

**First activity report of the Office of Administration of Justice
1 July – 31 December 2009**

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I. Introduction

1. The first report the OAJ outlines the activities of the Office for the period 1 July to 31 December 2009.
2. The OAJ was established pursuant to General Assembly resolution 62/228; in accordance with General Assembly 63/253, the new system of administration of justice began functioning on 1 July 2009.
3. The 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. It provides substantive, technical and administrative support to the UNDT and UNAT through their Registries; assists staff members and their representatives in pursuing claims and appeals through OSLA and provides assistance through the Office of the Executive Director, as appropriate, to the Internal Justice Council (IJC).

II. Activities of the Office of the Executive Director

4. The principal task of the Office of the Executive Director has been to set up the office, coordinate the selection of staff for the Registries of the Dispute and Appeals Tribunals and OSLA, and to provide assistance to the judges of the Tribunals in taking up their duties.
5. In addition to this foundational work, Office of the Executive Director has conducted a global outreach campaign designed to inform staff about the new system of justice. The Executive Director and other senior staff of OAJ have carried out outreach missions and held town-hall meetings in Arusha, Bangkok, Beirut, Geneva, Haiti, The Hague, Nairobi, New York, Santiago and Vienna.
6. The Office also prepared and carried out an induction course for the newly appointed judges of the UNDT and UNAT which took place upon their arrival to begin service in the new system.
7. The Office of the Executive Director has published a handbook on the new system, titled, "A Guide to Resolving Disputes", which has been distributed to staff in the Organization in all six official languages. The Office is in the process of developing a fully web-based case management system and a comprehensive website to facilitate staff access to the new system of justice.
8. Another of the mandates of the Office of the Executive Director has been to negotiate and conclude agreements with a number of UN entities for their participation in the new system. Agreements have been concluded with the International Civil Aviation Organization, the International Maritime Organization, the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the International Seabed Authority. Agreements with the International Tribunal for the Law of the Sea and the International Court of Justice are close to finalization.
9. Finally, the Office of the Executive Director is responsible for providing support to the IJC in its work. During the reporting period, the IJC held regular meetings and conducted a number of monitoring missions to see how the new system is functioning and in order to prepare a report with its views on the system to be presented to the General Assembly in its 65th session.

III. Activities of the United Nations Dispute Tribunal

A. Composition of the Dispute Tribunal

1. Judges of the Dispute Tribunal

9. In 2 March 2009, the General Assembly elected three full-time judges and two half-time judges. Subsequently, the General Assembly also elected for a period of one year three ad litem judges to assist in handling the backlog of cases transferred from the Joint Appeals Boards (JABs) and Joint Disciplinary Committees (JDCs). The composition of the UNDT is as follows:

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

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

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

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

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

Judge Michael Adams (Australia), ad litem judge in New York

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

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

10. In accordance with article 4 of the Statute of the UNDT, following drawing of lots, Judge Ebrahim-Carstens (the full-time judge) and Judge Meeran (half-time judge) serve for a term of three years, renewable for seven years. The other permanent judges are serving a non-renewable seven-year term of office.

2. Election of the President

11. In accordance with article 1 of the then provisional Rules of Procedure of the UNDT, on 24 June 2009, the judges elected Judge Vinod Boolell as President for a period of one year.

3. Plenary meetings

12. During the reporting period, the judges of the Tribunal held two plenary meetings from 20 to 24 June 2009 and from 30 November to 2 December 2009. During the first plenary meeting, the judges discussed and adopted the Rules of Procedure of the UNDT, which were approved by the General Assembly on 16 December 2009, and elected the President of the Tribunal. During the second plenary meeting, the judges discussed and agreed on a wide range of administrative and legal issues concerning their work practices. The UNDT also established a committee on Rules of Procedure as well as a practice directions committee.

B. Judicial statistics

1. General activity of the Tribunal

13. During the reporting period, the UNDT received a total of 162 cases from the former JABs and JDCs as well as 121 new cases. The Tribunal delivered 97 judgments. As at 31 December 2009, 190 cases were pending, including 91 cases from the JABs and JDCs. The three Registries of the UNDT located in Geneva, Nairobi and New York provided substantive, administrative and technical support to the Tribunal.

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

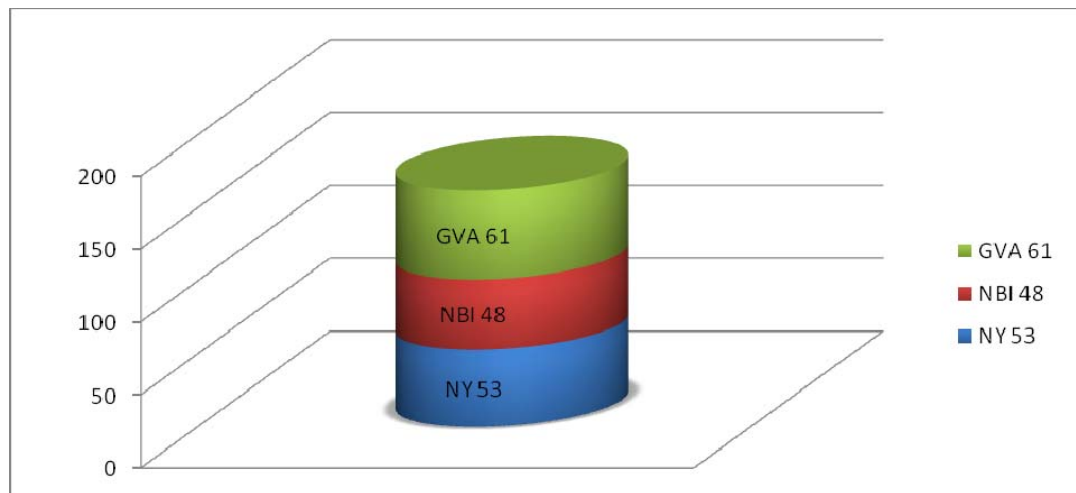
14. On 1 July 2009, following the abolition of the JABs and JDCs in Geneva, Nairobi, New York and Vienna, the cases pending before these entities were transferred to the UNDT. 31 JAB/JDC cases (including several group cases) were transferred to the Registry in Geneva, 14

JAB/JDC cases were transferred to the Registry in Nairobi and 91 JAB/JDC cases were transferred to the Registry in New York.

15. Subsequently, judges agreed on the geographical distribution of cases among the three locations of the UNDT. Specifically, judges decided that if an applicant's office or duty station at the time of the contested decision was or is located in Europe or Western Asia (including the Arabic Peninsula, Armenia, Azerbaijan, Iran, Georgia, Iran, Russia, Turkey), the application should be filed with the Geneva Registry. Should the applicant's office or duty station be located in Africa at the time of the contested decision, the application was to be filed in Nairobi. For contested decisions made in locations not covered by the Geneva and Nairobi Registries, such as Central Asia (including Pakistan, Afghanistan, Turkmenistan, Uzbekistan, Kazakhstan), Eastern Asia, North America, the Caribbean, South America, and the Pacific, the application should be filed in New York.

16. This geographical distribution has allowed a relatively even distribution of cases among the three Registries. 38 former JAB/JDC cases were, in turn, transferred from the Registry in New York to the Registries in Geneva and Nairobi so that a total of 61 former JAB/JDC cases (group cases were split into individual cases) became pending before the Registry of the UNDT in Geneva, 48 of these cases became pending in Nairobi and 53 remained pending in New York.

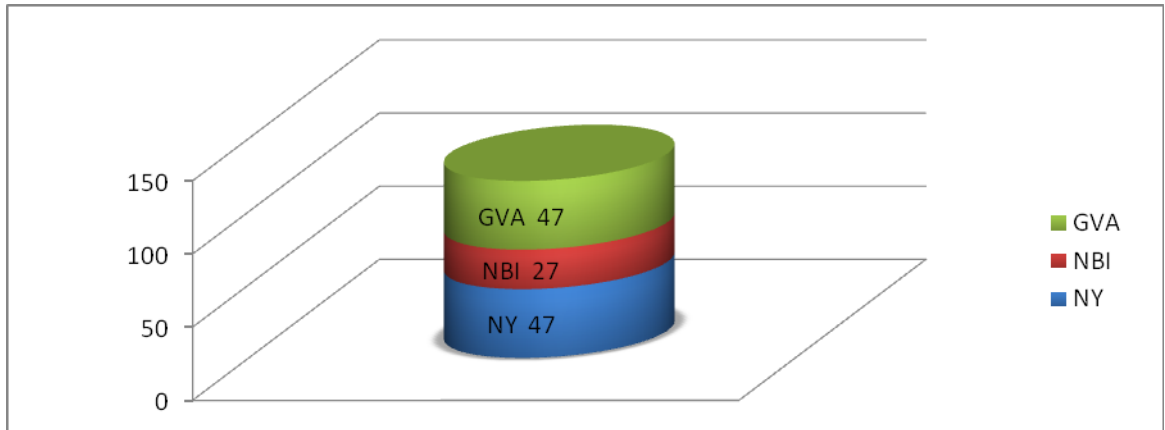
Chart 1 JAB and JDC cases before the Registries



