

Seventh activity report
Office of Administration of Justice
1 January to 31 December 2013

CONTENTS

I.	INTRODUCTION.....	4
II.	ACTIVITIES OF THE OFFICE OF THE EXECUTIVE DIRECTOR.....	4
III.	ACTIVITIES OF THE UNITED NATIONS DISPUTE TRIBUNAL.....	4
	A. COMPOSITION OF THE DISPUTE TRIBUNAL	4
	1. Judges of the Dispute Tribunal	4
	2. Election of the President	5
	3. Plenary meetings	5
	B. JUDICIAL STATISTICS.....	5
	1. General activity of the UNDT.....	5
	2. Cases transferred to the UNDT by the JABs and JDCs.....	7
	3. Cases transferred to the UNDT by the former UN Administrative Tribunal.....	7
	4. Number of judgments, orders and court sessions	7
	5. Cases referred to the Mediation Division	8
	6. Cases referred for accountability	8
	7. Cases pending before the UNDT as at 31 December 2013.....	8
	8. Cases by subject-matter	8
	9. Legal representation of applicants before the UNDT	9
	10. Outcome of closed cases.....	10
	11. Relief ordered and compensation awarded	10
	12. Information on staff who filed applications in 2013 by level, nationality, and employment entity	10
	13. Jurisprudence	11
IV.	ACTIVITIES OF THE UNITED NATIONS APPEALS TRIBUNAL.....	12
	A. COMPOSITION OF THE APPEALS TRIBUNAL	12
	1. Judges of the Appeals Tribunal:	12
	2. Election of the President and Vice-Presidents	12
	B. JUDICIAL STATISTICS.....	12
	1. General activity of the Appeals Tribunal.....	12
	2. Outcome of disposed cases	14
	3. Relief ordered and compensation awarded, modified or set aside.....	15
	4. Accountability	16
	5. Legal representation of staff members (as appellants or respondents before UNAT).....	16
	6. Jurisprudence	17
V.	ACTIVITIES OF THE OFFICE OF STAFF LEGAL ASSISTANCE.....	18
	A. GENERAL ACTIVITY.....	18
	B. OUTREACH AND TRAINING ACTIVITIES.....	18
	C. STATISTICS.....	18
	1. Number of cases.....	18
	2. Breakdown of the cases	19
	3. Cases by client entity (Department, Agency, Fund or Programme, Duty Station).....	21

4. Cases by gender	22
5. Representation before the Dispute Tribunal	23
APPENDIX I: UNDT CASES RECEIVED IN 2013 – EMPLOYMENT ENTITY	24
APPENDIX II: UNDT CASES RECEIVED IN 2013 – COUNTRY OF NATIONALITY	26
APPENDIX III: PRONOUNCEMENTS OF THE UNDT.....	27
APPENDIX IV: PRONOUNCEMENTS OF UNAT	36

I. Introduction

1. The seventh report of the Office of Administration of Justice (OAJ) outlines the activities of the Office for the period 1 January to 31 December 2013, covering the activities of the Office of the Executive Director, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) and United Nations Appeals Tribunal (Appeals Tribunal or UNAT) and their Registries, and the Office of Staff Legal Assistance (OSLA).
2. The report provides statistical information for the UNDT and UNAT and OSLA and covers the main activities of the Office of the Executive Director. It appends summaries of major legal pronouncements made by UNAT and the UNDT in judgments rendered in 2013.

II. Activities of the Office of the Executive Director

3. As in past years, OAJ coordinated the preparation of the Secretary-General's report on administration of justice at the United Nations (A/68/346), participated in discussions on the report held by the Advisory Committee for Administrative and Budgetary Questions (ACABQ) and provided additional information to the ACABQ and the Fifth and Sixth Committees of the General Assembly as requested.
4. OAJ invited staff representatives and management to participate in a videoconference discussion on 6 August 2013 with respect to the General Assembly's request of the Secretary-General for a single preferred proposal for joint financing for the Office of Staff Legal Assistance (OSLA). One staff association participated, together with management.
5. OAJ continued to make improvements to the electronic Court Case Management System (CCMS) and migrated CCMS to a new platform required for continued support and improved performance. OAJ took steps to enhance data capture in the OSLA database and in CCMS to better enable that office to provide statistics. OAJ also chaired a working group to elaborate user specifications for the development of a more powerful search engine to be used to search the jurisprudence of the Tribunals.
6. The IJC was fully constituted with the appointment of Ian Binnie, a former justice of the Supreme Court of Canada, as Chair in April 2013. OAJ provided support to the Internal Justice Council (IJC) in its work, including with respect to its meetings and teleconferences, and the preparation of its annual report to the General Assembly on the implementation of the system of administration of justice (A/68/306).

III. Activities of the United Nations Dispute Tribunal

A. Composition of the Dispute Tribunal

1. Judges of the Dispute Tribunal

7. During the reporting period, the composition of the Dispute Tribunal was as follows:
 - (a) Judge Vinod Boolell (Mauritius), full-time judge based in Nairobi;
 - (b) Judge Memooda Ebrahim-Carstens (Botswana), full-time judge based in New York;
 - (c) Judge Thomas Laker (Germany), full-time judge based in Geneva;
 - (d) Judge Goolam Hoosen Kader Meeran (United Kingdom), half-time judge;
 - (e) Judge Coral Shaw (New Zealand), half-time judge;
 - (f) Judge Jean-François Cousin (France), ad litem judge based in Geneva;
 - (g) Judge Nkemdilim Amelia Izuako (Nigeria), ad litem judge based in Nairobi;
 - (h) Judge Alessandra Greceanu (Romania), ad litem judge based in New York.

8. At its sixty-seventh session, the General Assembly decided to extend the term of the three ad litem judges and their support staff for an additional year until 31 December 2013 (see resolution 67/241).

2. Election of the President

9. On 24 June 2013, Judge Thomas Laker was elected President of the UNDT for one year, from 1 July 2013 to 30 June 2014.

3. Plenary meetings

10. During the reporting period, the judges of the Tribunal did not hold any plenary meetings.

B. Judicial statistics

1. General activity of the UNDT

11. As at 1 January 2013, the UNDT had 262 pending cases. During the reporting period, the UNDT received 289 new cases, including by inter-registry transfer, and disposed of 325 cases, including one remanded case and eight closed by inter-registry transfer. As at 31 December 2013, 226 cases were pending, including three cases from the old system.

12. Table 1a below shows the number of cases received, disposed of and pending for the years 2009 to 2013. Table 1b shows the cases received, disposed of and pending from 1 July 2009 to 31 December 2013 by duty station.¹

Table 1a

<i>UNDT</i>	<i>Cases received</i>	<i>Cases disposed of</i>	<i>Pending cases (end of year)</i>
2009	281	98	183
2010	307	236	254
2011	281	271	264
2012	258	260	262
2013	289	325	226
Total	1416	1190	

Table 1b

<i>UNDT</i>	<i>Cases received</i>			<i>Cases disposed of</i>			<i>Pending cases (end of year)</i>		
	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
Total	492	417	507	460	316	414			

13. Table 1c shows the average monthly rate of registration and disposal of cases for the same five-year period for each Registry (rounded to the nearest decimal point).

¹ With the introduction of electronic statistical reports, some discrepancies were found in the numbers reported by the Registries. Thus the numbers provided in the tables differ slightly from those reported in prior years.

Table 1c

A. Average monthly rate of registration of new cases in each reporting period

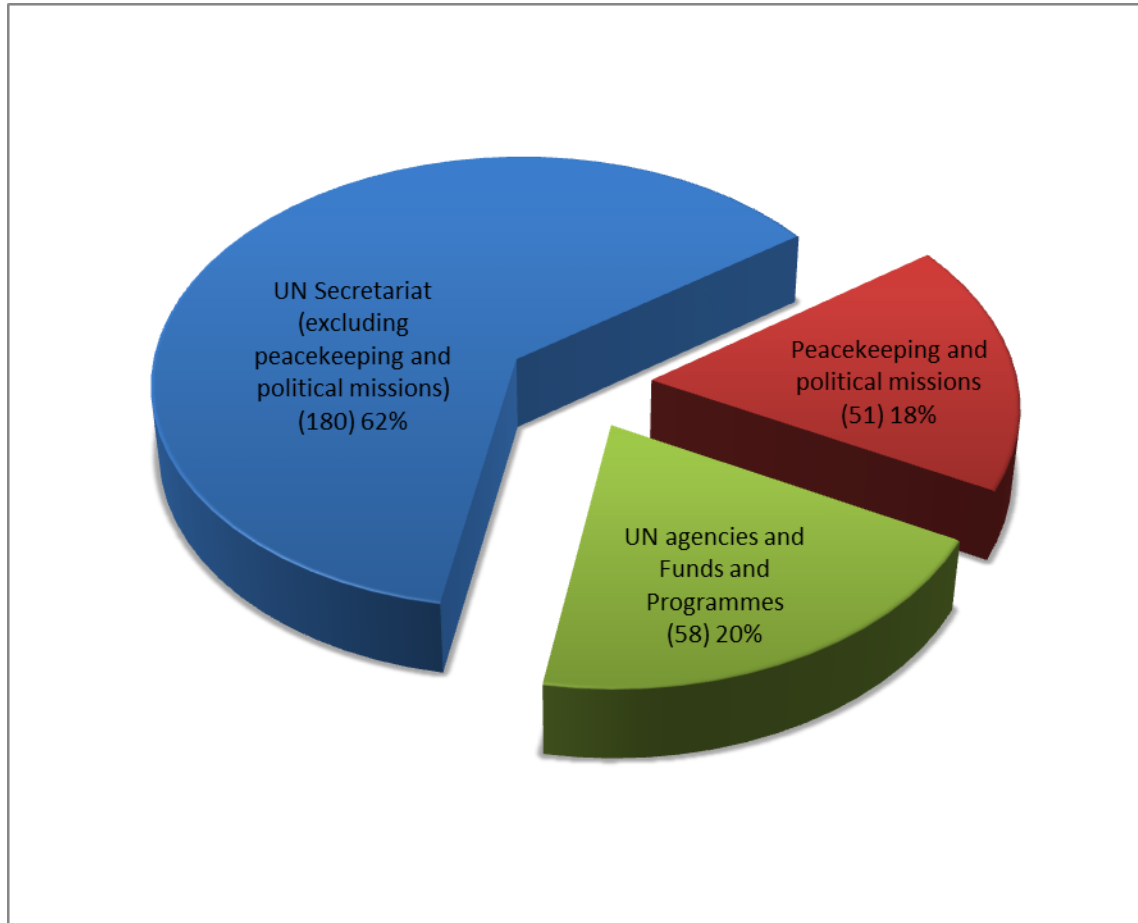
Category	Geneva	Nairobi	New York	Three registries combined
Jul.-Dec. 2009	18	12.3	16.5	46.8
Jan.- Dec. 2010	10	6.7	8.9	25.6
Jan.-Dec. 2011	7.9	7.4	8.1	23.4
Jan.-Dec. 2012	7.8	6.5	7.2	21.5
Jan.-Dec. 2013	6.3	8	9.8	24.1
Overall period (54 months)	9.1	7.7	9.4	26.2

B. Average monthly rate of case disposal in each reporting period

Category	Geneva	Nairobi	New York	Three registries combined
Jul.-Dec. 2009	9.5	3.2	3.7	16.4
Jan.-Dec. 2010	8.4	4.9	6.3	19.6
Jan.-Dec. 2011	9.9	4.9	7.8	22.6
Jan.-Dec. 2012	8.8	6.3	6.5	21.7
Jan.-Dec. 2013	6.4	8.6	12.1	27.1
Overall period (54 months)	8.5	5.9	7.7	22

14. Of the 289 cases received during the reporting period, 180 cases (62 per cent) 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; 51 cases (18 per cent) originated from peacekeeping and political missions; and, 58 cases (20 per cent) originated from UN agencies, and Funds and Programmes, including UNHCR, UNDP, UNICEF, UNFPA, UNOPS and WFP. This is illustrated in Chart 1 below.

Chart 1 Distribution of registered cases by clients (1 January to 31 December 2013)



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

15. During the reporting period, two cases transferred from the former JABs and JDCs were disposed of, one in Nairobi and one in New York. One such case was still pending in Nairobi at the end of 2013.

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

16. During the same period, four of the cases transferred from the former UN Administrative Tribunal were disposed of: three in Nairobi and one in New York. Two such cases remain pending in Nairobi.

4. Number of judgments, orders and court sessions

17. During the reporting period, the UNDT rendered 181 judgments, issued 775 orders and held 218 court sessions. The UNDT in Geneva rendered 41 judgments, issued 201 orders and held 32 court sessions; the UNDT in Nairobi rendered 67 judgments, issued 219 orders and held 114 court sessions; and the UNDT in New York rendered 73 judgments, issued 355 orders and held 72 court sessions.

18. Table 2a shows the total number of judgments, orders and court sessions for the years 2009-2013 and table 2b provides the same information broken down by Registry.

