking into account relevant factors (contract status, suitability, length of service, etc.), a process different from a competency-based interview. The UNDT concluded that UNDP had not complied with the rules on retention of permanent staff.

56. With regard to the allegation of bias against the Applicant, the UNDT concluded that there was insufficient evidence to establish that the process was tainted and that the Applicant was not afforded proper priority consideration for the post under the framework established by staff rules 9.6(e) and 13.1(d) for staff members on permanent appointments whose posts are abolished.

57. As compensation for his pecuniary losses, the UNDT looked at any effects of the non-selection decision and awarded the Applicant seven months' net base salary. The UNDT took into consideration that the Applicant had lost a 50 per cent chance of being selected for the post and that, if selected, it would be reasonable to expect him to occupy the post for two years. As the Applicant did not dispute the abolition of his post and the decision to terminate his appointment,

the UNDT did not take the termination indemnity paid to the Applicant into account in determining the amount of compensation.

58. The UNDT also took into account that the Applicant had suffered no pecuniary loss for the nine months he remained employed with UNDP before his termination. Given the Applicant's experience, skills, excellent performance record, relatively young age and continued efforts to find alternative employment, UNDT expected that he would be gainfully employed at some point in the future.

59. The UNDT denied a request by the Applicant for pre-judgment interest on his pecuniary damages, with interest accruing from the date each salary payment would have been made, compounded semi-annually on the grounds that his pecuniary loss pertained almost entirely to future earnings. The UNDT found no basis for awarding the Applicant compensation for non-pecuniary damages as no evidence was adduced to substantiate the Applicant's claim of moral injury.

Judgment UNDT/2016/204 - Permanent appointment – termination - abolition of post/mandate - good faith

60. The application challenged the decision to terminate the Applicant's permanent appointment with the UN Secretariat on the basis of the alleged abolition of her post and the inability to identify another position for her. The application was considered by a three-judge panel of the UNDT.

61. The Applicant joined the Organization in 2001 as a general service staff member and passed the G-to-P examination in Finance in 2008. In 2009, the Applicant was granted a permanent appointment with the UN Secretariat. Her letter of appointment did not contain a limitation of her appointment to any particular office or department. In December 2009, the Applicant was transferred to a P-2 post as Finance Officer in the Department of Field Support. She was assigned in August 2011 to a P-3 post as Finance and Budget Officer in the Department of Management, and also placed on the rosters for "Finance and Budget Officer" and for "Program Management Officer" at the P-3 level.

62. Thereafter, the United Nations Interregional Crime and Justice Research Institute (UNICRI) approached the Applicant for selection from the roster for a post of "Expert (Grant Management)" for a project at UNICRI. In response to her question whether her assignment to the project post would affect her permanent staff member status, the Applicant was advised by the Administration in July 2012 that "upon reassignment, your permanent appointment will remain unchanged" and that the post was available for a number of years and she should not worry about its duration.

63. The Applicant accepted the offer and assumed the functions of the post in September 2012. As the UNICRI project progressed, the Applicant was informed in July and October 2014 by the United Nations Office at Vienna (UNOV) of the intent to abolish her post at UNICRI by the end of

December 2014. In early December 2014, UNOV advised the Applicant that as the abolition of her post was imminent, it would proceed to separate her by 31 December, unless she would request Special Leave Without Pay. Shortly thereafter, UNOV informed the Applicant that her permanent appointment was not going to be terminated as neither UNOV nor UNICRI had authority to do so.

64. UNICRI and UNOV, which administers UNICRI, made efforts to find a suitable post for the Applicant within UNICRI and UNOV given that she held a permanent appointment. The Office for Human Resources Management (OHRM), which had been alerted about the Applicant's situation by both UNICRI and UNOV, made no effort to find an alternative post for the Applicant within the UN Secretariat at large. Instead, OHRM had informed the hiring managers of four posts for which the Applicant had applied that "due consideration" should be given to her as a permanent contract holder on a post due to be abolished.