3. New applications received in 2009

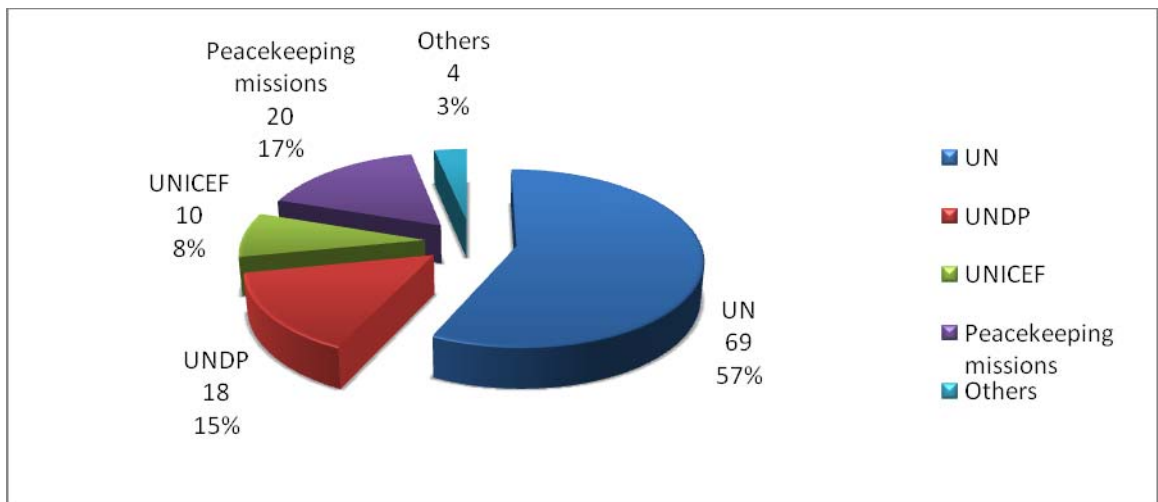
17. From 1 July to 31 December 2009, the UNDT received a total of 121 new applications. On average, five to eight applications were filed each month in each Registry. Chart (2) below details the number of new applications received in each Registry (Geneva, Nairobi and New York) of the UNDT from 1 July to 31 December 2009.

Chart 2 New applications received in each registry (Geneva, Nairobi and New York) of the UNDT from 1 July to 31 December 2009



18. Chart (3) below shows that the majority of the new applications were received from applicants in the UN Secretariat, including UNHCR. The UNDT handled 69 cases from applicants in the UN Secretariat, 20 cases from applicants in the peacekeeping missions, 18 cases from applicants in UNDP, 10 cases from applicants in UNICEF and 4 cases from applicants in other entities such as UNFPA, UNOPS and WFP (local staff only).

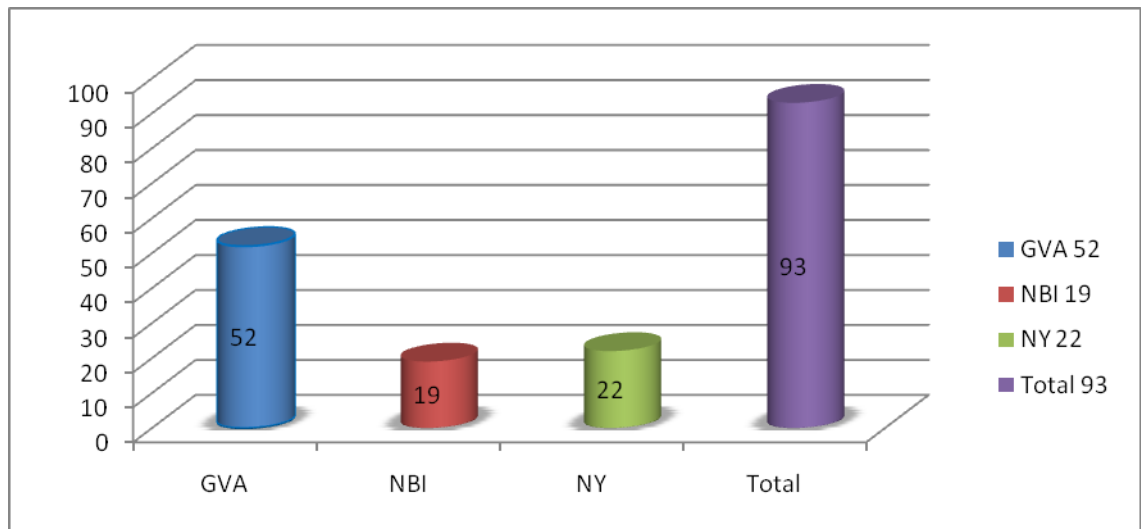
Chart 3 New applications received by agency of applicants



4. Cases disposed of by the UNDT in 2009

19. The UNDT disposed of 93 cases in 2009. Chart (4) below shows that the Geneva Registry disposed of 52 cases while the Nairobi and New York Registries disposed of 19 and 22 cases respectively. The large number in Geneva is partially explained by group cases (instances where a number of applicants contested the same administrative decision) split into individual cases in Geneva, as well requests for suspension of action and applications on the merits being counted as separate cases. On average, each Registry disposed of five cases per month.

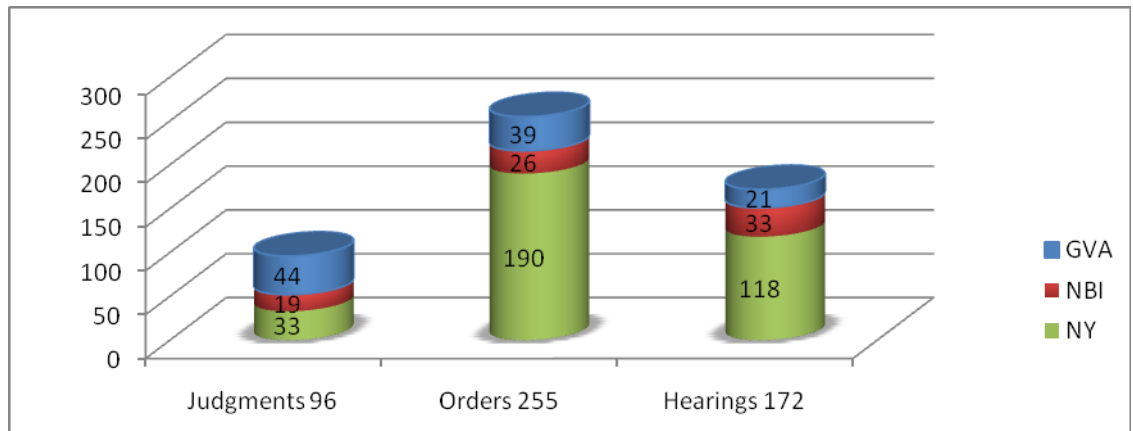
Chart 4 Cases disposed of by the UNDT in 2009



5. Number of judgments, orders and hearings

20. During the period 1 July to 31 December 2009, the UNDT issued 97 judgments on both the merits of cases and interlocutory matters. A total number of 255 orders were issued and 172 hearings were held by the UNDT. The average time taken to process a case in 2009 in each location was 3.5 months. Chart (5) below details the numbers of judgments, orders and hearings held by judges in Geneva, Nairobi and New York.

Chart 5 Number of judgments, orders and hearings in Geneva, Nairobi and New York



6. Cases referred to the Mediation Division

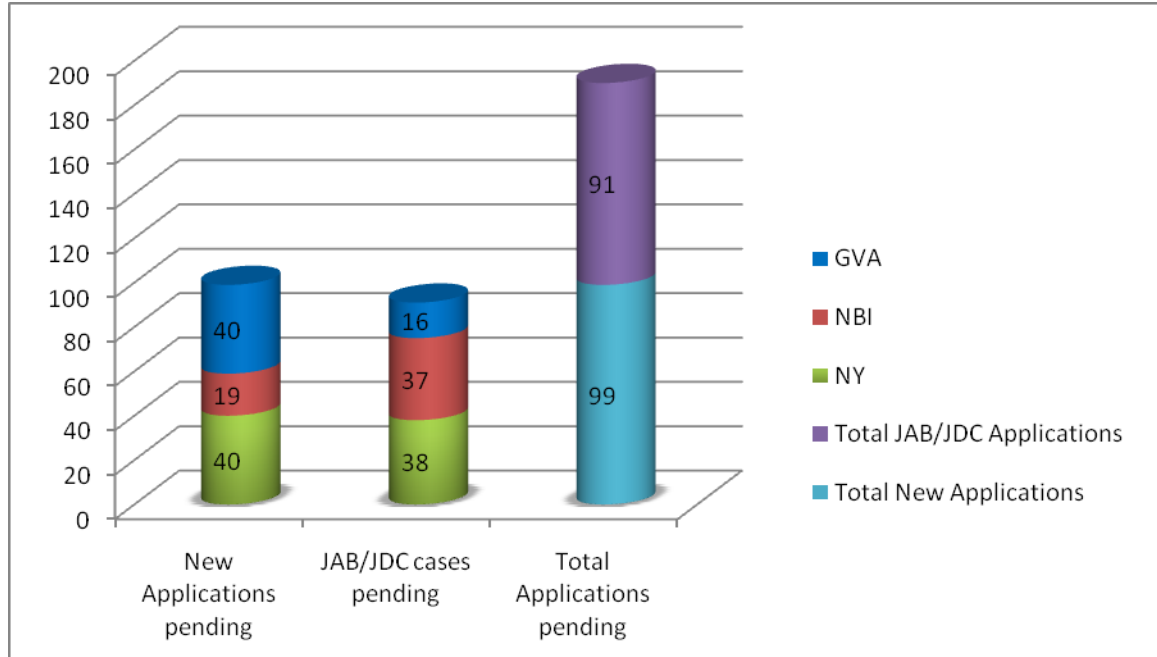
21. During the period covered by this report, the UNDT identified cases suitable for mediation and referred a total number of 5 cases to the Mediation Division in the Office of the Ombudsman.

7. Cases pending before the UNDT as at 31 December 2009

22. As at 31 December 2009, the Dispute Tribunal had 190 cases pending, 91 of these cases being the remainder of those transferred by the former JABs and JDCs.

23. Chart (6) below shows that, at 31 December 2009, 56 cases were pending in the Geneva Registry, 56 cases were pending in the Nairobi Registry and 78 cases were pending in the New York Registry.