Table 2a

<i>UNDT</i>	<i>Judgments</i>	<i>Orders</i>	<i>Court Sessions</i>
2009	97	255	172
2010	217	679	261
2011	219	672	249
2012	208	626	187
2013	181	775	218
Total	922	3007	1087

Table 2b

<i>UNDT</i>	<i>Judgments</i>			<i>Orders</i>			<i>Court Sessions</i>		
	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
Total	333	256	333	729	820	1458	185	468	434

5. Cases referred to the Mediation Division

19. At the outset of the reporting period, there were four ongoing mediation cases previously referred by the UNDT to the Office of the Ombudsman and Mediation Services. During the reporting period, the UNDT identified 27 additional cases suitable for mediation and referred them. Of these, 15 cases were successfully mediated and 10 were unsuccessful. At the end of 2013, six cases were pending completion of mediation.

6. Cases referred for accountability

20. In 2013, six cases were referred for accountability under art. 10.8 of the UNDT Statute.

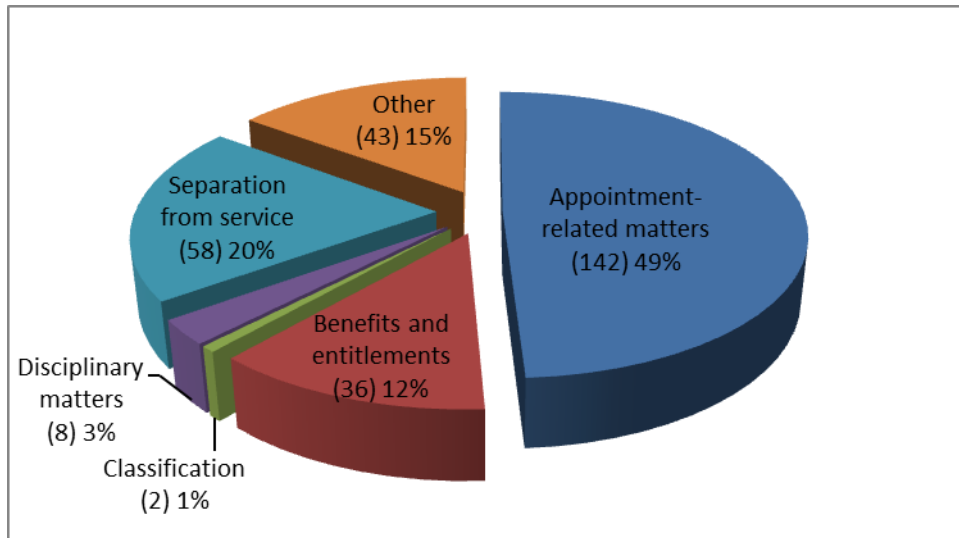
7. Cases pending before the UNDT as at 31 December 2013

21. As at 31 December 2013, the UNDT had 226 cases pending: 223 new cases, one case transferred by the former JABs and JDCs and two cases transferred by the former Administrative Tribunal. As at 31 December 2013, 32 new cases were pending in the Geneva Registry, 101 new cases were pending in the Nairobi Registry, including one JAB/JDC case and two cases from the former Administrative Tribunal, and 93 new cases were pending in the New York Registry.

8. Cases by subject-matter

22. The nature of cases received during the reporting period fall into six main categories: (1) appointment-related matters (non-selection, non-promotion and other appointment-related matters): 142 cases, (2) benefits and entitlements: 36 cases, (3) classification: two cases, (4) disciplinary matters: eight cases, (5) separation from service (non-renewal and other separation matters): 58 cases, and (6) other: 43 cases. Chart 2 below shows the number of cases registered between 1 January and 31 December 2013 by subject-matter for the three Registries.

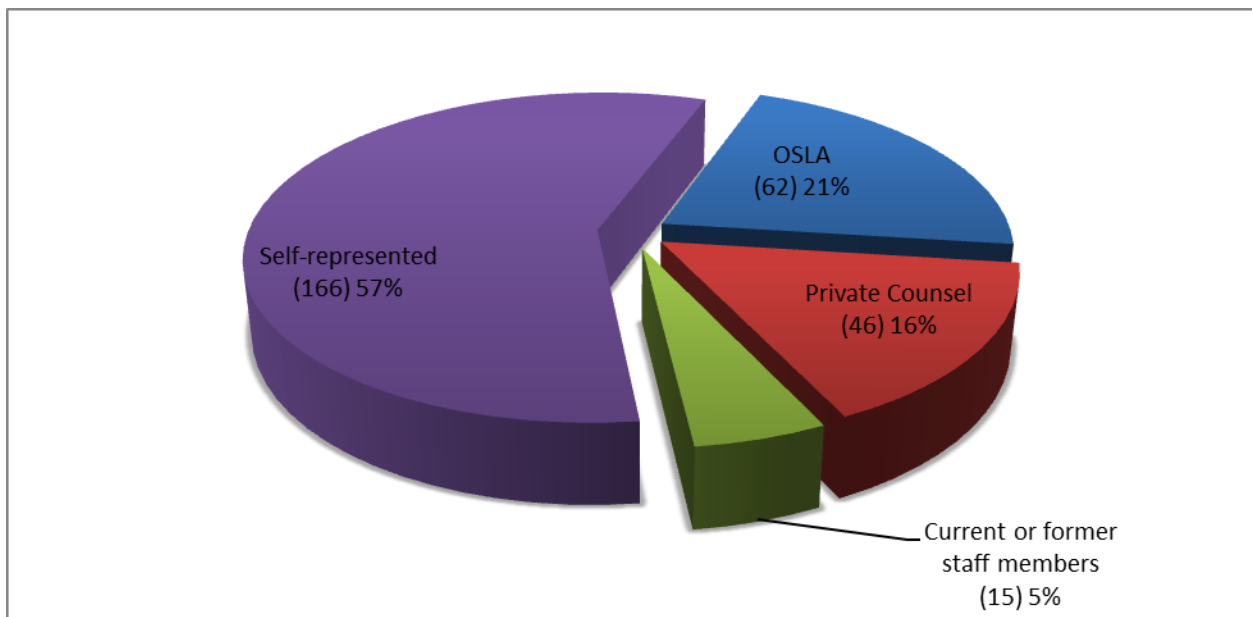
Chart 2 Cases registered between 1 January and 31 December 2013 by subject-matter (combined data for the three Registries)



9. Legal representation of applicants before the UNDT

23. OSLA provided legal assistance in 62² of the 289 new cases received in 2013. In 46 cases, staff members were represented by private counsel, in 15 cases staff members were represented by volunteers who were either current or former staff members of the Organization and 166 staff members represented themselves. This is illustrated in Chart 3 below.

Chart 3 Legal representation of applicants (combined data for the three Registries)

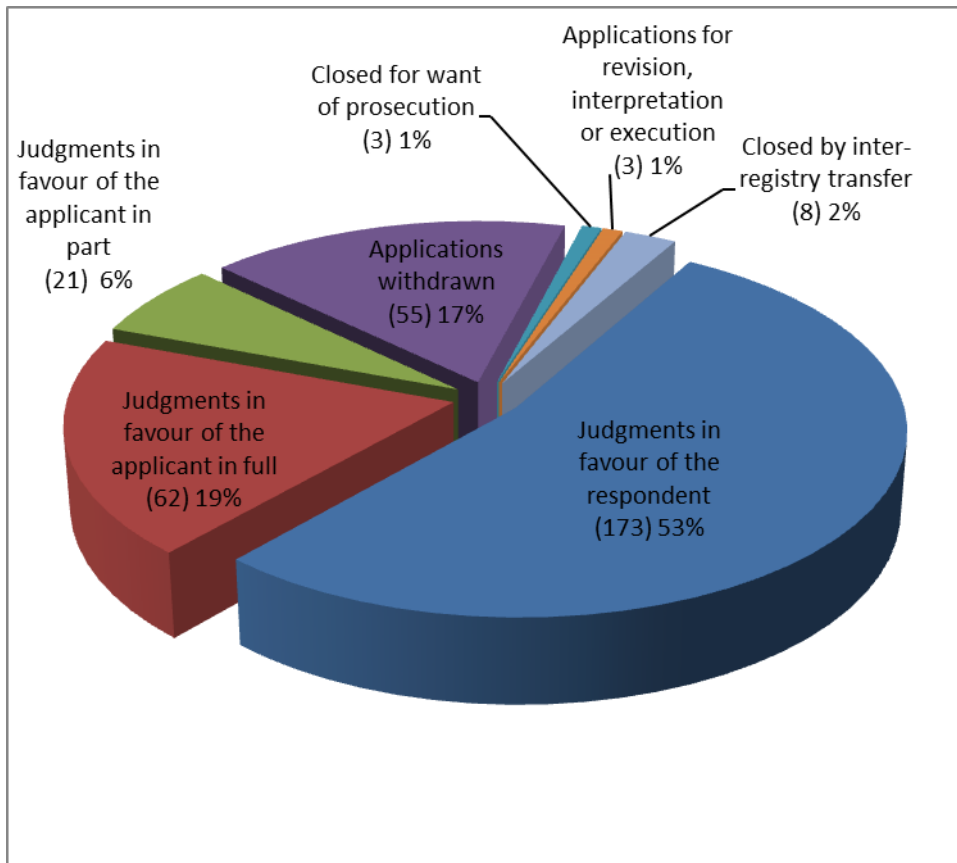


² OSLA also counts cases in which it provides advice and assistance as well as cases in which it represents UNDT applicants. Thus, OSLA's number relating to legal representation is higher than that provided by the UNDT.

10. Outcome of closed cases

24. Of the 325 cases disposed of by the UNDT in 2013, 173 were decided in favour of the respondent (i.e., application rejected in full), 62 were decided in favour of the applicant in full and 21 were decided in favour of the applicant in part (i.e., some claims on liability granted). A total of 55 applications were withdrawn, including cases successfully mediated or settled, including as a result of the efforts of the judges; three cases were closed for want of prosecution; three involved applications for revision, interpretation or execution; and eight were closed by inter-registry transfer. This is illustrated in Chart 4 below.

Chart 4 Outcome of closed cases (combined data for the three Registries)



11. Relief ordered and compensation awarded

25. During the reporting period, 83 cases were decided in favour of the applicant either in full or in part. In 28 cases, only financial compensation was ordered. In 20 cases, both financial compensation and specific performance were ordered. Specific performance only was ordered in six cases, and in nine cases no compensation was ordered. Suspension of action was granted in 19 cases. In one case, compensation was settled following a judgment on liability.

12. Information on staff who filed applications in 2013 by level, nationality, and employment entity

26. The level of staff who filed applications during the reporting period was as follows: D: 8; P 158; GS: 92; FS: 7; Other: 24.

27. For nationalities of applicants in 2013 see Appendix I. For departments or offices where these applicants were serving at the time of the contested decision see Appendix II.

13. Jurisprudence

28. In 2013, the UNDT rendered a number of notable legal pronouncements on such issues as the requirement to relinquish permanent residency status as a condition of employment with the Organization; the imposition of breaks in service between appointments; and restructuring and retrenchment exercises. The UNDT also pronounced on matters of contract formation; sexual harassment in the workplace; hierarchy of legal norms in the Organization; and the place of office guidelines and manuals in the hierarchy of legal norms. Highlights of the jurisprudence of the UNDT in 2013 are set out in Appendix III.

IV. Activities of the United Nations Appeals Tribunal

A. Composition of the Appeals Tribunal

1. Judges of the Appeals Tribunal:

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

- (a) Judge Luis María Simón (Uruguay);
- (b) Judge Mary Faherty (Ireland);
- (c) Judge Sophia Adinyira (Ghana);
- (d) Judge Inés Weinberg de Roca (Argentina);
- (e) Judge Jean Courtial (France);³
- (f) Judge Richard Lussick (Samoa);
- (g) Judge Rosalyn Chapman (United States).

2. Election of the President and Vice-Presidents

30. In June 2013, UNAT elected its Bureau for the term of 1 July 2013 to 30 June 2014, with Judge Faherty serving as President; Judge Weinberg de Roca as First Vice-President; and Judge Adinyira as Second Vice-President.

B. Judicial statistics

1. General activity of the Appeals Tribunal

31. UNAT held three sessions in 2013: a spring session (18 to 28 March 2013), a summer session (17 to 28 June 2013) and a fall session (7 to 18 October 2013). At these sessions, UNAT heard and passed judgment on appeals filed against judgments rendered by the Dispute Tribunal (see art. 2.1 of the UNAT Statute); against decisions of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board (UNJSPB or Pension Board), alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF or the Pension Fund) (see art. 2.9 of the UNAT Statute); and on appeals against decisions from entities that concluded special agreements with the Secretary-General of the United Nations (see art. 2.10 of the UNAT Statute) including the International Civil Aviation Organization (ICAO), the Commissioner-General of UNRWA and the UNRWA Dispute Tribunal. The Appeals Tribunal held five oral hearings, one of which concerned 16 cases.

32. During the reporting period, UNAT received 125 new appeals and disposed of 137 cases. UNAT rendered 115 judgments and issued 47 orders. As at 31 December 2013, UNAT had 110 cases pending.