65. On 5 and 22 December 2014, the Applicant requested management evaluation of what she considered the decision by UNOV to terminate her permanent appointment and by UNICRI not to reassign her to another function. The MEU deemed both requests not receivable as no effective administrative decision to terminate her appointment had been taken. On 2 March 2015, OHRM submitted UNICRI's request to terminate the Applicant's permanent appointment effective 31 January 2015, based on Staff regulation 9.3(a)(i) ("If the necessities of service require abolition of the post or reduction of the staff") to the Under-Secretary-General for Management (USG/DM) for approval. USG/DM approved the termination on 6 March 2015. Before approving the termination, USG/DM had been informed by OHRM that considerable efforts had been made to secure another appointment for the Applicant, within UNICRI or within the United Nations system, but they had been unsuccessful.

66. On 9 March 2015, UNOV notified the Applicant as per staff rules 9.7(a) (notice of termination) and 13.1(a) (permanent appointment) that her permanent appointment would be terminated. The Applicant's request for management evaluation of the decision was rejected by the Chef de Cabinet on 8 April 2015.

67. In the UNDT's view, the Applicant's post had not been abolished as per staff rule 13.1(d) (abolition of post in case of permanent appointment). The UNICRI project required functions distinct from the Applicant's, which the UNDT considered to be an abolition of mandate of the post rather than of the post. As a result, the termination did not comply with staff rule 13.1(c) which did not provide for the possibility to terminate a permanent appointment under such circumstances. Staff rule 13.1(d) on abolition of post was not applicable.

68. The UNDT found that even if the ground for the termination of the Applicant's permanent appointment had legitimately been the abolition of her post, abolition required the approval of the UNICRI Board of Trustees, which had not been obtained. Absent an official document delegating the authority to abolish a post from the Board of Trustees to the Director of UNICRI, the Director acted *ultra vires* in deciding to abolish the Applicant's post. The UNDT found that the Administration

failed to discharge its obligation to make reasonable and good faith efforts under staff rules 9.6(e) and 13.1(d) to find the Applicant an alternative post within the UN Secretariat and misinformed the USG/DM in this regard when requesting approval for the termination.

69. The UNDT also referred to its judgment UNDT/2016/102 with regard to the wide scope of the Organization's obligation to make good faith efforts to find an alternate function for a permanent staff member whose post is slated for abolition.

70. The UNDT ordered the rescission of the termination decision and reinstatement of the Applicant or, alternatively, payment of three years' net base salary plus the corresponding contributions to the United Nations Joint Staff Pension Fund (UNJSPF) as compensation in lieu. The UNDT also awarded the Applicant USD20,000 as moral damages for stress and anxiety over the termination and disappointment and sorrow over how she was treated. Since the Applicant's loss of employment was the result of the Organization's failure to comply with its duty to secure alternative employment for her, it was justified to award compensation in excess of the two-year limitation.

APPENDIX III: PRONOUNCEMENTS OF UNAT

Introduction

1. A summary of major legal pronouncements made by UNAT in judgments rendered during its 2016 sessions is provided below. The judgments summarized are provided for illustrative purposes only and are not intended to be authoritative, representative or exhaustive. A complete set of UNAT judgments issued during the period covered by this report is available on the OAJ website (<http://un.org/en/oaj/appeals>).

Judgment 2016-UNAT-618 (see also Judgment 2016-UNAT-628, Judgment 2016-UNAT-629, Judgment 2016-UNAT-630, Judgment 2016-UNAT-631, Judgment 2016-UNAT-632, Judgment 2016-UNAT-633) - Revision of salary scheme - on its own motion conversion by UNDT of request for extension of time into application

2. UNAT considered an appeal relating to a Comprehensive Local Salary Survey which was conducted in New Delhi, India, in June 2013. UNAT found that the UNDT exceeded its competence and jurisdiction and made procedural errors when it, on its own motion, converted the staff members' request for an extension of time into an application and summarily dismissed it as not receivable. By equating the request for extension of time with an application, which the applicants were not ready to file without having obtained more information, the UNDT violated the staff members' statutory rights to file an application and to have access to justice as well as their right to due process of law. Accordingly, UNAT vacated the UNDT judgment and remanded the matter to the UNDT with instructions to permit the staff members to file an application.