Chart 6 Cases pending before the Dispute Tribunal as at 31 December 2009



8. Cases by subject-matter

24. The nature of cases before the UNDT can be roughly distinguished into seven categories: (1) appointment, (2) benefit, entitlement and classification, (3) disciplinary matters, (4) non-promotion, (5) non-renewal of appointment, (6) separation from service, and (7) other.

25. The greatest number of cases concern disciplinary-related matters. Thereafter, in almost equal positions are cases concerning non-renewal, non-promotion and benefits and entitlements matters. Non-renewal and separation cases, when computed together, suggest that the issue of separation from service is the greatest concern for UN staff.

26. Case types vary depending on the Registry. Appeals in respect of disciplinary-related matters are greatest in the Nairobi Registry which covers all African peacekeeping missions. The issues of non-promotion, non-renewal of appointment and benefits and entitlements appear of great concerns in the duty stations covered by the Registry in Geneva. All categories, except non-promotion cases, seem of equal importance to staff in duty stations covered by the Registry in New York.

Chart 7 Nature of cases before the UNDT

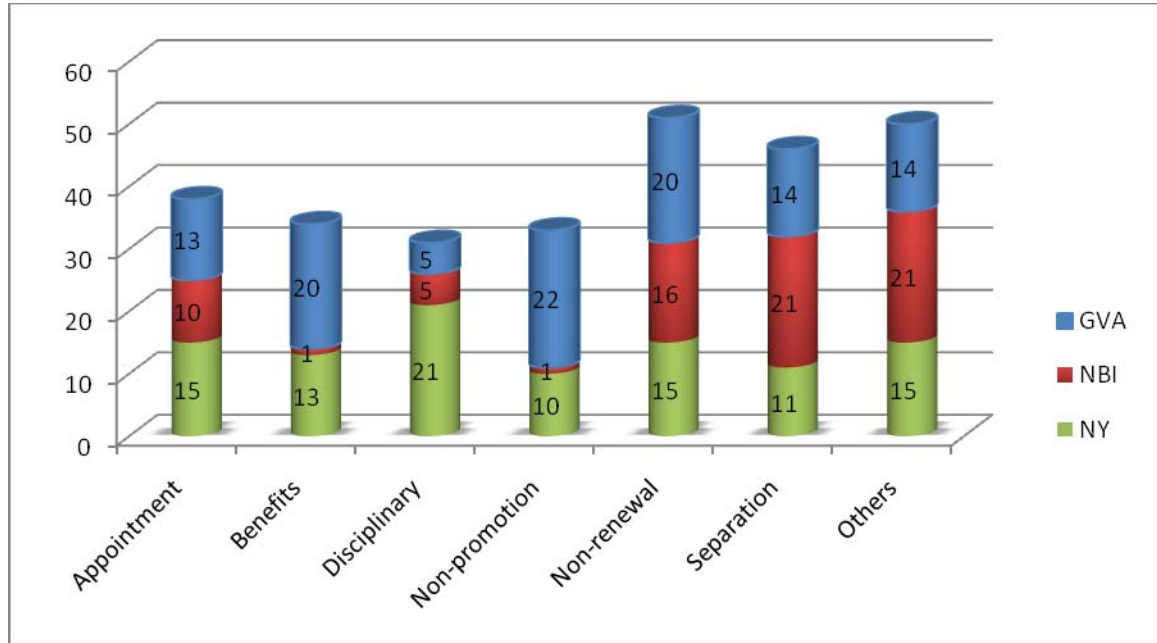
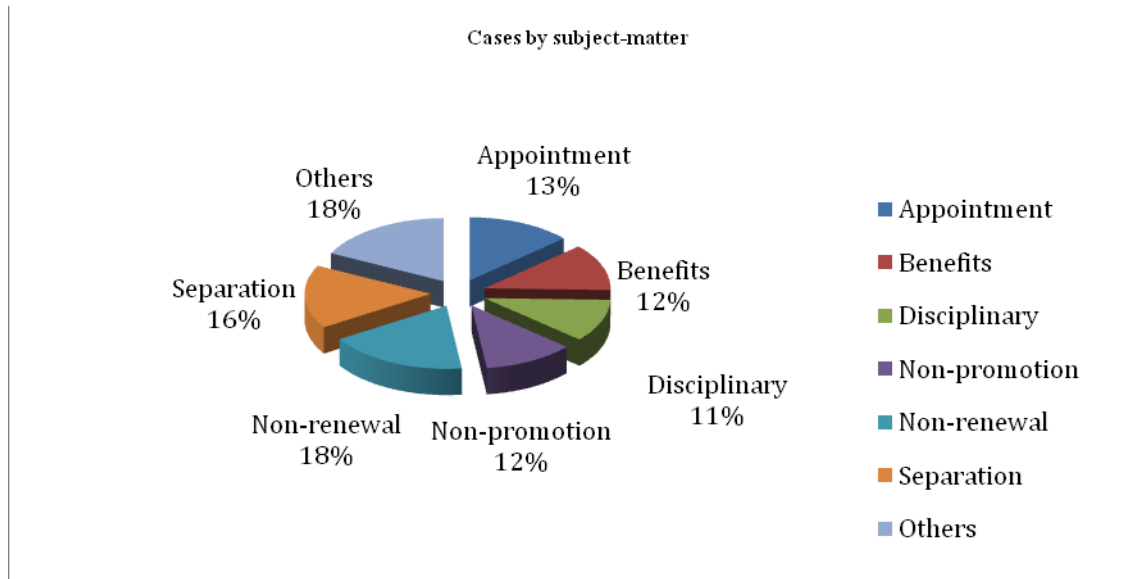


Chart 8 Cases by subject-matter



9. Legal representation of applicants before the UNDT

27. During the period covered by this report, 29% of staff members were not represented by legal counsel before the UNDT. OSLA provided legal assistance in 35% of cases before the Tribunal, 19% staff chose to be represented by private counsel and 17% of staff were represented by volunteers who were either current or former staff members of the Organization (see chart 10). The greatest proportion of self-represented staff members was before the Geneva judges, with a rather important proportion of staff represented by volunteers. In Nairobi and New York, OSLA represented applicants in the majority of cases (see chart 9).

Chart 9 Legal representation of applicants in the three Registries

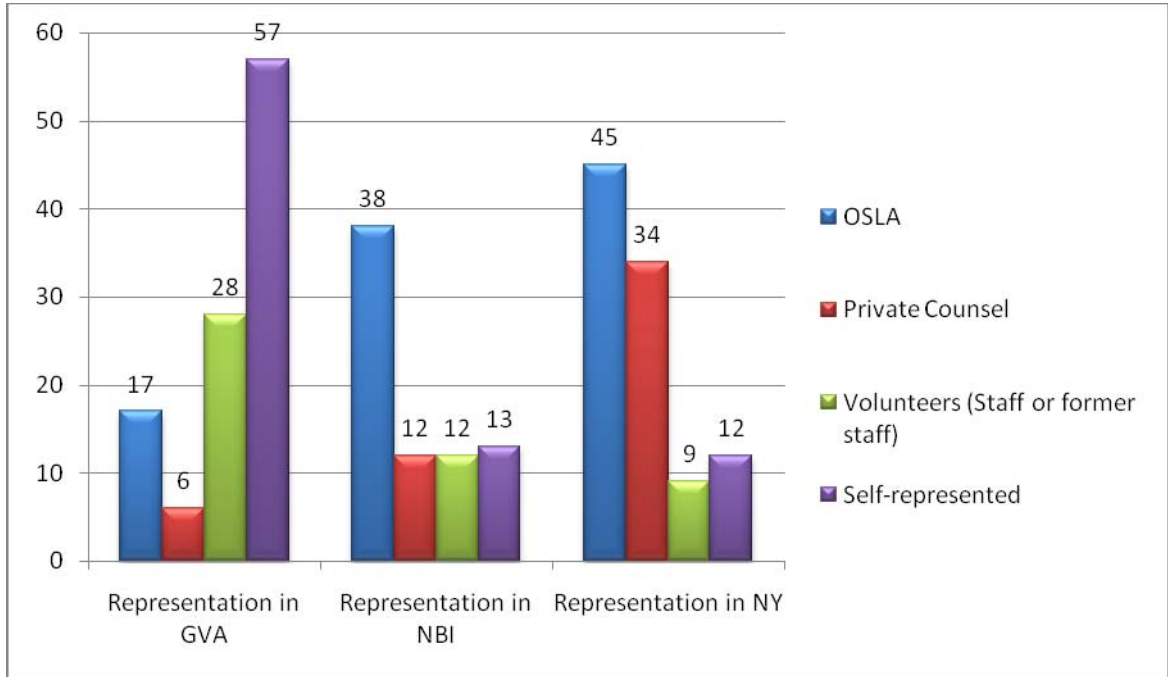
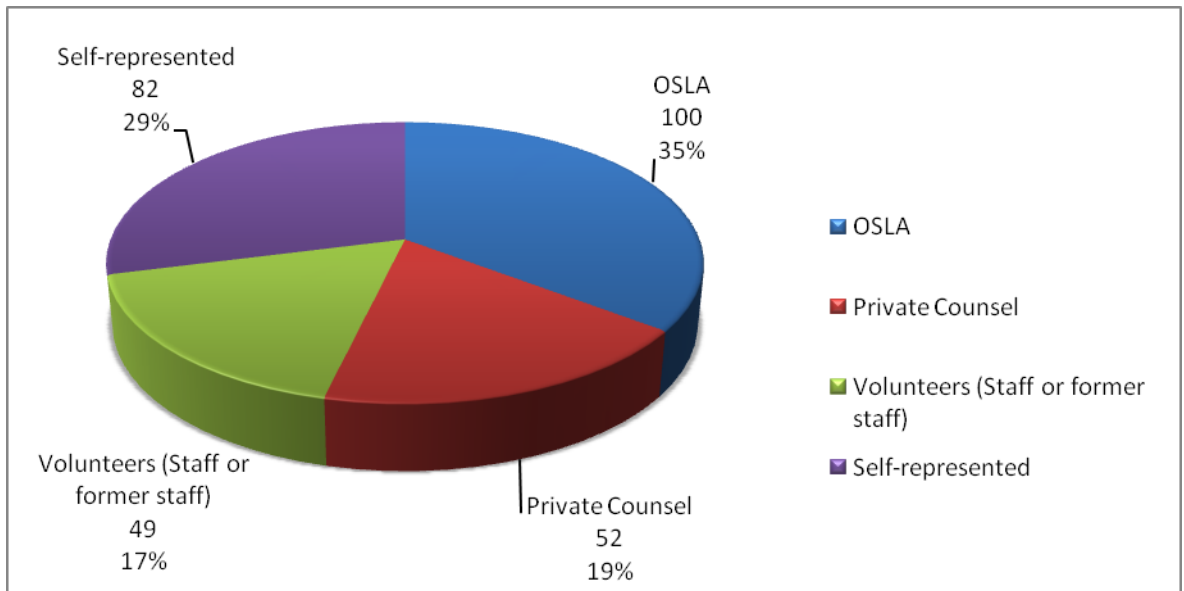