33. Table 3a below shows the number of cases received, disposed of and pending for 2013 and previous years. There was a 12 per cent decrease in the number of appeals received in 2013, as compared to 2012.

³ Judge Courtial tendered his resignation effective 31 December 2013.

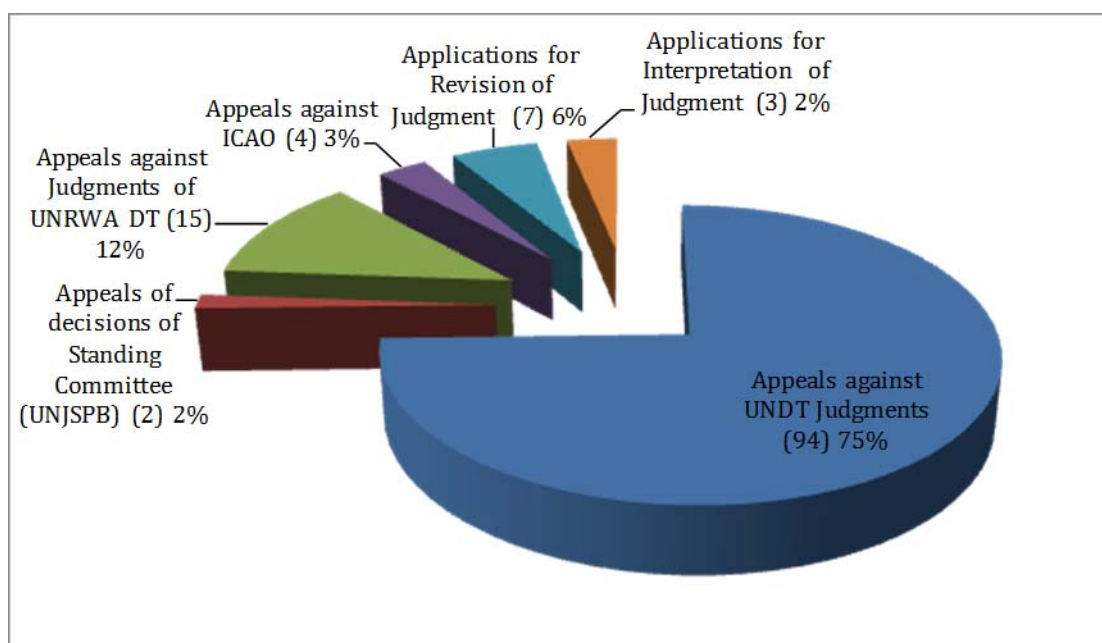
Table 3a

<i>UNAT</i>	<i>Cases received</i>	<i>Cases disposed of</i>	<i>Pending cases</i>
2009	19	N/A ⁴	19
2010	167	95	91
2011	96	104	83
2012	142	103	122
2013	125	137	110
Total	549	439	

34. The ratio of cases filed by staff members compared to those filed on behalf of the Secretary-General changed from 2012 to 2013. In 2012, 63 per cent of the cases were filed by staff members and 37 per cent were filed on behalf of the Secretary-General, while in 2013 half of the cases were filed by staff members and half of the cases were filed on behalf of the Secretary-General.

35. The 125 new cases filed in 2013 included 94 appeals against judgments of the UNDT (44 filed by staff members and 50 filed on behalf of the Secretary-General); two appeals of decisions of the Standing Committee acting on behalf of the UNJSPB; 15 appeals against judgments rendered by the UNRWA Dispute Tribunal (11 brought by staff members and four brought on behalf of the Commissioner-General); and four appeals against decisions by the Secretary General of ICAO. They also included seven applications for revision of UNAT judgments filed by staff members (including one Pension Fund case and one UNRWA case) and three applications for interpretation of UNAT judgments (one filed on behalf of the Secretary-General and two filed by staff, including one Pension Fund case).

36. Chart 5 below provides a breakdown of the number of cases registered between 1 January and 31 December 2013 by entity.

Chart 5 Cases registered between 1 January and 31 December 2013

⁴ UNAT did not hold a session in 2009. It held its first session in the spring of 2010.

37. In the four and a half years from 1 July 2009 to 31 December 2013, UNAT received a total of 549 cases, rendered 396 judgments, and disposed of 439 cases. Table 3b reflects a breakdown of judgments, orders and hearings for UNAT for the period 2009 to 2013.

Table 3b

<i>UNAT</i>	<i>Judgments</i>	<i>Orders</i>	<i>Hearings</i>
2009	N/A	N/A	N/A
2010	102	30	2
2011	88	44	5
2012	91	45	8
2013	115	47	5
Total	396	166	20

2. Outcome of disposed cases

38. Of the 115 judgments rendered by UNAT in 2013, 80 related to Dispute Tribunal judgments (disposing of 99 appeals), three to decisions of the Standing Committee of the UNJSPB, 12 to UNRWA Dispute Tribunal judgments, one to a decision of the UNRWA Commissioner-General, and one to a decision of the Secretary General of ICAO. The Appeals Tribunal also rendered 19 judgments on applications for revision, interpretation or correction (disposing of 20 applications). An additional application for interpretation was disposed of by an order. UNAT also considered seven cross-appeals, which it disposed of in the respective judgments.

39. Of the 99 appeals related to UNDT judgments, 61 were filed by staff members and 38 were filed on behalf of the Secretary-General. Of the 61 appeals filed by staff members, 44 (72 per cent) were rejected and 17 were granted in full or in part (28 per cent). Of the 38 appeals filed on behalf of the Secretary-General, 7 were rejected (18 per cent), and 31 were granted in full or in part (82 per cent). In addition, UNAT considered three cross-appeals by the Secretary-General and three cross-appeals by staff members, which it disposed of in the respective judgments.

40. UNAT issued three judgments on appeals of decisions taken by the Standing Committee, acting on behalf of the Pension Board. One appeal was granted in part, and two cases were remanded to the Standing Committee.

41. UNAT rendered 13 judgments, disposing of 12 appeals filed by UNRWA staff members and one appeal filed by the UNRWA Commissioner-General. Of the 12 appeals filed by UNRWA staff members, 10 were dismissed and two were remanded to the UNRWA Dispute Tribunal. The Commissioner-General's appeal was allowed. In addition, UNAT disposed of a cross-appeal by a staff member in the respective judgment.

42. UNAT rendered one judgment rejecting an appeal filed by a former ICAO staff member.

43. UNAT rendered 19 judgments disposing of 20 applications for interpretation, correction or revision of judgments, including two UNRWA cases and one Pension Fund case. Of the 19 applications filed by staff members, two were granted and 17 were denied. One application for interpretation by the Secretary-General was denied. An additional request for interpretation by the Secretary-General was rejected by an order.

44. Charts 6a and 6b provide a breakdown of the outcome of appeals against UNDT judgments by party.

Chart 6a Outcome of appeals against UNDT judgments filed by staff members

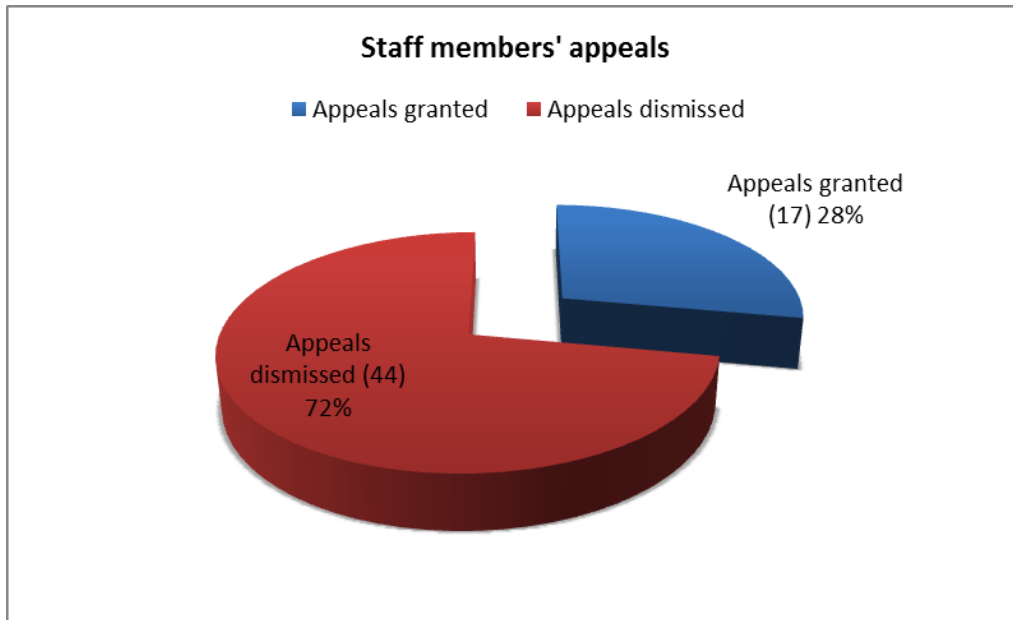
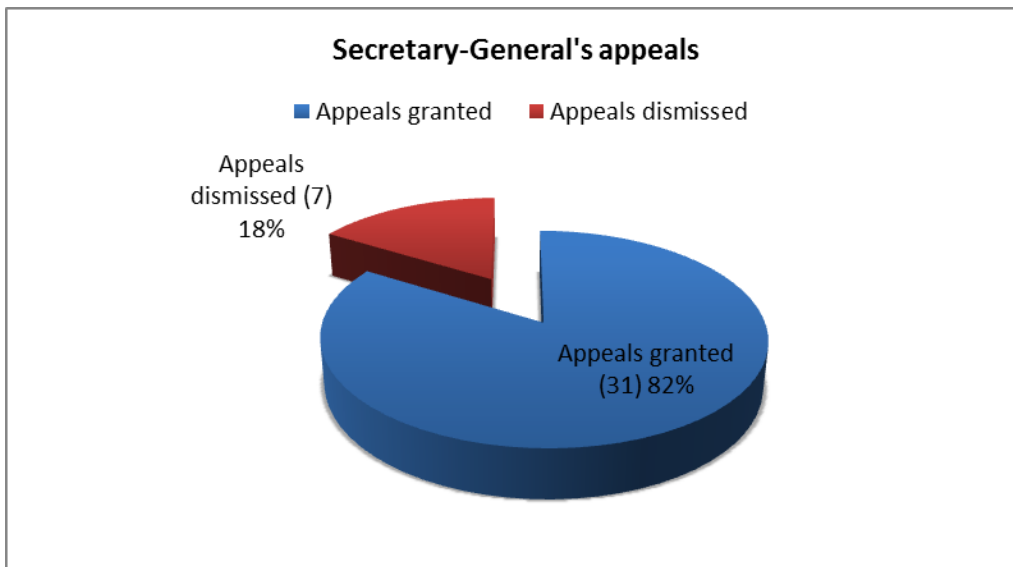


Chart 6b Outcome of appeals against UNDT judgments filed on behalf of the Secretary-General



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

Appeals against UNDT judgments

45. In 11 judgments, UNAT vacated an award for compensation granted by the UNDT. In one judgment, UNAT reduced the award of compensation granted by the UNDT. In one judgment, UNAT vacated the UNDT’s award of interest on compensation ordered.

46. In three judgments, UNAT vacated the UNDT’s orders of specific performance (rescission of decision to discontinue post; consideration for permanent appointment; and decision to convert staff member’s fixed-term

appointment to permanent appointment).⁵ In one judgment, UNAT vacated the UNDT's order to place the staff member on the roster of successful candidates for the G to P exam and instead ordered that the staff member be granted an opportunity to take the oral exam again. In two judgments, UNAT remanded cases to the Administration, ordering that the Administration consider the staff member's appointment for conversion to a permanent appointment.

47. In six judgments, UNAT vacated the order of reinstatement or payment of compensation in lieu thereof.⁶ In one judgment disposing of two cases, UNAT ordered reinstatement of the staff member or payment of compensation in lieu thereof. In one judgment, UNAT reduced compensation ordered as an alternative to reinstatement. In four judgments (disposing of 16 cases in total, concerning 270 current or former staff members), UNAT vacated the UNDT's order of reconsideration of staff for permanent appointments by the ICTY Registrar and payment of compensation in lieu thereof. UNAT instead ordered that the staff members be reconsidered for permanent appointments by the Assistant Secretary-General, OHRM; *and* awarded compensation for moral damage.

48. In one judgment, UNAT vacated the UNDT order to suspend the staff member's separation from service pending a ruling on the merits of the case. In one judgment, UNAT vacated a ruling by the UNDT on receivability, finding the application receivable.

49. In one judgment, UNAT vacated an order of costs against the Secretary-General. In two judgments, UNAT ordered costs against a staff member.

50. In one judgment, UNAT ordered the redaction of certain paragraphs of the UNDT judgment.

Appeal against a decision of the Standing Committee of the UNJSPB

51. In one judgment, UNAT ordered payment of a widow's benefit.

Appeal against an UNRWA DT judgment

52. In one judgment, UNAT vacated the UNRWA Dispute Tribunal's order of reinstatement of the staff member or payment of compensation in lieu thereof.