Judgment 2016-UNAT-622 (see also Judgment 2016-UNAT-615) - Remedy for protracted classification review process

3. UNAT considered an appeal against a judgment in which the UNDT rescinded a decision of the Assistant Secretary-General for the Office of Human Resources Management (ASG/OHRM) and remanded the case to the Administration. In the context of a protracted classification review process spanning over 20 years, the ASG/OHRM, based on the recommendation of the NY General Service Classification Appeals Committee following the remand pursuant to a previous UNDT judgment, had decided to maintain the classification of the posts of staff members who undisputedly performed functions exceeding their original job descriptions during that period.

4. UNAT affirmed the rescission by the UNDT of the decision to maintain the classification, reaffirming the right of staff members to request reclassification when the duties and responsibilities of their posts change substantially as a result of a restructuring within their

office. However, UNAT reversed the UNDT's order to remand the case to the Administration, stating that a second remand was unviable and unfair having regard to the fact that the protracted classification review process was mainly due to the reluctance and failure of management to follow their own rules, regulations and administrative instructions. Furthermore, the majority of the applicants had already retired so a remand could not offer an effective remedy. Instead, UNAT awarded each appellant compensation equivalent to three years' net base salary. In light of the particularly egregious circumstances of the case and the accumulation of aggravating factors, UNAT found that the increased award, exceptionally exceeding the equivalent of two years' net base salary pursuant to Article 9(1)(b) of UNAT's Statute, was justified.

Judgment 2016-UNAT-641 - Lateral reassignment decision subject to interim relief under Article 10(2) of the UNDT Statute

5. The staff member filed an application before the UNDT challenging the decision to laterally reassign him and requested a suspension of action. The UNDT issued an order granting his request for suspension of action pending resolution of the matter. The Secretary-General filed an interlocutory appeal of the order. UNAT found that the UNDT did not "clearly exceed its competence or jurisdiction" when it temporarily suspended the administrative decision to laterally reassign the staff member as that decision did not constitute a case of "appointment, promotion, or termination" excluded from interim relief under Article 10(2) of the UNDT Statute. Accordingly, since there was no basis for an interlocutory appeal, it was dismissed as not receivable.

Judgment 2016-UNAT-661 - MEU review outcome not an appealable administrative decision

6. UNAT affirmed the UNDT's finding that the staff member's application was not receivable *ratione materiae* because a response of the Management Evaluation Unit (MEU) to a request for management evaluation is not a judicially reviewable administrative decision. The UNDT correctly held that the MEU response does not produce direct legal consequences on the staff member's terms and conditions of appointment. Considering "the nature of the decision, the legal framework under which the decision was made, and [its] consequences", UNAT found that the response to a request for management evaluation is an opportunity for the Administration to resolve a staff member's grievance without litigation and not a fresh decision.

Judgment 2016-UNAT-706 - Imposition of non-disciplinary measure subsequent to end of staff member's employment contract

7. UNAT held that the UNDT erred in finding that it was unlawful for the Secretary-General to issue a written reprimand in connection with a former staff member's conduct while employed. It stated that there was no requirement in the Staff Regulations or Rules providing

that the Secretary-General's discretionary authority to issue a written reprimand as a non-disciplinary measure pursuant to staff rule 10.2(b)(i) was predicated upon and limited to the existence of an ongoing employment contract. To hold otherwise would render baseless those standards of conduct that survive active service. In addition, from a practical perspective, it would stymie the Secretary-General's ability and discretionary authority to properly manage investigations and discipline staff. The Secretary-General's authority to administer the Organization's records, including those of former staff members, and to ensure they reflect the staff member's performance and conduct during his or her period of employment, did not lapse upon the staff member's separation from service. Therefore, UNAT granted the appeal and vacated the UNDT judgment in part with respect to this holding and the UNDT's order to remove the reprimand from the former staff member's Official Status File.