Chart 10 Legal representation of applicants before the UNDT



IV. Activities of the United Nations Appeals Tribunal

A. Composition of the UNAT

1. Judges of the Appeals Tribunal:

28. On 2 March 2009, the General Assembly elected the following seven judges:

Judge Inés Weinberg de Roca, President (Argentina)

Judge Jean Courtial, First Vice-President (France)

Judge Sophia Adinyira, Second Vice-President (Ghana)

Judge Mark P. Painter (United States of America)

Judge Kamaljit Singh Garewal (India)

Judge Rose Boyko (Canada)

Judge Luis Maria Simón (Uruguay)

29. In accordance with article 3.4 of the Statute of the UNAT, following drawing of lots, four of the judges are serving a seven-year term of office and three judges an initial three-year term. Judge Courtial, Judge Painter and Judge Singh Garewal were elected for a term of three years. These three Judges may be reappointed to the same UNAT for a further non-renewable term of seven years.

2. Election of the President and Vice-Presidents

30. In accordance with article 1 of the then provisional Rules of Procedure of the UNAT, at its plenary meeting on 24 June 2009, the Tribunal elected Judge Weinberg de Roca as President, and Judges Courtial and Adinyira as First and Second Vice-Presidents, respectively.

3. Plenary meeting of the Appeals Tribunal in June 2009

31. The judges of the UNAT held a plenary meeting from 20 to 24 June 2009. During this meeting, the judges discussed and adopted their Rules of Procedure, which were approved by the General Assembly on 16 December 2009.

B. Jurisdiction of the Appeals Tribunal

32. Under article 2.1 of its Statute, the UNAT is competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNDT.

33. Under article 2.9 of its Statute, the UNAT is also competent to hear and pass judgment on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund. Previously, such appeals could be submitted directly to the United Nations Administrative Tribunal under article 14.2 of its Statute. Unlike the former system, however, such appeals are now subject to the payment of a fixed flat fee per case.

34. In accordance with article 2.10 of the UNAT Statute, the competence of the Tribunal may be extended to specialized agencies or other international organizations or entities established by a treaty and participating in the common system of conditions of service, upon conclusion of a special agreement with the Secretary-General of the United Nations. The agency or entity agrees to pay a flat fee per case and must utilize a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. Similar arrangements existed between these agencies and entities and the Secretary-General, accepting the jurisdiction of the UN Administrative Tribunal under article 14 of its Statute, with the exception of the flat fee.

35. To date, four such entities have concluded special agreements with the UN Secretary-General accepting the competence of the UNAT: the International Civil Aviation Organization; the International Maritime Organization; the International Seabed Authority and UNRWA. It is anticipated that agreements will be concluded with the International Tribunal of the Law of the Sea and the International Court of Justice in the near future.

C. Judicial statistics

36. During the reporting period, the UNAT received five cases against the UNJSPB and 14 cases appealing judgments of the UNDT. The UNAT did not hold a session or issue judgments in any case in 2009.

V. Activities of the Office of Staff Legal Assistance

A. Introduction

37. The first six months of operation for OSLA was marked by the challenges of building and staffing a new Office, while at the same time having to manage an inherited caseload of 346 cases transferred from the former UN Panel of Counsel. During the reporting period, 275 additional cases were brought to OSLA, bringing the total number OSLA handled to 621 cases. Of those, OSLA was able to close and find solutions for 171 cases. OSLA's aggregate figure of cases at year end was 450 cases. The number of cases under OSLA's responsibility is expected to grow with increased staffing of OSLA field offices in addition to dissemination of knowledge and access to the system of administration of justice for staff members in the field.

B. Advice and legal representation before and during formal litigation

38. The mandate of OSLA is to provide professional legal assistance pursuant to the General Assembly's resolution 62/228. OSLA's assistance consists of providing legal advice and representation to staff members contesting an administrative decision or appealing a disciplinary measure, primarily those with cases before the UNDT and UNAT. Upon receiving a request for assistance, OSLA counsel first assesses the merits of a case, as well as matters of receivability, and, if the case is accepted, proceeds to provide legal advice to the staff member and takes, inter alia, any of the following actions on their behalf, as appropriate: drafts legal submissions and other correspondence; discusses the case with third parties or opposing counsel, when authorized by the staff member, on case management issues or with a view to negotiating settlements; and, represents the staff member in hearings before the UNDT. OSLA may reject a case when it decides that it is not in the interest of the staff member, in the interest of justice or within the scope of OSLA's legal obligations to bring a case or complaint before a Tribunal or other body. In its Judgment **UNDT/2009/093**, the Tribunal interpreted OSLA's obligations, pursuant to resolution 62/228, to include the following: "OSLA is ... entitled to advise applicants not to file an application before the Tribunal and may therefore legally refuse to appoint counsel for an Applicant on the grounds that his application has little chance of success". In its Judgment **UNDT/2010/025**, the Tribunal further stated that not to do so "would overload the Office and prejudice those applicants with a serious case."

39. The amount of time required to deal with a matter varies depending on the complexity of each case, the legal issues raised and the personal needs of the staff member. Some cases require a great deal of time and effort on the part of OSLA counsel. For example, a case before the UNDT could involve several submissions, multiple hearings, discussions with opposing counsel and numerous consultations with the concerned staff member. At times, managing a staff member's expectations can be challenging and time-consuming.

40. OSLA has also assisted staff members in resolving disputes in cases where there was no clear administrative decision which would allow for initiation of a case before formal bodies in accordance with relevant rules, but where there is a valid grievance. These cases involved consultations with the staff member and discussions and negotiations with third parties. In other

cases, OSLA provided summary legal advice to staff members not involving written submissions or negotiations with a third party.

41. Reasons for closure or resolution of cases included the following:

- disciplinary or administrative measure taken, or exoneration of a staff member charged with misconduct;
- issuance of a management evaluation, judgment or other decision;
- negotiated settlement of a dispute;
- withdrawal by the staff member or by OSLA from the case;
- provision of summary legal or procedural advice by OSLA where follow-up is not anticipated;
- loss of contact with the staff member.

42. In a number of cases, staff members withdrew their case after OSLA explained the unlikelihood of success before a Tribunal or other recourse body for reasons of receivability or lack of legal merit. In some cases, these withdrawals occurred after considerable time and effort had been devoted to the case by OSLA.

C. Statistics

1. Number of cases received in 2009

43. On 1 July 2009, 346 cases were transferred from the former Panel of Counsel (POC) to the newly created OSLA. From July to December 2009, 275 additional cases were brought by staff members (including former staff members or affected dependants of staff members) to OSLA. Of these 621 total cases, 171 were closed or resolved during the reporting period, bringing the number of cases pending before OSLA (pending) to 450 as at 31 December 2009.