4. Accountability

53. In one judgment, UNAT referred a case to the Secretary-General for possible action to enforce accountability pursuant to art. 9.5 of its Statute.

54. In one judgment, UNAT found that the UNDT erred in referring a case to the Secretary-General for possible action to enforce accountability under art. 10.8 of its Statute.

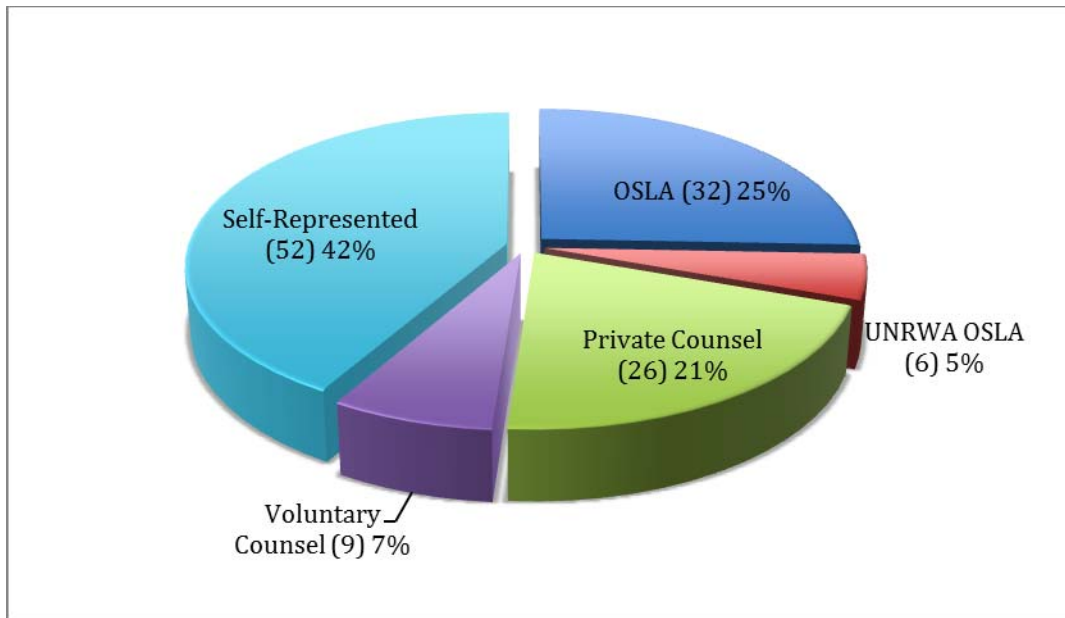
5. Legal representation of staff members (as appellants or respondents before UNAT)

55. With respect to the 125 cases received during the reporting period, 32 staff members were represented by OSLA, six staff members were represented by UNRWA OSLA, 26 were represented by private counsel, 9 by voluntary counsel, and 52 staff members were self-represented. This is illustrated in Chart 7 below.

⁵ In two of these judgments, UNAT also vacated an award of compensation.

⁶ In two of these judgments, UNAT vacated additional orders on specific performance.

Chart 7: Legal representation of staff members in cases filed between 1 January and 31 December 2013



6. Jurisprudence

56. Highlights of the jurisprudence in 2013 are set out in Appendix IV.

V. Activities of the Office of Staff Legal Assistance

A. General Activity

57. OSLA continued to provide legal advice and representation to staff in employment matters (including from non-appointment to termination), claims of discrimination/harassment/abuse of authority, pension benefits and other rights and entitlements under the staff rules. OSLA also provided advice and representation to former UN employees and their beneficiaries regarding pension and post-separation entitlements claims.

58. This year marked the implementation of the use of the OSLA e-intake form which facilitates making requests for assistance wherever UN staff members are located. Efforts are ongoing to link the e-intake form to the OSLA database.

B. Outreach and training activities

59. In 2013, the OSLA Legal Officer in Beirut visited UNIFIL and gave a presentation to the UN Country Team in Lebanon. Outreach with members of UN staff associations both in the Secretariat and Funds and Programmes took place in Headquarters and field-based OSLA duty stations including Geneva, Beirut, Addis Ababa and Nairobi. OSLA participated in regular outreach and training activities organized by OHRM for newly-recruited UN staff members in New York and Geneva as well as other duty stations with an OSLA presence. OSLA also made a presentation at the UNICEF general staff association meeting in NY, briefed the entire UNDP Headquarters Human Resources Department on the role of the Office, and addressed the Directors of Mission Support during a global VTC chaired by the Under-Secretary-General for Peacekeeping Operations.

C. Statistics

60. OSLA provides a range of legal assistance to staff, including summary legal advice; advice and representation during informal dispute resolution including formal mediation; assistance with the management evaluation review and during the disciplinary process; and representation of staff before the Dispute and Appeals Tribunals and other recourse bodies. Each action can vary significantly in terms of time expenditure by a Legal Officer; however each of these activities is tracked as a “case.”

1. Number of cases

61. During the reporting period, OSLA received 762 new cases and closed or resolved 589 cases. As at 31 December 2013, there were 189 cases pending.

62. Table 4 provides the figures of cases received from 2009-2013.

Table 4 Types and number of cases received from 2009-2013

<i>Types of Cases</i>	Number of cases received				
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Summary Legal Advice	173	303	358	631	487
Management Evaluation Matters	61	90	120	196	113
Representation before the UNDT	127	75	116	96	71
Representation before the UNAT	10	39	21	31	34
Disciplinary Cases	156	69	55	46	38
Other	74	13	10	29	19
<i>Total</i>	<i>601</i>	<i>589</i>	<i>680</i>	<i>1029⁷</i>	762

63. “Summary legal advice” cases vary significantly and can often involve identifying strengths and weaknesses of a case and advising staff members on options for seeking redress and likely outcomes and implications of a particular action or approach. It does not involve preparing an application or other submissions to a formal body such as the Management Evaluation Unit (MEU) or the UNDT or UNAT, or in cases of alleged misconduct writing to the Administration. “Management Evaluation” cases are those cases where OSLA held consultations and provided legal advice to staff member clients, drafted management evaluation requests on their behalf, held discussions with the MEU or equivalent entity within the Funds and Programmes and negotiated settlements. “Disciplinary Cases” are those cases where OSLA provided assistance to staff members in responding to allegations of misconduct under the staff rules.

2. Breakdown of the cases

64. In cases before the UNDT and UNAT, OSLA held consultations and provided legal advice to staff member clients, drafted submissions on their behalf, provided legal representation in oral hearings, held discussions with opposing counsel and, to the extent possible, negotiated settlements. OSLA similarly provided advice and assistance in submissions and processes before other formal bodies, and represented staff in cases of formal mediation. Chart 8 below provides a breakdown of the 275 new cases in 2013 in which OSLA formally represented staff members before the MEU, UNDT, UNAT and other recourse bodies. Chart 9 provides a breakdown of the 762 new cases in 2013 by subject matter.

⁷ The relatively higher number of cases in 2012 was due to a number of ‘class appeals’ whereby large groups of staff from the same UN entity facing the same issue approached OSLA for assistance, but each individual was counted as a case. Accordingly, the number of cases in 2013 is consistent with an overall annual growth of requests for OSLA’s assistance.

Chart 8 OSLA cases by UN recourse body

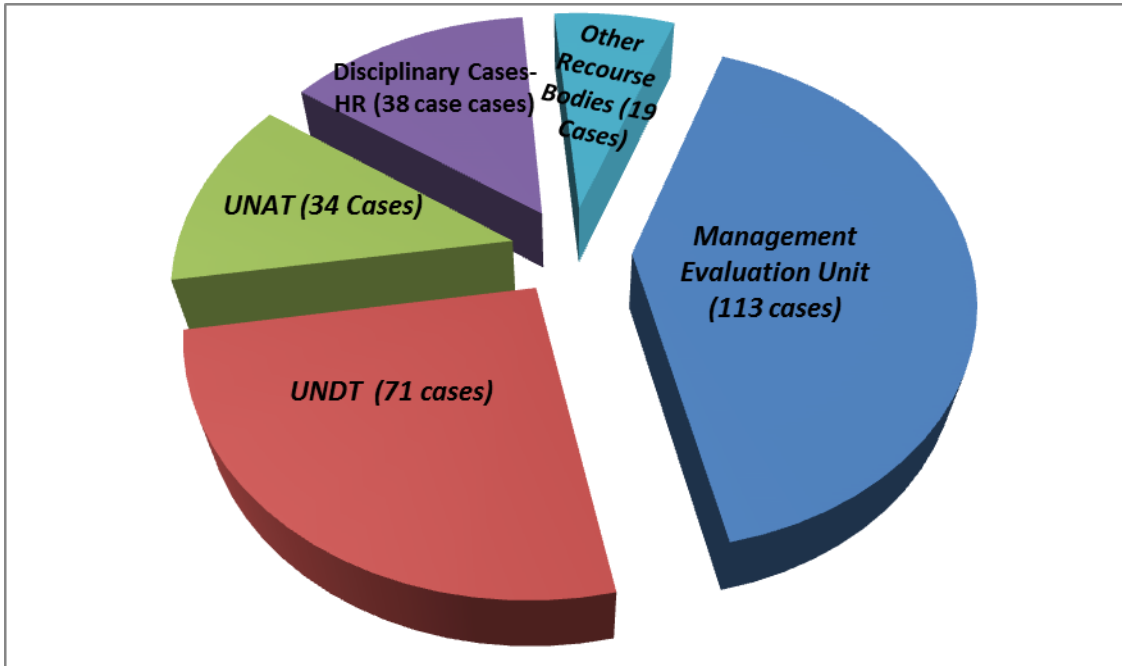
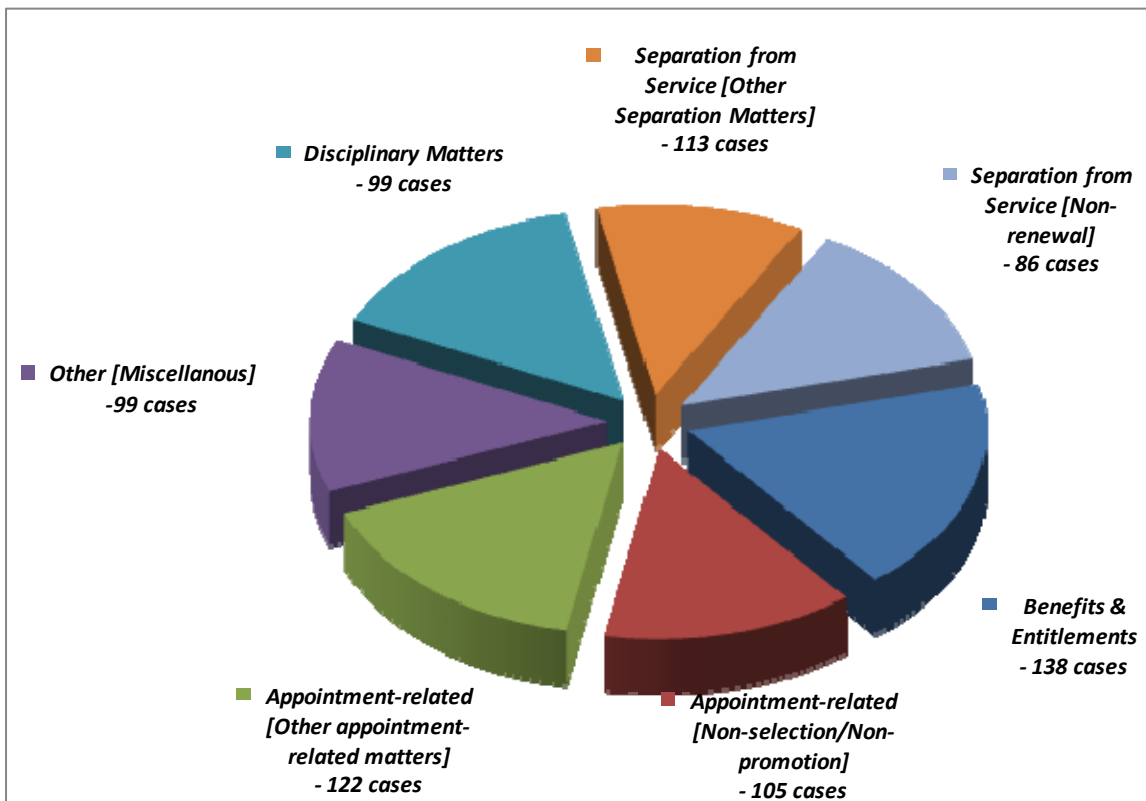
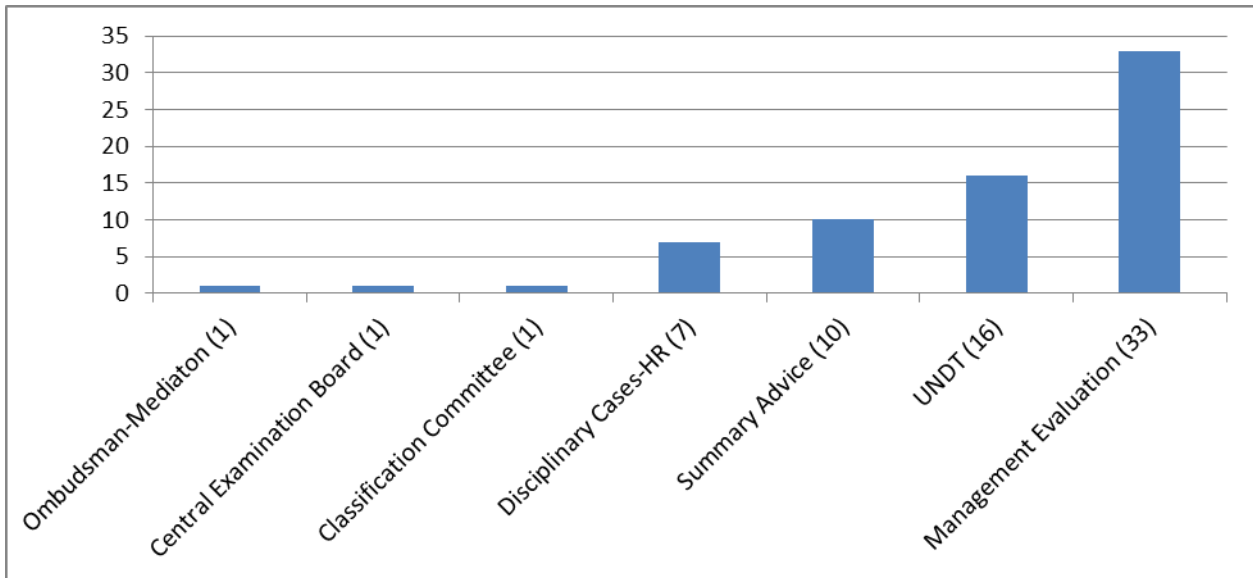


Chart 9 OSLA cases by subject matter



65. Notably, OSLA settled 69 cases in 2013. Chart 10 below shows the breakdown of those cases.

Chart 10 OSLA settled cases in 2013



3. Cases by client entity (Department, Agency, Fund or Programme, Duty Station)

66. Chart 11 provides a breakdown of cases by UN entity in which the staff member was employed, namely, Secretariat departments or UN agencies, peacekeeping and political missions, and Funds or Programme. Chart 12 provides a breakdown of clients' duty station. The largest single client group is staff members in peacekeeping operations in the field.

Chart 11 Cases by UN entity of the client

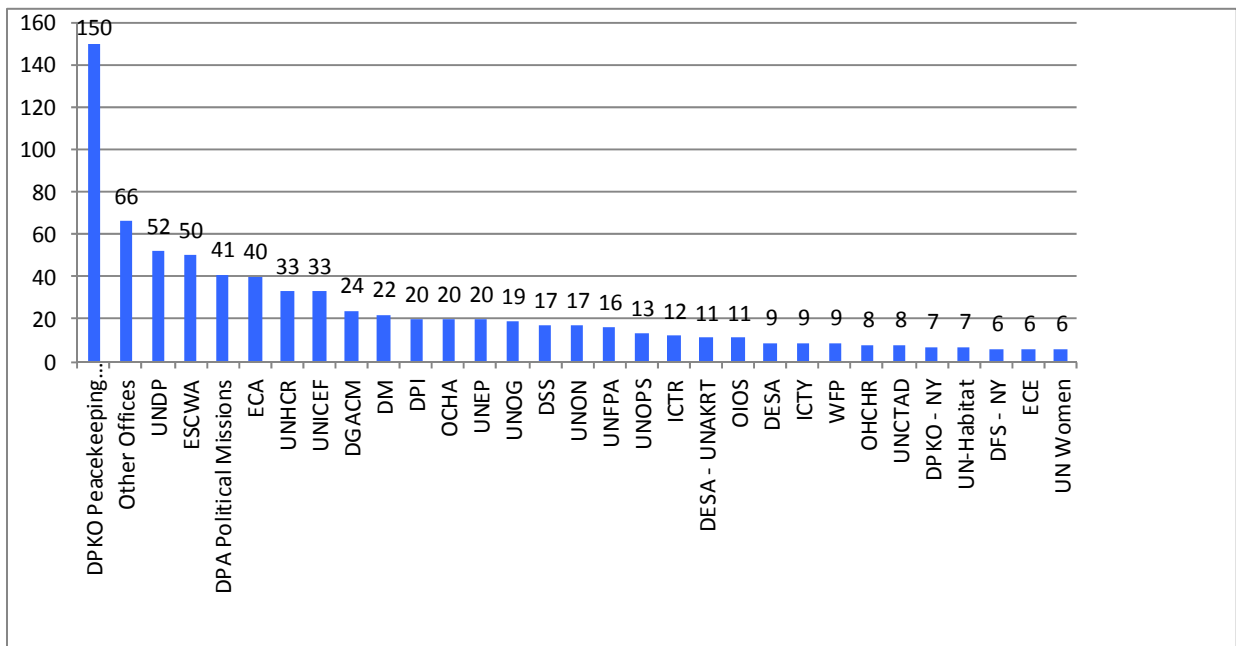
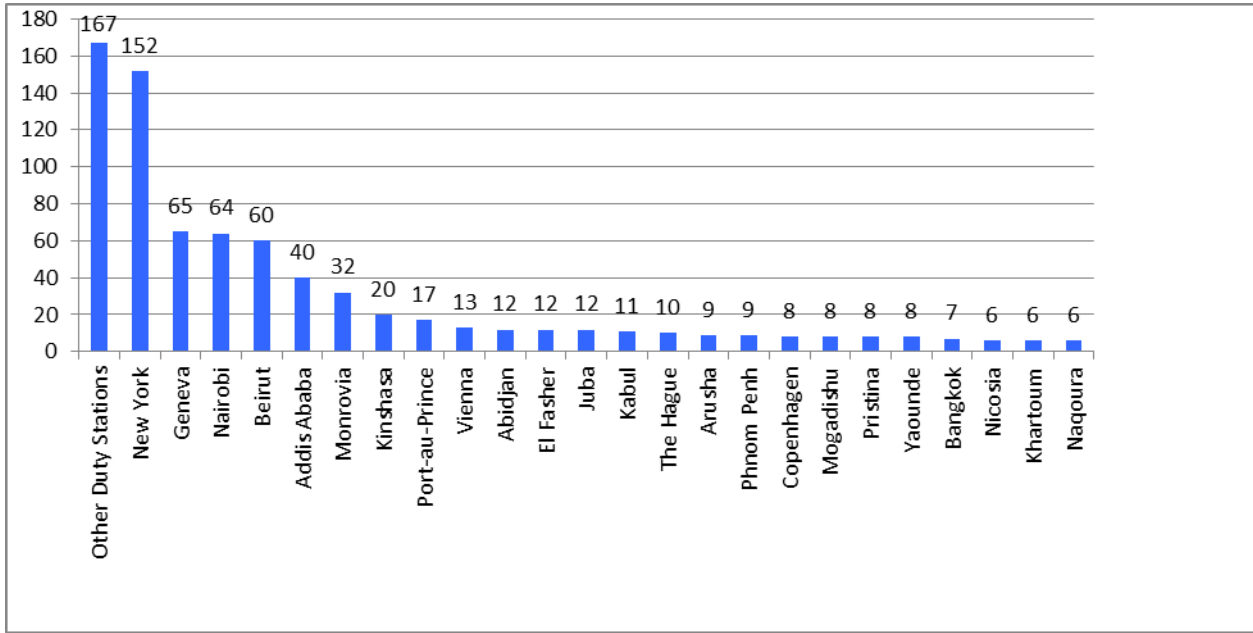


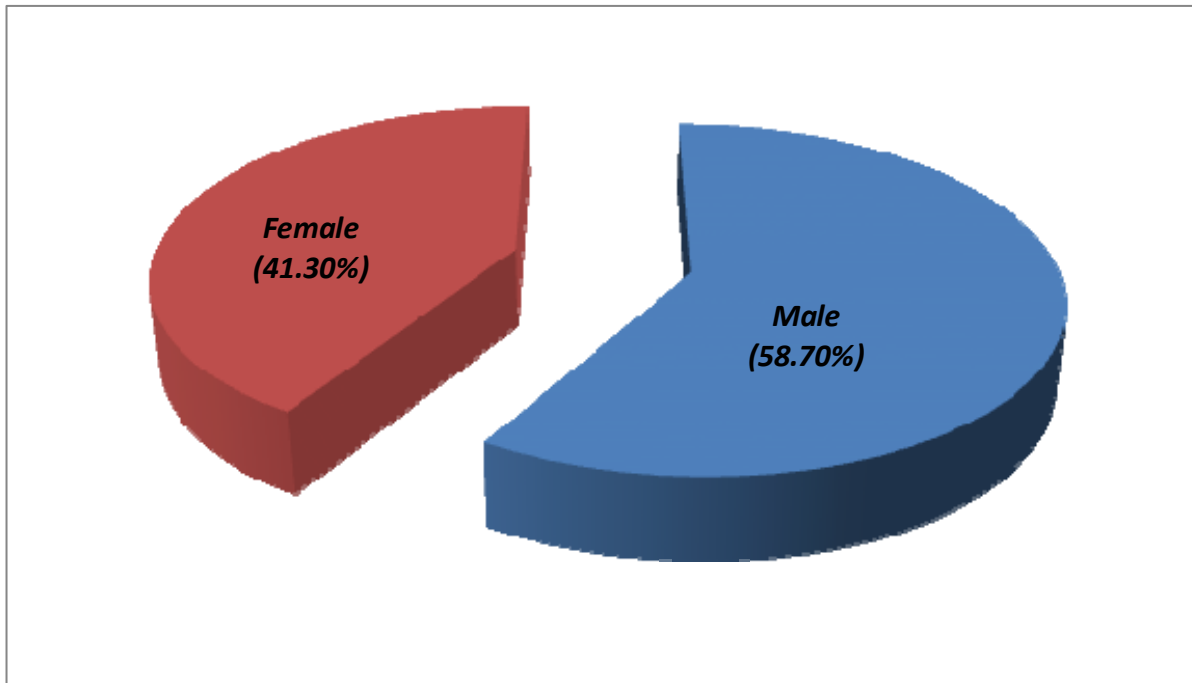
Chart 12 Breakdown of OSLA cases by duty station of the client



4. Cases by gender

67. Chart 13 provides a breakdown of new OSLA cases by gender of the client in 2013: 448 cases from male staff members and 314 from female staff members.

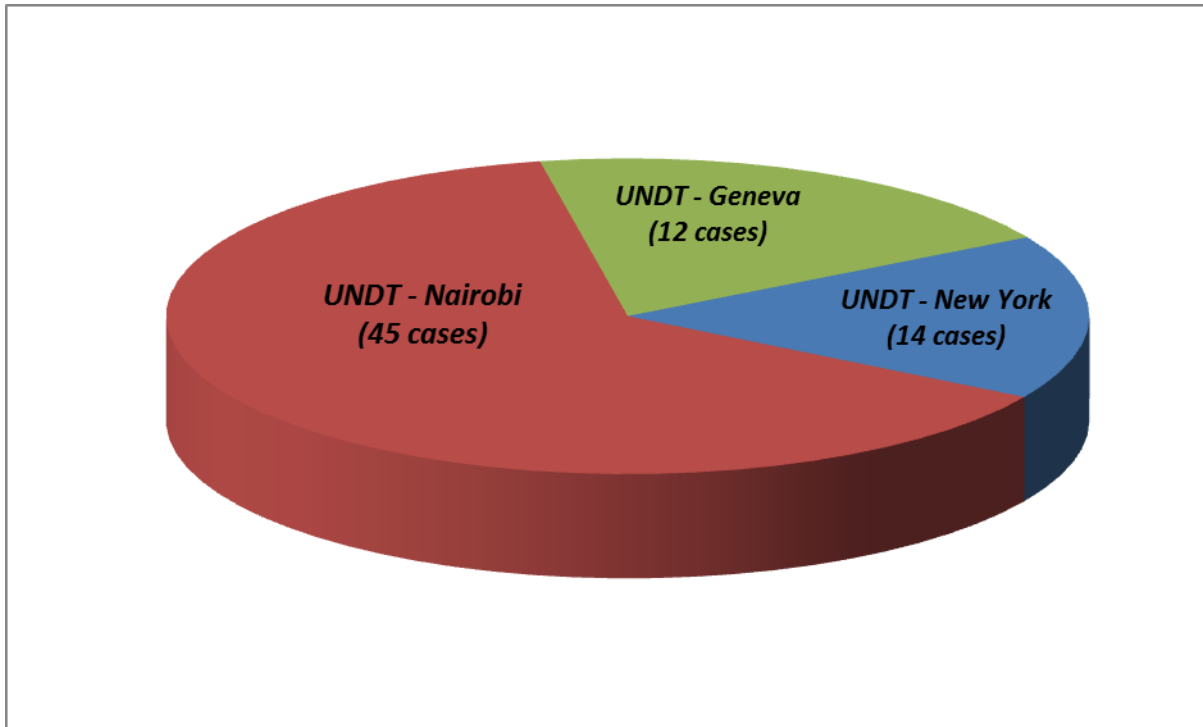
Chart 13 OSLA cases by client gender



5. Representation before the Dispute Tribunal

68. Chart 14 below provides a breakdown of cases before the UNDT by location.

Chart 14 OSLA cases before UN Dispute Tribunal



APPENDIX I: UNDT CASES RECEIVED IN 2013 – EMPLOYMENT ENTITY

UN Secretariat (Headquarters)	DESA	5
	DFS	2
	DGACM	70
	DM	16
	DPI	3
	DSS	8
	OAJ	7
	OCHA	4
	OHCHR	2
	OIOS	2
	Other UN Secretariat (Headquarters)	1
	Total	120
UN Secretariat Offices Away from Headquarters	UNOG	18
	UNON	17
	UNOV	1
	Total	36
Peacekeeping missions	MINUSTAH	9
	MONUSCO (former MONUC)	1
	UNAMID	5
	UNDOF	2
	UNMIL	11
	UNMISS	2
	UNOCI	2
	Total	32
Regional Commissions	ECA	5
	ECE	1
	ESCAP	2
	ESCWA	10
	Total	18