Chart 11 Cases received in OSLA in 2009

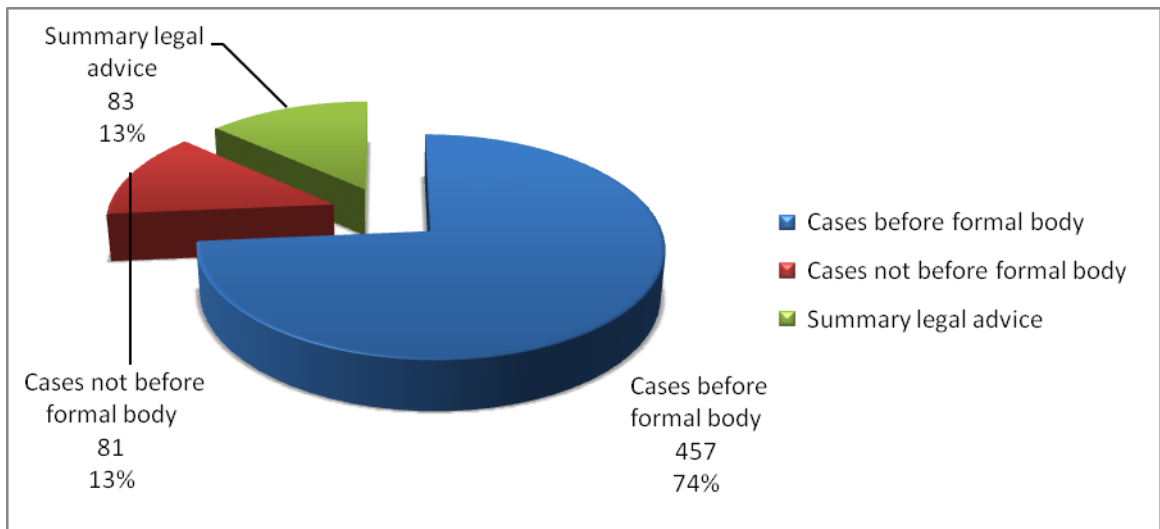
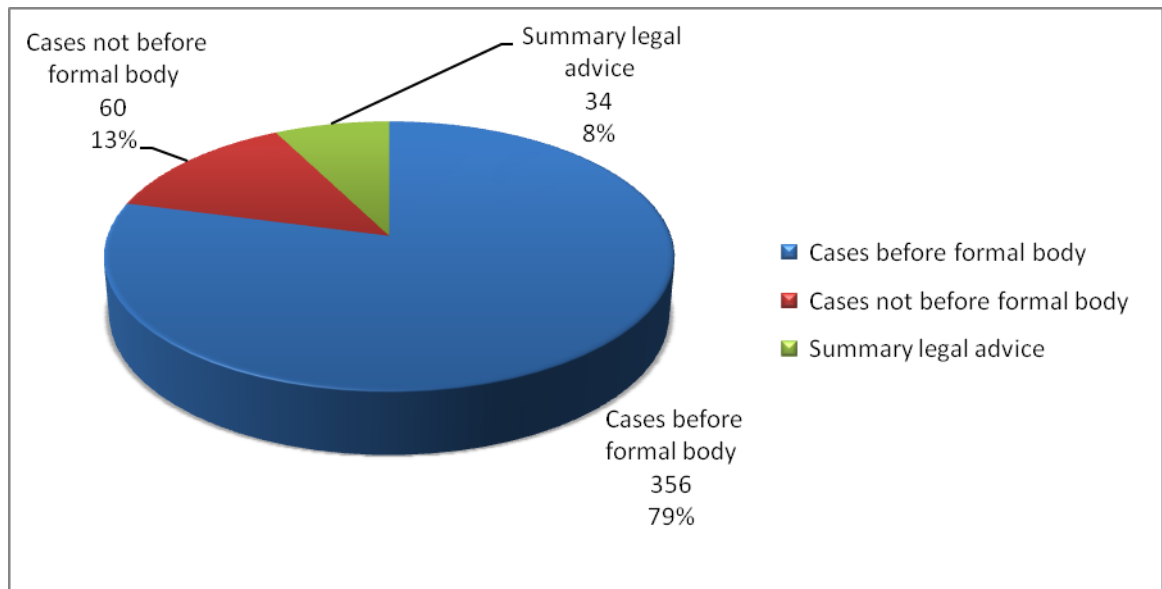


Chart 12 Cases pending in OSLA as at 31 December 2009



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

44. The table below provides further details of the 621 OSLA cases for the period 1 July – 31 December 2009, including a breakdown of formal cases before each recourse bodies, those not before formal bodies or where summary advice was provided, and the number of closed or resolved cases for each recourse body or category.

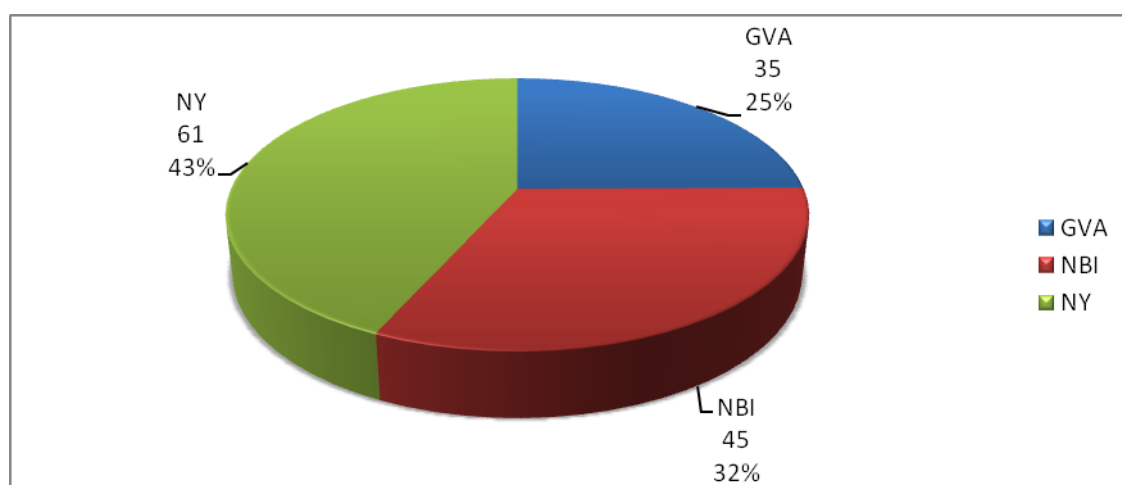
45. In the table, “human resources (disciplinary cases)” indicate those cases where OSLA provided assistance to staff members in responding to allegations of misconduct. Where such a case is indicated as ongoing, the Administration had not yet taken a decision in the matter as of 31 December 2009. In cases before the UNDT and UNAT, as well as the former UN Administrative Tribunal, OSLA held consultations and provided legal advice to staff member clients, drafted submissions on their behalf, represented them in hearings (UNDT only), held discussions with opposing counsel, and negotiated settlements. OSLA similarly provided advice and assistance in submissions and processes before other formal bodies listed in the table below.

Cases by recourse body in 2009:	New Cases	Resolved/Closed	Ongoing/Continuing
Human Resources (disciplinary cases)	172	16	156
UN Dispute Tribunal	141	44	97
Management Evaluation	58	32	26
UN Administrative Tribunal	57	7	50
UN Appeals Tribunal	10		10
Rebuttal Panel	9	2	7
Harassment investigation	6		6
ABCC	1		1
Medical Board	1		1
UNICEF OIA	1		1
UNJSPF	1		1
Cases before formal body	457	101	356
Cases not before formal body	81	21	60
Summary legal advice	83	49	34
Total	621	171	450

3. Representation before the Dispute Tribunal

46. Chart (13) below shows a breakdown of OSLA's cases before the UNDT by UNDT venue. Those cases which have been closed or resolved through the issuance of a judgment, negotiated settlement, withdrawal by the staff member or by OSLA or loss of contact with the staff member are indicated. In some cases, withdrawal of the case or settlement occurred before a UNDT application was filed. Ongoing/continuing cases remain pending judgment or other resolution as of 31 December 2009.

Chart 13 OSLA representation of cases before the UNDT (Geneva, Nairobi and New York)

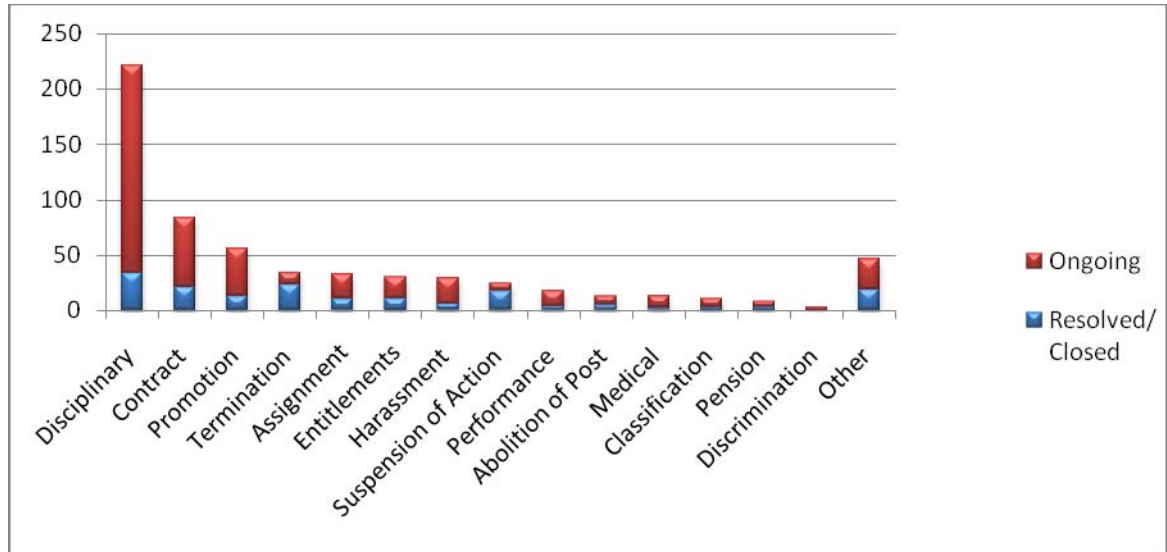


4. Cases by subject-matter

47. Chart (14) below provides an overview of OSLA cases by subject-matter. The bulk of the cases handled by OSLA in 2009 concerned disciplinary matters, followed closely by cases

involving non-renewal of contract, non-promotion and termination of contract. The reasons for resolution or closure of cases are described above. Ongoing/continuing cases remain pending a final decision or other resolution as of 31 December 2009.