Special political missions	UNAMA	5
	UNAMI	6
	UNIPSIL	3
	UNPOS	3
	UNSMIL	1
	UNTSO	1
	Total	19
Tribunals	ICTR	4
	ICTY	2
	Total	6
Agencies/Funds/Programmes/Other UN entities	UNCTAD	2
	UNDP	9
	UNEP	5
	UNFPA	1
	UN-Habitat	3
	UNHCR	15
	UNICEF	6
	UNODC	4
	UNOPS	6
	UNV	1
	UN-Women	4
	WFP (local staff)	2
	Total	58
Total		289

APPENDIX II: UNDT CASES RECEIVED IN 2013 – COUNTRY OF NATIONALITY

Country	Number	Country	Number
Afghanistan	6	Liberia	13
Albania	2	Madagascar	1
Argentina	3	Malawi	2
Australia	1	Mali	1
Austria	4	Morocco	1
Bahamas	2	Nepal	1
Belgium	1	Netherlands	2
Benin	1	New Zealand	1
Bhutan	1	Nigeria	2
Bosnia and Herzegovina	4	Norway	1
Brazil	1	Pakistan	1
Cameroon	3	Peru	1
Canada	7	Philippines	4
China	10	Qatar	3
Colombia	1	Russian Federation	29
Congo, The Democratic Republic	2	Sierra Leone	5
Cote D'Ivoire	3	Somalia	1
Cuba	3	South Africa	2
Denmark	3	Spain	2
Dominica	9	Switzerland	5
Egypt	8	Syrian Arab Republic	1
Ethiopia	5	Tanzania, United Republic of	1
France	11	Thailand	1
Georgia	1	Tunisia	2
Germany	10	Turkey	1
Ghana	1	Uganda	1
India	1	United Kingdom	13
Iraq	1	United States	41
Ireland	3	Vanuatu	1
Italy	5	Venezuela	2
Jamaica	2	Zambia	2
Japan	2	Zimbabwe	1
Jordan	3	Other	2
Kenya	19		
Lebanon	3	Total	289

APPENDIX III: PRONOUNCEMENTS OF THE UNDT

Introduction

1. A summary of major legal pronouncements made by the UNDT in judgments rendered from 1 January to 31 December 2013 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 UNDT judgments issued during the period covered by this report is available on the OAJ website (<http://un.org/en/oaj/dispute>). Further, certain UNDT judgments summarized may be appealed to UNAT by either party. Accordingly, the UNAT website should be consulted for the final determination made in the cases under appeal.

Receivability

2. In *Mersmann* UNDT/2013/065, the Tribunal stated that exceptions from the requirements of the wording of art. 3.1 of its Statute, as provided for in UNAT Judgments *Iskandar* 2011-UNAT-116 and *Gabaldon* 2011-UNAT-120, have to be applied in a restrictive manner. The decision of the governing body of a UN Convention to transfer the administration of an entity under that Convention from one hosting organization (IFAD) to the United Nations does not imply the automatic transfer of its staff to a new employer, the United Nations, including the issuance of new contracts under the Rules and Regulations of the United Nations.

3. In *Gusarova* UNDT/2013/072, the UNDT held that the preliminary determination by an interview panel that a person is not eligible to apply for a vacancy announcement, which has yet to be confirmed by the competent authority within the Organization, does not constitute an administrative decision for the purpose of art. 2(a) of the Tribunal's Statute. It further stated that unlike under former staff rule 111.2(a), under current staff rule 11.2(c) an administrative decision does not need to be notified in writing. In *Asariotis* UNDT/2013/144, it held that an implicit administrative decision cannot be notified in writing.

4. In *Skourikhine* UNDT/2013/113, the UNDT stated that when the Administration fails to provide notification of an individual decision, i.e. to cancel a vacancy announcement, it creates a legal uncertainty for itself and for the staff member. In such case, the statutory time-limits for management evaluation start to run only once the Applicant receives a written notification thereof. It further found that an Applicant who was unable to apply for a post because a vacancy announcement was accessible to the public only for one day cannot be denied legal standing (*intérêt à agir*).

5. In *Gehr* UNDT/2013/135, the UNDT found that it is the pre-eminent purpose of management evaluation to afford to the Administration an opportunity to reconsider its initial decision. Where such reconsideration is delegated to a specialized body, such as a rebuttal panel, there is no need for further administrative review prior to recourse to the UNDT.

6. In *Lee* UNDT/2013/147, the UNDT held that a proposal submitted by the Secretary-General to the General Assembly to abolish a post in the regular budget is not an "administrative decision" that can be challenged, because it does not produce "direct legal consequences on the Applicant".

Non-renewal of appointment

7. In *Oummih* UNDT/2013/045, the UNDT held that since a staff member has no right to renewal of his/her fixed-term appointment in accordance with staff rule 4.13 (c), a decision to extend such an appointment for one instead of two years is a favourable decision which does not adversely affect the staff member's rights, and is thus not subject to appeal.

8. In *Gehr* UNDT/2013/166, the UNDT found that a staff member has a right to ask the Administration to provide reasons for non-renewal of his/her contract. If s/he does not ask, then s/he cannot complain that s/he was not given reasons for the decision. The Tribunal further held that if a staff member's work relationship with his/her superiors has deteriorated to the extent that there is no possibility of salvaging such a relationship, it is within the Administration's discretion not to renew the contract.

Selection, appointment, and promotion

Interviews/written test

9. In *Lex* UNDT/2013/056, the UNDT stated that the interview process is not a robotic exercise in which each staff member must necessarily be asked identical questions without any regard to their background and answers provided by them. A reasonable degree of flexibility during interviews is permitted, provided that all candidates are given full and fair consideration.

10. In *Wang* UNDT/2013/099, the UNDT confirmed that, in the absence of a guiding mechanism for the conduct of written tests, a hiring manager has discretion in developing a standard to be used to govern the awarding of scores and ratings.

Selection of roster candidates

11. In *Charles* UNDT/2013/040, *Charles* UNDT/2013/041, *DeSouza* UNDT/2013/054 and *Skourikhine* UNDT/2013/113, the UNDT stated that being placed on a roster of pre-approved candidates does not remove the requirement that roster candidates have to be compared against other non-roster candidates for position-specific job openings. In *Charles* UNDT/2013/040 and *Charles* UNDT/2013/041, the UNDT explained that the purpose of the roster is to speed up the recruitment process by avoiding the stage of a referral to the central review bodies if a roster candidate is considered the best candidate when compared to all other candidates. However, roster candidates are not a separate privileged class of candidates for position-specific job openings and cannot be treated as such to the detriment of other candidates. Appointment to a position-specific job opening of a roster candidate without giving proper consideration to all candidates would be contrary to the United Nations Charter and the elaborate selection procedures of the Organization.

12. In *Nwuke* UNDT/2013/157, the UNDT concluded that section 7.8 of ST/AT/2006/3 required the programme manager to evaluate all candidates, including those from the roster, by way of a competency-based interview in cases of recruitment or promotion. After that, if the successful candidate was from the roster, the central review body was not required to re-evaluate the person's candidacy.

13. In *Nwuke* UNDT/2013/161, the UNDT stated that there is no transparency in a process that selects a candidate from a roster without interview or objective comparison with the other candidates. The Tribunal held that the reason for advertising a vacancy is to attract a wide range of candidates for selection and to give full and proper consideration to securing the highest standards of efficiency, competence, and integrity. The need for advertising is obviated if those who apply to the vacancy are not even considered.

14. In *Boutiba* UNDT/2013/153, the Tribunal considered that when a staff member is placed on a roster of candidates pre-approved for similar functions, this creates a presumption that the staff member is capable of exercising the functions concerned and that s/he meets the eligibility requirements of the post in question. However, the Tribunal considers that it is no more than a presumption and can be invalidated by evidence to the contrary, especially when, as in this case, it is provided by another candidate. To maintain otherwise, that is, to decide that the Tribunal cannot challenge a competency regarded as acquired, would mean that the Tribunal knowingly accepts an error committed by a panel regarding a staff member's linguistic skills, university degrees, and so forth, an error that led to the staff member's wrongful placement on the roster, with continuing consequences, even though in another selection procedure evidence was provided of the roster candidate's inability to meet the eligibility requirements of the job opening.

Lateral transfer of candidates

15. In *Nwuke* UNDT/2013/160, the UNDT stated that lateral moves may be seen as an expedited method of recruitment, such as the pre-screening process referred to in General Assembly resolution 61/244. A lateral move is a discretionary measure that must be used in accordance with the established procedural rules and must not be arbitrary or motivated by factors inconsistent with proper administration.

Compensation

16. In *Makwaka* UNDT/2013/002, the UNDT stated that it would not consider an award of a remedy that was not requested by the Applicant. In *Santos* UNDT/2013/038, the UNDT stated that an award of non-pecuniary damages should be expressed as a lump-sum rather than in terms of net base salary. Non-pecuniary damages should not depend on the status or seniority of the staff member but rather on the actual harm suffered.

17. In *Guedes* UNDT/2013/042 and *Wasserstrom* UNDT/2013/053, the UNDT stated that, when assessing appropriate compensation, it categorizes the harm suffered by the Applicant in terms of a scale of severity, including assessing whether the Applicant was minimally, moderately, or extremely distressed by the manner in which s/he was treated. In *Guedes* the UNDT further stated that in an appropriate case, medical evidence may be helpful in determining the amount of compensation, but the absence of such evidence is not fatal to a claim in respect of distress suffered so long as there is a rational basis to support a finding by the UNDT that such damage occurred.

18. In *Gusarova* UNDT/2013/072 and *Terragnolo* UNDT/2013/093, the UNDT found that a lost chance of being selected to be put on a roster and subsequently to be selected for a higher level post, and as such to improve one's status within the Organization, may create material damage warranting moderate compensation.

19. In *Rahman* UNDT/2013/097, the UNDT held that it can only decide on damages which result directly from contested decisions.

20. In *Skourikhine* UNDT/2013/113, the UNDT stated that a fundamental violation of an Applicant's due process rights can itself give rise to moral damage.

Staff association matters

21. In *Saffir* UNDT/2013/109 and *Ginivan* UNDT/2013/110, the UNDT dealt with an application contesting the Secretary-General's refusal to conduct an investigation into alleged irregularities surrounding the United Nations Staff Union (UNSU) elections. The UNDT stated that it is empowered to deal with administrative decisions including alleged action or inaction by the Secretary-General, but that it lacks jurisdiction to entertain disputes arising from the holding of, or a challenge to, union elections. Further, the UNDT does not have general jurisdiction to review or supervise internal union affairs. An aggrieved person, under the terms of the UNSU Statute, may approach the UNSU Arbitration Committee, which issues decisions that are binding on all bodies of the Staff Union. The UNDT stated that, while the Secretary-General must facilitate organizational rights, he may not intervene in the format or conduct of UNSU elections by virtue of the UNSU Statute.

Delegation of authority

22. In *Bastet* UNDT/2013/172, the UNDT stated that decisions on delegation of authority are important since they modify the statutory powers conferred to Officials of the Organization. Therefore, to produce legal effects, a decision by the Secretary-General to delegate the power to dismiss a staff member, in this case to the Under Secretary-General for Management, has to be published. It further found that an Official who received delegation of authority cannot further sub-delegate this authority, unless the initial delegation of authority provided for a specific sub-delegation.