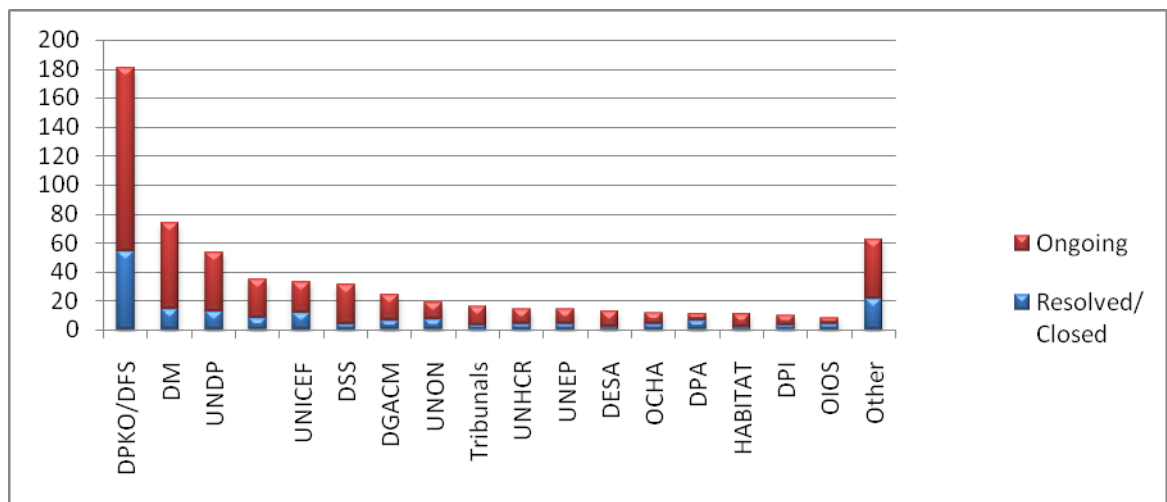
Chart 14 Cases by subject matter



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

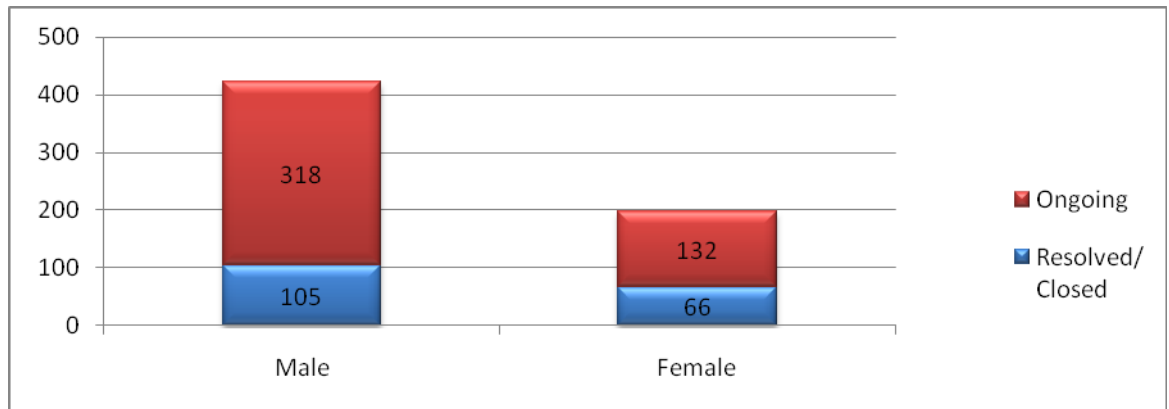
48. Chart (15) below provides an overview of OSLA cases by Secretariat departments or UN agency, fund or programme. The majority of cases arise from contested decisions taken by peacekeeping missions (DPKO/DFS) (181 cases). A large number of cases stem out of contested decisions made by the Department of Management (DM) (74 cases). The next largest caseloads by entity are UNDP (53), Regional Commissions (35), UNICEF (33) and DSS (31). A total of 151 cases are from four Secretariat entities, namely DM, DGACM, DSS and DESA. This may be explained by the fact that NY-based staff can more readily contact OSLA as opposed to colleagues in field missions.

Chart 15 Cases by client (Department, Agency, Fund or Programme)



6. Cases by gender of applicant

Chart 16 Cases by gender of applicant



APPENDIX I

Proceedings of the UNDT

Introduction

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8. Interim measures pending judgment on the merits of the case.....	5
9. Other ancillary matters.....	5

Introduction

1. As indicated above, during the period covered by this report, the UNDT rendered a number of judgments on issues which can be roughly divided into the following categories: non-promotion; non-renewal of contract; separation from service; appointment; disciplinary matters; benefits, entitlements and classifications; request for suspension of action; interim measures pending judgment on the merits of a case; other ancillary matters.

2. A summary of the legal pronouncements made by the UNDT in judgments rendered in 2009 is provided below. The summaries are not authoritative and the judgments cited below are not comprehensive. For a complete set of the judgments issued in 2009 by the UNDT and the text of which, the website of the UNDT (<http://un.org/en/internaljustice/>) should be consulted. It should also be borne in mind that, at the time of the writing of the report, a number of UNDT's judgments were being appealed before the UNAT by either the applicant or the respondent. Therefore, the findings made by the UNDT in a number of the judgments mentioned below should not be considered final and the website of the UNAT should be consulted for the final determination made in the cases being appealed.

1. Non-promotion

3. The UNDT rendered a number of judgments on the issue of non-promotion. The Judges generally agreed that when the terms of the rules and the administrative instruction governing staff selection processes are unambiguous, the Administration should follow the terms of its own policies strictly or be liable to compensate staff for breaches of them.

4. In UNDT/2009/022, Kasyanov, the Tribunal found that the decision not to select the applicant was unlawful because the applicant was a 15-day mark candidate found suitable for the post and under section 7.1 of ST/AI/2006/3 on staff selection system the Administration was precluded from considering any 30-day mark candidates. The Tribunal elaborated that priority consideration given to 15-day mark candidates is mandatory because of the use of the word "shall" in the administrative instruction, which almost always indicates a mandatory and unqualified direction or command or requirement. The UNDT found that authoritative interpretations of administrative instructions can only be made by the Secretary-General through formal amendments or by the Tribunals and not by OHRM. This finding was followed in several subsequent judgments, including UNDT/2009/084, Wu.

5. In UNDT/2009/045, Solanki; UNDT/2009/040, Ardisson; and UNDT/2009/041, Ippolito, the Tribunal held that the Administration has a duty to set clear rules for promotion and if it wishes to modify the promotion criteria, it has a duty to modify the rules before prior to a selection process. Similarly, in UNDT/2009/038, Andrysek; UNDT/2009/039, Mebtouche; UNDT/2009/044,

Mututa; and UNDT/2009/048, Tsoneva the Tribunal held that the Administration must follow its own procedures when promoting staff and that an irregularity that vitiates the non-promotion decision requires that that decision be rescinded or that compensation be awarded. In UNDT/2009/014, Parker, the Tribunal held that an applicant is able to contest a review body's decision of non-recommendation for promotion on incorrect facts. In UNDT/2009/074, Luvai, the Tribunal held that an applicant cannot challenge the recruitment process of a post to which he did not apply because the vacancy announcement did not indicate the number of posts to be filled. In UNDT/2009/095, Sefraoui, the Tribunal held that non-promotion cases should be determined by the preponderance of evidence rather than by imposing an a priori burden of proof on either party. If the evidence is evenly balanced, the impugned administrative decision should be regarded as unjustified since the Administration has the contractual obligation of making decisions for reasons that are accurate, sufficient and proper.

2. Non-renewal of contract

6. The Tribunal rendered a number of judgments on the issue of non-renewal of fixed-term appointment, which were generally in accord with the jurisprudence of the former UN Administrative Tribunal which was abolished on 31 December 2009. Specifically, in UNDT/2009/003, Hepworth, the Tribunal held that according to staff regulation 4.5 (c) and staff rule 9.4, a fixed-term appointment (FTA) does not carry any expectancy of renewal or conversion to any other type of appointment and expires automatically and without prior notice on the expiration date specified in the letter of appointment, unless there are countervailing circumstances. The Tribunal elaborated in UNDT/2009/093, Syed, that a legitimate expectancy of renewal may be created by the Administration's actions. The Tribunal also found that if the respondent provides reasons for the non-renewal of a fixed-term appointment – for instance poor performance - these reasons must be supported by the facts (UNDT/2009/071, Corcoran). In Syed and UNDT/2009/019, Balestrieri, the Tribunal found that a decision not to renew an appointment cannot be motivated by extraneous factors. In UNDT/2009/085, Boutruche, the Tribunal held that if a legal provision, such as a prohibition to hire a sibling, is clear and does not leave room for interpretation, the Administration is obliged to adhere to it. In UNDT/2009/088, Nogueira, the Tribunal found that the decision not to renew the applicant's contract based on poor performance was not well-founded since the provisions of the administrative instruction on the Performance Appraisal System (PAS) were not respected. In UNDT/2009/096, Utkina, the Tribunal held that the application was not time-barred because the time for the applicant to appeal the decision started running when the applicant was made aware by the Administration that there was no reasonable chance or possibility of renewal.

3. Disciplinary

7. In various judgments, the Tribunal specified the rights of staff in disciplinary-related matters. Specifically, in UNDT/2009/006, Manokhin, and UNDT/2009/009, Kouka, the Tribunal held that an internal UN investigation must provide full and fair opportunity for staff to defend themselves and the evidence must be sufficient to sustain disciplinary findings. The Tribunal held that it will use principles of natural justice and internationally recognized standards for reviewing administrative actions in relation to disciplinary matters in an employment context. In Balestrieri, the Tribunal held that a witness in an investigation does not have the right to be informed of the outcome of the investigation. In UNDT/2009/072, Ishak, the Tribunal held that the applicant has a right and a duty to report to his management any misconduct that comes to his notice but if the alleged misconduct does not in any way affect his rights, the applicant has nothing to gain by contesting the management's follow-up to his report. In UNDT/2009/066, Parker, the Tribunal held that if the Organization conforms to its procedures prescribed by relevant rules upon receiving complaints for harassment and diligently addresses allegations through the procedures established, it acts reasonably when not undertaking an additional fact-finding investigation. In UNDT/2009/091, Coulibaly, the Tribunal found that the decision to summarily dismiss the applicant was lawful as the applicant was recruited/promoted on the basis of his qualifications, the certificate for which was forged, and falsely asserted in his P-11.