Disciplinary matters

23. In *Nguyen-Kropp* UNDT/2013/028 and *Postica* UNDT/2013/029, the UNDT stated that the decision to launch an investigation may be an appealable administrative decision. The UNDT also stated that staff members are entitled to basic, fundamental due process rights and guarantees during the investigation process, which includes the respect of standards of confidentiality, objectivity, impartiality, fairness, and the avoidance of conflicts of interest (see also *Makwaka* UNDT/2013/002, *Austin* UNDT/2013/080, and *Conti* UNDT/2013/081).

24. In *Santos* UNDT/2013/038, the UNDT stated that pursuant to the generally implied requirement of good faith and fair dealing between parties to an agreement, it is reasonable to assume that the Administration, when negotiating an agreement on a disciplinary measure, has a duty to inform the staff member about any foreseeable adverse consequence of that agreement.

25. In *Cateaux* UNDT/2013/027, the UNDT stated that when a court of law is faced with an admission of guilt by a party who is charged in a criminal matter, the court still has to look at the overall circumstances in which the confession was made and whether the facts admitted amount to a criminal act. The Tribunal stated that the same approach must be taken in disciplinary matters by it in view of the presumption of innocence in disciplinary proceedings as observed by UNAT (see *Liyandarachige* 2010-UNAT-087, para.17).

26. In *Stoykov* UNDT/2013/070, the UNDT held that there was a breach of the Applicant's due process rights by being compelled to answer the questions put to him by the investigators without a warning as to the consequences of providing answers to incriminating questions. This was particularly true when many of his answers were highly self-incriminating and largely formed the primary basis of the charges against him.

27. In *Bastet* UNDT/2013/172, the UNDT stated that where a decision to dismiss a staff member for misconduct is rescinded by the Tribunal on grounds of an illegality of form, it has to examine whether the decision was founded on the merits. If it finds that the decision was well-founded and that the Secretary-General, had he himself taken the decision as he should have, would have taken the same decision, no compensation is due to the Applicant under art. 10.5 of its Statute, since his loss of employment was due not to the irregularity committed by the Administration, but to the fault of the Applicant himself.

Termination

28. In *Bali* UNDT/2013/094, the UNDT held that the termination decision was taken without the requisite delegated authority notwithstanding the fact that all posts within UNMIS were necessarily to be abolished as a result of a Security Council resolution.

Performance evaluation and rebuttal

29. In *Tadonki* UNDT/2013/032, the UNDT held that the failure to discuss alleged shortcomings in the performance of a staff member and the failure to follow the e-PAS rules are a denial of due process and unacceptable managerial behaviour.

30. In *Said* UNDT/2013/150, the UNDT held that when a staff member is given a grading with a caveat that s/he should improve, there is an implicit undertaking by the Administration that the staff member will be allowed to continue in his/her employment and that s/he should take steps with the assistance of management as provided by the rules to improve. The Tribunal noted that improvement rests primarily with the staff member but the rules also require that the appropriate supervisor offers support or guidance to that staff member.

31. In *Mashhour* UNDT/2013/133, the UNDT held that the UNICEF Handbook unduly restricted the grounds on which the Applicant could rebut her performance appraisal in a way not envisaged by ST/AI/2002/3. In this respect, the UNDT stated that a policy document of a single United Nations entity cannot be allowed to displace the rights and obligations agreed to at the level of the entire Organization and promulgated by the Secretary-General via an administrative issuance. The Applicant's rights were also circumvented when she was told that she could not challenge her performance ratings on grounds other than discrimination. This prevented her from exercising her fundamental right to place before the rebuttal panel all her grievances flowing from harassment, discrimination and abuse of authority.

32. In *Gehr* UNDT/2013/135, the UNDT found that the mandate of a rebuttal panel is fixed for two years and ST/AI/2002/3 did not provide any legal basis for an extension. Once the period lapses, members of an expired rebuttal panel have no competence to conduct valid rebuttal processes. If the Administration is to extend a mandate of an advisory body that is due to expire, such extension, if ever, can only be made before the expiry of its mandate.

Accountability

33. In *Hersh* UNDT/2013/062, the UNDT exercised its power of referral to the Secretary-General under art. 10.8 of its Statute for him to consider what action should be taken in respect of the conduct of a senior manager in deliberately, recklessly and illegally re-classifying the Applicant's post by re-writing its terms of reference without authority, and wrongfully subjecting the Applicant to a comparative review process to her detriment.

34. In *Tadonki* UNDT/2013/032, the UNDT exercised its power of referral to the Secretary-General under art. 10.8 of its Statute for him to consider what action should be taken in respect of the conduct of senior managers of OCHA who failed to treat the Applicant fairly and in accordance with due process, equity and the core values of the Charter of the Organization.

Other

Retaliation

35. In *Rahman* UNDT/2013/097, the UNDT found that if the Ethics Office determines that an applicant is the victim of retaliation, s/he is entitled to receive copies of the relevant investigation reports of the OIOS and to be informed about the sanctions imposed upon the authors of the retaliation. Though the Secretary-General is not obliged to follow all the recommendations of the Ethics Office in case of retaliation, he has to do everything possible to ensure that the concerned staff member is put back, as soon as possible, in an appropriate working environment.

36. In *Nguyen-Kropp and Postica* UNDT/2013/176, the UNDT stated that retaliation has three essential elements: participation in a protected activity, being subject to a detriment, and a causal connection between the protected activity and the detriment suffered. Once the individual complainant has made out a *prima facie* case of retaliation, the burden of proof shifts to the Administration, which must prove by clear and convincing evidence that it would have taken the same action absent the protected activity.

Reasons for administrative decisions

37. In *Leclercq* UNDT/2013/055, the UNDT found that if the motive provided by the Administration is not supported by the facts and the available evidence shows that the Administration had earlier manifested its intention not to renew the Applicant's contract on grounds of alleged but not documented bad performance, the Tribunal cannot but conclude that the real motive behind the decision is the Administration's intention to get rid of the Applicant for improper motives.

38. In *Kulawat* UNDT/2013/058 and *Fernandez de Cordoba de Briz* UNDT/2013/069, the UNDT stated that administrative decisions must be based on proper reasons and take into account proper facts and considerations. A decision taken without proper reasons would be arbitrary, capricious and therefore unlawful. While the Administration's failure to provide proper and substantiated reasons does not automatically render the contested decision arbitrary, the Tribunal may draw an adverse inference from it. In *Zeid* UNDT/2013/005, the UNDT stated that failure to acknowledge or respond to reasonable requests, particularly where they are repeated several times over, amounts to maladministration for which some compensation may be payable in appropriate cases.

Time limits

39. In *Awad* UNDT/2013/071, the UNDT stated that if the rules of procedure provide for a filing within a certain number of calendar days, the filing party has until the expiration of the last calendar day of the filing period to file his application, regardless of the working hours of the Registry. The UNDT stated that if a filing is delayed for a brief period of time, and the filing party was not lax in the handling of the case and the delay caused no prejudice to the other party to the proceedings, such a delay may be considered *de minimis* depending on the circumstances of the case.

40. In *A-Ali and 45 others* UNDT/2013/155, the UNDT stated that it is an applicant's responsibility to pursue his/her case and, when the applicant is represented by counsel, s/he is not absolved of errors or oversight by counsel regarding the applicable time limits.

Departmental practices

41. In *Bauzá Mercére* UNDT/2013/011, the UNDT stated that, within the United Nations, different offices and departments benefit from a certain leeway as to how to best implement certain policies relating to the organization of work, so long as that implementation complies with the regulations and rules of the United Nations. The fact that a

practice may not be in place in other departments does not in itself render its implementation in a particular department discriminatory.

Waiver of a right, acquiescence, estoppel

42. In *Egglesfield* UNDT/2013/006, the UNDT stated that the waiver of a right is an express or implied abandonment of that right. If not expressly waived, a right may be impliedly waived by acquiescence or conduct that is inconsistent with the enforcement of the right on the part of the party entitled. In *Candusso* UNDT/2013/090, the UNDT stated that, generally, once the parties to a contract of employment have agreed to its terms, neither party may unilaterally amend them unless the original contract provides for agreed variations. However, there may be situations where an employee consents to the variation, including through a waiver of a right. A party to a contract may also be deemed to have waived his/her rights if s/he does not act within a reasonable time.

43. In *Egglesfield* UNDT/2013/006, the UNDT stated that the doctrine of estoppel has been relied upon by both the UNDT and the UNAT. For estoppel, the essential requirements are a representation by the representor that is accepted by the representee, and which induces the latter to act in such manner, or to alter his/her position, to his/her prejudice.

44. In *Simmons* UNDT/2013/015, the UNDT stated that if the management evaluation unit, as an integral part of the Secretariat, has already effectively addressed the question of the receivability of the request for management evaluation and declared it receivable under its own time limits, the Respondent is estopped, when the same claim is pending before the UNDT, from arguing the opposite position under the doctrines of waiver and estoppel.

Requirement of management evaluation with respect to former staff members

45. In *Masykanova* UNDT/2013/033, the UNDT stated that applications filed by former staff members are subject to the same established appeal procedures as for staff members, including the requirement of seeking timeous management evaluations with respect to the contested administrative decisions.

Informal resolution

46. In *Egglesfield* UNDT/2013/006, the UNDT stated that if the Administration does not want to engage in informal resolution efforts, it has a good faith duty to inform the Applicant of this promptly and unequivocally.

Conversion to a permanent appointment

47. In *D'Aspremont* UNDT/2013/083, the UNDT held that the eligibility of a given staff member for conversion to a permanent appointment has to be assessed against clear and objective criteria, not open to discretion. In the case at hand, since the Applicant did not fulfil the eligibility criteria, there was no discretion to allow her to be considered for conversion to permanent appointment. It follows that, even if the decision had been taken by a competent organ within the Organization, it was not legally possible to come to another result with respect to the Applicant's lack of eligibility. Therefore, the Tribunal finds that the fact that the decision was taken by the Assistant Secretary-General, OHRM, did not in any way impact the Applicant's chances for consideration for permanent appointment.

48. In *Hermoso* UNDT/2013/130, the UNDT found that the decision to take into account the Applicant's recent disciplinary record was a lawful exercise of discretion in determining the Applicant's suitability for conversion. In *Chikuhwa* UNDT/2013/066, the UNDT stated that for a staff member to be eligible for consideration for conversion to a permanent appointment, s/he must be, among other requirements, on a fixed-term contract at the time s/he is being considered for conversion.

Pleadings

49. In *Bali* UNDT/2013/094, the UNDT stated that it is a primary and basic rule of pleading that the party replying or answering to a claim or complaint must fully and sufficiently address any "allegations of fact" that go to any "issues" that are raised in the said claim or complaint. In other words, a reply filed by the Respondent before this Tribunal must

admit or deny the specific allegations set forth in the application. It is for this reason that an application or claim is served on the Respondent and a period of 30 days is afforded him to reply.

Contempt

50. In *Igbinedion* UNDT/2013/024, the UNDT stated that for courts such as the UNDT and UNAT to be effective in the exercise of their respective jurisdictions, it is imperative that their decisions, however unpalatable they appear to a losing party, are obeyed and complied with pending any judicial avenues for a remedy if the situation so warrants. The UNDT held that although the Statute is silent in so far as contempt provisions are concerned, the power to adjudicate on contempt is inherent in the jurisdiction afforded to the Tribunal by the Statute.

Legitimate expectation

51. In *Nwuke* UNDT/2013/157, the UNDT held that to be legitimate, an expectation does not require an express promise but may be inferred from relevant past practice. The Tribunal emphasized, however, that the practice must be constant and consistent in order to give rise to a general rule or practice. It must be well established and accepted by the Organization and the evidence establishing it must be clear and compelling so as to leave no doubt that the practice exists and is observed.

Abuse of process

52. In *Arigi-Oikelomen* UNDT/2013/036, the UNDT held that the Applicant's Second Reporting Officer demonstrated ill-motive and unethical conduct when, after the Applicant's separation from service, she decided to personally "investigate" the Applicant's qualifications. Her efforts to introduce the purported results of this investigation into evidence constituted an abuse of the process of the Tribunal.

53. In *Tadonki* UNDT/2013/032, the UNDT held that the Respondent manifestly abused process by: trying to bring in evidence an allegation of sexual harassment against the Applicant that had never been the subject of investigation under the relevant rules and regulations of the Organization and was devoid of any substance; filing a motion to recall a witness after he had been thoroughly examined, cross-examined and re-examined; and by filing submissions that were irrelevant, unnecessary, gratuitous and intended solely to undermine the credibility of the Applicant before the Tribunal and to cause needless distress to the Applicant.

54. In *Al-Mulla* UNDT/2013/107, the Applicant filed an application for revision of judgment alleging discovery of new decisive facts contained in documents which were in fact already on file when the initial judgment was rendered and which he had submitted. The UNDT considered that the application constituted an abuse of process for which it awarded costs of 800 USD based on art. 10.6 of its Statute. In *Al-Mulla* UNDT/2013/173, the UNDT again awarded 800 USD as costs to be paid by the same Applicant to the Secretary-General for manifestly abusing the proceedings by bringing an obviously unfounded application for revision and after filing two other requests for revision with the UNDT, while relying on the same "decisive fact" and having lost the two earlier applications.