4. Benefits, entitlements, salaries, classifications

8. In UNDT/2009/077, Hocking, Jarvis & McIntyre, the Tribunal found that the appeal of three staff members who contested the amount of the home leave lump-sum payment they accepted in lieu of having their home-leave travel expenses paid by the Organization was not receivable. The Tribunal held that the intent of the author of the administrative instruction governing home leave lump-sum payment, which expressly precludes any subsequent challenge once the proposed amount of lump-sum payment has been accepted, is clear and bars any challenge of the amount of the lump-sum payment once it has been accepted, even if reservation by the applicants were made. In UNDT/2009/075, Castelli, the Tribunal held that because the Administration continued to pay the applicant's salary during an imposed break-in-service, during which he worked, it cannot refuse to pay the relocation grant entitlement which is due after one year of continuous service.

5. Appointment

9. In UNDT/2009/025, James, the Tribunal held that recruitment from general service level to professional level requires competitive examination but found that the Administration could not unilaterally impose limitations on staff members' existing contracts because it is a universal obligation of both employee and employer to act in good faith towards each other. In UNDT/2009/028, Crichlow, the Tribunal found that when a staff member alleges that actions have been taken against her (such as a reassignment to a post to be abolished), which have disadvantaged her in her employment, it is for the Administration to explain and justify those actions by providing balanced and objectively verifiable reasons. In UNDT/2009/030, Hastings, the Tribunal held that a decision-maker exercising powers conferred by rules and regulations is obliged to turn his or her mind to the factors which are relevant to the decision to be made. In UNDT/2009/054, Nwuke, the Tribunal found no unlawfulness in the decision not to appoint the applicant. The Tribunal held that the applicant had himself to blame as he declined to submit to an interview as requested; he cannot invoke his own omissions to pray for an equitable remedy. In UNDT/2009/013, Parker, the Tribunal held that the applicant was prevented from preparing himself for such a medical examination, in particular by gathering the medical personal documents or by securing the assistance of his personal doctor, from discussing his aptitude with the doctor and from challenging the medical opinion made, therefore the decision not to appoint him was illegal.

6. Separation from service

10. In its Judgment UNDT/2009/034, Shashaa, the Tribunal ruled that staff members with permanent appointments are afforded additional protections, particularly when nearing retirement age. In UNDT/2009/083, Bye, the Tribunal held that it is doubtful that former staff rule 109.1(c) imposes on the Administration a duty to make good faith efforts to find alternative employment to a staff member on a fixed-term appointment and whose post is abolished. The Tribunal also held that the party alleging harassment, prejudice, bias, discrimination bears the burden of proof. In its Judgment UNDT/2009/078, Koh, the Tribunal found that the respondent was in breach of the contract of employment by not respecting the terms of a separation agreement and therefore was liable to compensate the applicant.

7. Suspension of action pending management evaluation

11. The UNDT rendered a considerable number of judgments on requests for suspension of action pending management evaluation.

Receivability of request for suspension of action

12. In UNDT/2009/001, Tsoneva, the Tribunal held that pursuant to article 2.2 of the Dispute Tribunal's Statute, only an administrative decision may be the object of a request for suspension of action before the Tribunal. Similarly, in UNDT/2009/035, Caldarone, the Tribunal held that a request for suspension of action is only receivable if, in accordance with staff rule 11.2(a) the applicant has submitted, as a first step, a request for management evaluation. This ruling was upheld and elaborated on in a number of subsequent judgments, including UNDT/2009/051, Costa.

In UNDT/2009/092, Calvani, the Tribunal held that because a decision to place a staff member on administrative leave without pay during a certain period of time has continuous legal effects during the suspension period and can only be deemed to have been implemented in its entirety at the end of the administrative leave, the respondent cannot claim the decision has already been implemented and the applicant for suspension of action for therefore receivable.

Cumulative nature of the conditions to grant a request for suspension of action

13. In UNDT/2009/033, Onana, the Tribunal found that where a decision has been shown to be prima facie unlawful, and although the Rules require that the Tribunal considers two further elements before granting the applicant with the interim relief that he seeks, the illegality is so fundamental a factor that it ought to be sufficient for the impugned decision to be suspended. By contrast, the Tribunal held in all other judgments and orders on requests for suspension of action that the conditions for the granting of a suspension of action are cumulative and that it is enough to demonstrate that one condition is not met to reject the request.

Prima facie unlawfulness

14. In UNDT/2009/003, Hepworth, the Tribunal elaborated on the meaning of the Latin expression “prima facie” and found that prima facie does not require more than serious and reasonable doubts about the lawfulness of the contested decision. In UNDT/2009/004, Fradin de Bellabre, the Tribunal found that to establish prima facie unlawfulness there has to be evidence that it is at least probable that the decision was unlawful. In UNDT/2009/008, Osman, the Tribunal found that the decision not to renew the applicant’s contract was unlawful inasmuch as his performance evaluations were conducted following an irregular procedure. Similarly, in UNDT/2009/16, Tadonki, the Tribunal held that any decision not to renew the fixed-term appointment of the applicant and to resort instead to extensions of the contract when faced with applications for suspension of action is prima facie unlawful. In UNDT/2009/063, Kasmani, the Judge held that since none of the facts adduced by the applicant were challenged by the respondent, it was entitled to accept the applicant’s case as stated, namely that he had been victimised for a personal conflict between his first and second reporting supervisors and that therefore the decision he wished suspension of was prima facie unlawful.

15. In UNDT/2009/064, Buckley, the Tribunal elaborated on the expression “appears prima facie to be unlawful” as when there is a reasonably arguable case that the contested decision is unlawful so that a merely reasonable (hence legitimate in ordinary parlance) expectation of a particular outcome is not the same as a legitimate expectation that gives rise to any legal rights, and will be insufficient to establish reasonably arguable unlawfulness. In UNDT/2009/092, Calvani, the Tribunal found that it resulted from the respondent’s ill will to adduce evidence regarding proof of the identity of the author of the contested decision to place the applicant on administrative that the contested decision could be deemed prima facie illegal. In UNDT/2009/096, Utkina, the Tribunal followed the test elaborated in Buckley and held that in order to show that the contested decision appears prima facie to be unlawful, it is not necessary to demonstrate that it was motivated solely by improper motives as long as the applicant can demonstrate that the decision was influenced by improper considerations and was contrary to the Administration’s obligations to ensure that its decisions are proper and made in good faith. Similarly, in UNDT/2009/097, Lewis, the Tribunal held that since there was some evidence to support the applicant’s allegation that her non-renewal was due to shortcomings in performance and that this assessment was made on the basis of information obtained from her supervisor who was motivated by ill will, the low test of reasonable arguability was satisfied and accordingly, the prerequisite of prima facie unlawfulness was met.

Irreparable harm

16. In UNDT/2009/004, Fradin de Bellabre, Lewis, and Utkina, the Tribunal held that since generally any breach of due process is capable of being compensated financially or by specific performance, applicants can get compensation for any economic losses, harm to professional reputation and career prospects. By contrast, in UNDT/2009/008, Osman, the Tribunal found that

the implementation of the decision not to renew the applicant's appointment would cause to the applicant irreparable damage as, even if staff members do not have a right to have their contract renewed, the applicant, after over 16 years of service at the United Nations, will find himself unemployed and, thus, without income. Similarly, in UNDT/2009/16, Tadonki, UNDT/2009/033, Onana, and UNDT/2009/063, Kasmani, the judges held that monetary compensation should not be used in cases where there appears to be a blatant irregularity, which caused distress. Similarly, in UNDT/2009/092, Calvani, the Tribunal held that the decision to deprive the applicant of his salaries in a sudden and unexpected manner, if not suspended, would cause irreparable damage because in this case the damage was not merely financial and could not be repaired by possible restoration of withheld salaries or award of damages.

Urgency

17. In UNDT/2009/007, Rees; UNDT/2009/008, Osman; and Lewis, the Tribunal found that the urgency requirement was met. In the latter two cases, the Tribunal found that the urgency requirement was met because their appointments were to expire. In UNDT/2009/092, Calvani, the Tribunal rejected the request for suspension of action on the decision to place the applicant on administrative leave on the grounds that there was no particular urgency for an applicant placed on administrative leave pending investigation to be reinstated in his functions and that, on the contrary, allowing the applicant to continue exercising his functions while the investigation is ongoing could hinder the investigation.

Duration of the suspension of action

18. In UNDT/2009/058, Tadonki, the Tribunal granted the request for suspension of action until determination of the merits of the case finding that the length of the suspension is to be decided by the Tribunal depending on the circumstances of the case and this discretion cannot be subject to the control of the Administration, including the management evaluation unit. By contrast, in UNDT/2009/071, Corcoran, the Tribunal held that the two types of interim measures with different functions, preconditions, restrictions and scope, have to be clearly distinguished. By contrast, in UNDT/2009/071, Corcoran, the Tribunal held that the two types of interim measures with different functions, preconditions, restrictions and scope, have to be clearly distinguished. Article 13 of the Rules of Procedure has to be applied exclusively during the pendency of the management evaluation, whereas article 14 is appropriate only during judicial review in terms of article 2 and 8 of the Dispute Tribunal's statute; in short; it is either article 13 or article 14, never both. Orders based on article 13 become ineffective with the end of management evaluation.

8. Interim measures pending judgment on the merits of the case

19. In UNDT/2009/076, Miyazaki, the Tribunal granted the applicant's request for interim relief pursuant to article 10.2 of the Statute of the Dispute Tribunal and article 14.1 of the Rules of Procedure, pending determination of her appeal against the decision not to allow her a formal rebuttal process in relation to a short-term staff performance report which made adverse findings regarding her performance on the grounds that the applicant demonstrated an arguable case of unlawfulness, notwithstanding that the case may be open to some doubt. In UNDT/2009/054, Nwuke, the Tribunal stated that an appointment decision cannot be the subject of an interim relief in view of the exception contained in Article 14 of the Rules.

9. Other ancillary matters

Extension of time

20. In various Judgments (e.g., UNDT/2009/060, Lutta; UNDT/2009/067, Gabriel; UNDT/2009/079, Abubakr; UNDT/2009/080, Jennings; UNDT/2009/36, Morsy), the Tribunal interpreted article 8 of the Dispute Tribunal's Statute and articles 19 and 35 of the Rules of Procedure that deal with extensions of time to file submissions, in different manners.

21. Specifically, in Morsy, the Tribunal held that the respondent's objection based on the grounds that the applicant had failed to show exceptional circumstances or overriding issues of interest of justice which would justify a waiver of the statutory time limits was not correct on the

grounds that article 8 of the Statute which referred to “exceptional case” for the granting of extension of time limit should not be interpreted too narrowly. The judge specified that “exceptional” is normally defined as something out of the ordinary, quite unusual, special or uncommon; therefore, the Tribunal was not required to interpret “exceptional case” referred to in article 8 of the Statute as requiring the circumstances to be beyond the applicant’s control as was required by the former UN Administrative Tribunal.

22. In respect of an extension of time to file a reply, in Jennings, the Tribunal distinguished when to act pursuant to article 35 or article 19 of the Rules of Procedure. The Tribunal held that article 35 deals specifically with the time limits provided for in the Rules of Procedure, and should therefore be applied by the Tribunal when dealing with the time limit for the filing of a reply. Article 19 deals generally with case management and is more appropriate for orders relating to time limits that are not set forth in the Rules of Procedure. In exercising its discretion in granting extension of time under articles 35 and 19, the Tribunal will have regard to what is fair to the parties and will weigh all relevant factors, including potential prejudice to both parties, the adequacy of the reasons advanced, the timeliness of the request, and the effect the extension of time will have on the proceedings. In Lutta, the Tribunal held that a literal reading of the Statute and the Rules of Procedure does not allow the respondent to request an extension of the time limit to submit a Reply after it had expired and that the only remedy is for the respondent to seek permission of the Tribunal to take part in the proceedings in accordance with article 10.1.

23. In two cases, the Tribunal found that the requests for extensions of time were tantamount to abuse of process. Specifically, in UNDT/2009/056, Hijaz, the Tribunal found that the applicant did not prove that the claimed illness may have affected his capacity to take the required preparatory action in his case. The Tribunal concluded that the application was unserious, lacking in diligent prosecution and merit and constituted an abuse of process. Similarly, in UNDT/2009/081, Macharia, the Tribunal treated the applicant’s request for extension of time as an abuse of process. It found that the applicant indulged in frivolous and unending applications for extensions of time.

Right to legal assistance

24. In UNDT/2009/093, Syed, the Tribunal held that General Assembly resolution 62/228 on administration of justice must be interpreted as creating a right for staff members to request legal counsel from OSLA, which has an obligation to provide proper advice, including on the merits of the case. OSLA is therefore entitled to advise applicants not to file an application before the Tribunal and may therefore legally refuse to appoint counsel for an applicant on the grounds that his application has little chance of success.

Abandonment of proceedings

25. In UNDT/2009/061, Bimo & Bimo and UNDT/2009/062, Hastopalli & Stiplasek, the Tribunal held that it is a general principle of procedural law that the right to institute legal proceedings is based on a legitimate interest in initiating and maintaining legal action. Access to the court is denied to those who are obviously no longer interested in the proceedings they once instituted. This principle was applied to applicants who did not respond to the Tribunal’s requests and who therefore were deemed to have abandoned the legal proceedings they had instituted.

Application for revision of judgment

26. In UNDT/2009/087, Mezoui No. 2, the Tribunal held that it follows from a combined reading of articles 11.3 and 12.1 of the Dispute Tribunal’s Statute and article 7.1 (c) of the Appeals Tribunal’s Statute that when, prior to the expiration of the time provided for appeal, the parties discover a decisive fact which meets the criteria of article 12 of the Statute of the Dispute Tribunal, their only recourse to contest a judgment of which they have been notified is the appeals process. Furthermore, it is only if the said decisive fact is discovered after the time provided for appeal that they can apply for a revision.

Compensation

27. In Crichlow, the Tribunal found that in respect of compensation for emotional suffering and distress, non-statutory principles for calculation of compensatory damages for emotional suffering and stress include non-punitive damages awarded to compensate proportionally for negative effects of a proven breach. This was further elaborated on in UNDT/2009/084, Wu, in which the Tribunal held that financial compensation (under article 10.5(b) of the UNDT Statute) must be proportionate to the injury suffered, bearing in mind the maximum amount set in the Statute. Even if an applicant did not suffer any financial damage, the immaterial injury caused to him/her by an illegal administrative decision may warrant compensation for the negative effects of the proven breach. To determine the amount of compensation, the particular circumstances of a given case have to be taken into account, including the impact the established breaches have on the victim.

Withdrawal of a withdrawal of an application

28. In UNDT/2009/023, Sheykhiyani, the Tribunal held that an applicant could not withdraw a withdrawal of an application. It ruled by way of summary judgment (since there were no dispute as to the material facts and judgment was restricted to a matter of law) that according to general principles of procedural law any statement of intention toward the court has to be clear and without any preconditions, and cannot be withdrawn because, normally, procedural law does not tolerate turning back the clock, as reasons of security and reliability tie the parties to their statements unless they were in error about their meaning.

Production of documents

29. In UNDT/2009/050, Koda, the Tribunal granted the applicant's motion for access to the notes taken by a fact-finding panel who prepared a confidential fact-finding panel report that allegedly cleared the applicant of misconduct allegations but made adverse findings and made recommendations including that conditions should be attached to the extension of the applicant's contract. The Tribunal ruled that the notes taken by the panel contain material that is or may well be relevant to the applicant's case.

Striking of submission, amended pleadings

30. In its Judgment UNDT/2009/082, Krioutchkov, the Tribunal did not grant the respondent's motion that the applicant's submission be struck out on the basis that the submission raised new factual and legal issues, relied on new documentation and requested remedies different from those sought in the application on the merits. The Tribunal held that since neither the Statute nor the Rules of Procedure of the Tribunal prescribe the form of the parties' submissions filed in accordance with an order of the Tribunal, the matter falls under article 36 of the Rules of Procedure and the applicant cannot be precluded from amending his earlier submission so long as the respondent's legal rights and interests are not impaired.

Stay of proceedings, abuse of process

31. In UNDT/2009/020, Hussein, the Tribunal held that an applicant cannot seek a stay of the proceedings on the grounds that she wishes time to determine whether to continue, amend or terminate her appeal against a non-promotion decision, as appropriate, depending on whether or not an on-going recruitment process worked out in her favour. The Tribunal considered that such action is an abuse of process of the Tribunal.

Summary dismissal judgment

32. In UNDT/2009/027, Sina, the Tribunal dismissed the respondent's motion for summary dismissal judgment in a non-renewal case on the grounds that where evidence is capable of establishing a likelihood of a connection between potentially extraneous considerations and a failure to obtain a renewal of a contract, summary dismissal of judgment is unlikely to be warranted. Where one party raises sufficient material suggesting a particular fact or facts and the other party has the sole means of refuting that inference, then an evidentiary burden to call that

evidence will ordinarily arise so that a failure to do so will make it relatively easy for the other party to treat the fact as proven.

Failure to comply with an order to show cause / striking of application

33. In UNDT/2009/006, Manokhin, and UNDT/2009/009, Kouka, the applicants in both cases failed to respond to the order to show cause why their appeals against a decision to summarily dismiss them should not be struck out since they had no reasonable prospect of success. The Tribunal found that it had authority to strike out the applications. The Tribunal held that the orders to show cause had been properly served on the applicants, that the evidence was sufficient to substantiate the charges, that these were cases of serious misconduct, there was no evidence of procedural irregularities or improper motive or abuse of power by the Administration. Both applications were struck out. Similarly, in UNDT/2009/069, Ahmad Ghosn, the Tribunal struck the application on the grounds that the applicant failed to actively and diligently pursue his claim.

Definition of an administrative decision

34. In UNDT/2009/074, Luvai, the Tribunal elaborated on the definition of an administrative decision. Specifically, the Judge found that the fact that the applicant did not apply for a post and, as result, there was no administrative decision affecting the applicant's rights, including his due process rights, did not preclude him from contesting the selection decision on the grounds that a decision must not necessarily be of individual application for an applicant to have a cause of action. In UNDT/2009/090, Teferra, the Judge held that given the nature of the decisions taken by the Administration, "there cannot be a precise and limited definition of such a decision. What is or is not an administrative decision must be decided on a case by case basis and taking into account the specific context of the surrounding circumstances when such decisions were taken".

Recusal / conflict of interest

35. In UNDT/2009/005, Campos, the President of the Dispute Tribunal found that the applicant's claim that the Dispute Tribunal's Judges could not review the decision of the Secretary-General not to nominate him as a staff representative on the IJC had no merit. The President held that the Judges were elected by the General Assembly and they are not subservient to the members of the IJC. In UNDT/2009/033, Onana, the Tribunal held that to address the applicant's counsel's concerns about a potential conflict of interest, given that the Registrar of the Tribunal was partly involved in the contested decision making processes, it excused the Registrar from his functions in respect of this case so that would have no substantive involvement in the matter.

Mediation

36. In UNDT/2009/053, Adrian, the Tribunal considered that the case at hand was one that was eminently suitable for mediation as the mediation process would give the parties an opportunity to reach a satisfactory solution in what appeared to be a case of error and misunderstanding.

Legal costs

37. In Crichlow, the Judge held that legal costs will be awarded if the Tribunal finds that in the course of the proceedings there has been an abuse of the process by a party. There may be other instances when the Tribunal will feel compelled to order award of costs.