Obligation of the Administration vis-à-vis a complainant when allegations of misconduct are substantiated

55. In *Nogueira* UNDT/2013/026, the UNDT held that the Administration had a duty to afford the Applicant an effective remedy in response to the findings of harassment. The Tribunal stated that the breadth of possible remedies that may be granted includes, but is not limited to, monetary compensation, rescission and injunctive or protective measures.

Harassment

56. In *Nwuke* UNDT/2013/158, the UNDT stated that the failure to ensure the appearance of fairness in the composition of the Advisory Selection Panel was an example of the systemic failure of the Administration to establish a fair and reliable system of recruitment and human resources management. However, the Tribunal concluded that systemic failure was not sufficient for it to find that the Applicant was a specific target of harassment and discrimination.

Abuse of authority

57. In *Luvai* UNDT/2013/035, the UNDT found that the Applicant's supervisor abused and exceeded his authority by not restoring the Applicant's access to Lotus Notes after investigations were completed and no further action was taken on the matter; by revoking the Applicant's firearm licence without providing reasons for his decision; and by usurping the powers of the Medical Director and declaring the Applicant mentally unstable.

58. In *Benfield-Laporte* UNDT/2013/162, the UNDT held that a decision not to initiate a formal fact-finding investigation into a complaint of abuse of authority, which was made six months after the complaint had been lodged, did not meet the requirement of "promptness" contained in section 5.3 and section 5.14 of ST/SGB/2008/5. It also found that the course of action chosen by the responsible official, which consisted in asking first the alleged offender for his views before taking the challenged decision, had no legal basis in ST/SGB/2008/5. Finally, the UNDT noted that it has both the competence and duty to assess whether there were "sufficient grounds" to warrant a formal fact-finding investigation, and considered that no general criteria could be determined to define the notion of "abuse of authority", but that the legal situation has to be assessed on a case-by-case basis.

Decisions of the International Civil Service Commission (ICSC)

59. In *Obino* UNDT/2013/008, the UNDT held that the Secretary-General has not been vested with any discretionary authority with respect to the implementation of ICSC decisions and that it cannot impute the decisions of the ICSC to the Secretary-General due to the different roles they play vis-à-vis the United Nations and its staff members. The Tribunal concluded that it could not extend its jurisdiction to include decisions of the ICSC regardless of how they are tailored to appear like decisions of the Secretary-General.

Ethics Office

60. In *Hunt-Matthes* UNDT/2013/085, the UNDT noted that the role of the Tribunal is to review the actions taken and decisions made by the Ethics Office in its preliminary evaluation of the Applicant's complaint in the light of its legal obligations and the relevant and factually reliable information it had in its possession. The Tribunal held that as a matter of general principle the criteria for assessing a claim of protected activity can only apply from the date on which the criteria came into force and may not be applied retroactively.

61. In *Gehr* UNDT/2013/127, the UNDT ruled that a finding of the Ethics Office that there was no *prima facie* case of retaliation constitutes an administrative decision which the Tribunal has jurisdiction to review. The Tribunal added that the work of the Ethics Office requires timely reaction for effective protection of any "whistle-blowing" activity. Although the duration of 45 days mentioned in section 5.3 of ST/SGB/2005/21 does not appear to be a mandatory fixed time limit, it clearly acts as a guiding principle for the duration within which a decision from the Ethics Office can be expected. Against this background, the UNDT found that taking six months to reach a decision is undue delay warranting compensation.

Contract of employment

62. In *Slade* UNDT/2013/121, the UNDT stated that the employment contract, which is defined under art. 2.1(a) of the Tribunal's Statute, is formed before issuance of the letter of appointment, by an unconditional agreement between the parties on the conditions for the appointment of a staff member, if all the conditions of the offer are met by the candidate.

OIOS Manual of Investigation Practices and Policies

63. In *Stoykov* UNDT/2013/070, the UNDT stated that the precepts of the OIOS Investigation Manual are not included in any resolution, rule, regulation or administrative issuance of the Organization and as such, are only guidelines for investigators that cannot be elevated in the hierarchy and accepted as standard norms of fairness and due process when judged by international standards on the rule of law and human rights. The UNDT concluded that to the extent that the precepts in the Manual contravene a known principle of human rights, the Tribunal is not bound by them.

Principle of equal pay for equal work

64. In *Slade* UNDT/2013/121, the UNDT held that the matter of the payment of certain allowances to staff resulting in one staff member taking home more money than his colleague at the same grade does not necessarily amount to unequal incomes. Certain allowances granted by the Organization to its staff are predicated on the existence of certain conditions. For instance, a staff member with school age children may receive an education grant while it is not expected that another with adult and perhaps income-earning children will receive the same grant.

Organization of work

65. In *Dahl* UNDT/2013/170, the UNDT stated that the Administration has broad discretionary powers when it comes to organization of work, in accordance with staff rule 1.2(c), and that the Prosecutor, ICTY, had the authority to assign staff to various assignments depending on operational requirements in the context of the ICTY downsizing.

Implementation of UNDT judgments

66. In *McCloskey* UNDT/2013/057 and *Johnson* UNDT/2013/052, the UNDT disagreed with the Respondent's position that it was the Applicants' responsibility to submit to the Internal Revenue Service an amended tax return and referred the cases to the Income Tax Unit to calculate the compensation for the financial losses suffered by the Applicants from the errors committed by that Unit.

APPENDIX IV: PRONOUNCEMENTS OF UNAT

Introduction

1. A summary of the major legal pronouncements made by the Appeals Tribunal in judgments rendered during its 2013 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>).

Period of service accrued at another Agency for purpose of permanent appointment at the United Nations Secretariat

2. In *O' Hanlon v. Secretary-General of the United Nations* 2013-UNAT-303, the Appeals Tribunal rejected the Dispute Tribunal's finding that the Appellant's service with UNRWA did not qualify as service under the 100 series of the Staff Rules. The Appeals Tribunal found that, pursuant to the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances, his service with UNRWA should have been counted as service with the United Nations and that he thus met the service criterion for eligibility. The Appeals Tribunal granted the appeal and remanded the case to the Administration to decide whether the Appellant met the remaining criteria for conversion to a permanent appointment.

3. In *Branche v. Secretary-General of the United Nations* 2013-UNAT-372, the Appeals Tribunal, relying on *O'Hanlon*, concluded that the Appellant's prior service with the International Labour Organization must be counted towards the eligibility requirement of five years continuous service for consideration for permanent appointment at the Secretariat. The Appeals Tribunal remanded the case to the Administration to consider whether the Appellant met the criteria for conversion to permanent appointment set forth in section 2 of ST/SGB/2009/10.

Pension Fund's statutory jurisdiction to review a country's Consumer Price Index data

4. In *Larghi v. United Nations Joint Staff Pension Board* 2013-UNAT-343, the Appeals Tribunal vacated the Standing Committee's decision to reject the Appellant's request that the UNJSPF discontinue the local track in application of paragraph 26 of the Pension Adjustment System (PAS) and remanded the case to the Standing Committee. The Appeals Tribunal determined that by refusing to review the Appellant's request, the UNJSPB had failed to properly exercise the jurisdiction with which it was vested pursuant to paragraph 26 of the PAS, whose very purpose "is to address the issue of whether the application of official [consumer price index (CPI)] data results in 'aberrant results' or the situation where no up-to-date CPI data is available".

Consideration for conversion to permanent appointment

5. In *Malmström et al. v. Secretary-General of the United Nations*,⁸ 2013-UNAT-357, the Appeals Tribunal held that the Assistant Secretary-General, OHRM, and not the ICTY Registrar, had discretionary authority in matters of permanent appointment. The Appeals Tribunal found that the Assistant Secretary-General, OHRM, had failed to exercise her discretion in a lawful manner in adopting a blanket policy of denial of permanent appointments to ICTY staff members rather than affording them the individual consideration to which they were entitled. Finding that the staff members were discriminated against and the impugned decision was legally void, the Appeals Tribunal rescinded the impugned decisions and remanded the matter to the Assistant Secretary-General, OHRM, for consideration of retroactive conversion.

6. Insofar as the appeals filed by *Malmström et al.* were concerned, the above decision by the Appeals Tribunal rendered the appeals of the UNDT award of 2,000 Euros moot. However, the Appeals Tribunal awarded *Malmström et al.* compensation in the amount of 3,000 Euros each for moral damage.

⁸ See also *Ademagic et al. and McIlwraith v. Secretary-General of the United Nations* 2013-UNAT-359; *Longone v. Secretary-General of the United Nations* 2013-UNAT-358; and *McIlwraith v. Secretary-General of the United Nations* 2013-UNAT-360.

Time limits for purpose of management evaluation and application to the Dispute Tribunal

Time limit for management evaluation

7. In *Roig v. Secretary-General of the United Nations* 2013-UNAT-368, the Appeals Tribunal concluded that the 60-day time limit for the purpose of requesting management evaluation of a non-selection decision started on 29 October 2010, when the Appellant was informed of her non-selection, and not on 17 December 2010, when she learned of the identity of the selected candidate. There was no second administrative decision which reset the time limit; rather, the Appellant learning the identity of the selected candidate was a consequence of the administrative decision not to select her. The Appeals Tribunal agreed with the Dispute Tribunal that the Appellant's request for management evaluation filed on 11 February 2011 was time-barred and not receivable.

Time limit for purpose of applying to the Dispute Tribunal

8. In *Secretary-General of the United Nations v. Neault* 2013-UNAT-345, the Appeals Tribunal considered it both reasonable and practical to provide for two different dates from which the time limit commenced to run. When the management evaluation is received within the deadline of 45 days, an application must be filed with the UNDT within 90 calendar days of an applicant's receipt of the management evaluation response. However, when the management evaluation is received after the deadline of 45 calendar days but before the expiration of 90 days for applying to the UNDT, the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before the UNDT. The Appeals Tribunal dismissed the Secretary-General's appeal and affirmed the UNDT decision that the application was filed within the time limit and was thus receivable.

Manifest abuse of proceedings

9. In *Secretary-General of the United Nations v. Bi Bea* 2013-UNAT-370, the Appeals Tribunal vacated the award by the UNDT of CHF 5,000 for the Secretary-General's "manifest abuse of the [Joint Appeals Board (JAB)] proceedings". While the Appeals Tribunal found that the UNDT had power to award costs for manifest abuse before the JAB, it found that the UNDT erred in finding that the Secretary-General's delay in responding to the JAB report constituted a manifest abuse of proceedings. The Appeals Tribunal found that the delay in question was not inordinate and in any event a delay, in and of itself, did not constitute a manifest abuse of proceedings. It concluded that the delay must be a "wrong or improper use of the proceedings of the court", such as proof that it was "frivolous or vexatious" to qualify as manifest abuse of proceedings.

10. In *Gehr v. Secretary-General of the United Nations* 2013-UNAT-333 and *Gehr v. Secretary-General of the United Nations* 2013-UNAT-328, the Appeals Tribunal found that, by continuously filing appeals lacking merit, the Appellant had manifestly abused the proceedings, and awarded costs for the first time since its inception.

Evidence needed to substantiate a case for moral damage

11. In *Secretary-General of the United Nations v. Andersson* 2013-UNAT-379, the Appeals Tribunal affirmed the UNDT's award of CHF 4,000 for moral damage and dismissed the Secretary-General's appeal that no evidence of moral harm had been presented to the UNDT. The Appeals Tribunal noted that, at a hearing of the UNDT, the Appellant gave oral evidence of the harm to his professional reputation, injury to his dignity and moral harm suffered as a result of the failure to adhere to the relevant procedure that led to his non-promotion. The Appeals Tribunal concluded that the Appellant was the victim of a fundamental procedural violation, which of itself could also have given rise to an award of moral damages.

Right of the accused to confront and examine accusers

12. In *Secretary-General of the United Nations v. Applicant* 2013-UNAT-302, the Appeals Tribunal vacated the UNDT judgment and affirmed the decision to summarily dismiss the Applicant for sexually harassing young men who

were non-staff members employed as either waiters or security guards at a residential camp in South Sudan. The Appeals Tribunal found that the weight of the evidence in that case justified the decision taken by UNICEF. While acknowledging the importance of confrontation and cross-examination of witnesses, the Appeals Tribunal considered that due process did not always require that a staff member defending a disciplinary action for summary dismissal had the right to confront and cross-examine his/her accusers. Under certain circumstances, denial of this right did not necessarily fatally flaw the entire process, so long as it was established to the Appeals Tribunal's satisfaction that the accused was afforded fair and legitimate opportunities to defend his/her position.

13. In the instant case, the Administration was unable to produce the complainants to testify and be cross-examined before the UNDT almost five years after the impugned incidents. However, the Appeals Tribunal was satisfied that the key elements of the Applicant's rights of due process were met: he was fully informed of the charges against him and the identity of his accusers and their testimony. As such, he was able to mount a defense and to call into question the veracity of their statements. The Appeals Tribunal was, therefore, satisfied that the interests of justice were served in this case, despite the Applicant's inability to confront the persons who had given evidence against him during the initial investigation.