Second activity report of the Office of Administration of Justice
1 July 2009 – 30 June 2010

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I. Introduction

1. The second report of the Office of Administration of Justice (OAJ) outlines the activities of the Office for the first year of the new system of administration of justice, from 1 July 2009 to 30 June 2010.

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 June 2009, the Office of the Executive Director prepared and carried out an induction course for the newly appointed judges of the UNDT and UNAT upon their arrival to begin service in the new system. Subsequently, the Office published and distributed a handbook on the new system, titled, “A Guide to Resolving Disputes”, which has been distributed to all UN staff in the system.

6. In addition to this foundational work, the Office has conducted a global outreach campaign designed to inform staff about the new system of justice. During the reporting period, the Executive Director and other senior staff of OAJ have carried out outreach missions and held town-hall meetings at over 15 duty stations, including Arusha, Bangkok, Beirut, Geneva, Porte-au-Prince, The Hague, Nairobi, Santiago, Vienna, Kuwait, Amman, Brindisi, Santo Domingo, Addis Ababa, Kinshasa and Khartoum. In addition, the OAJ participated in the XXXth and XXXIth sessions of the United Nations Staff-Management Coordination Committee) in Nairobi, in June 2009, and in Beirut, in June 2010, respectively.

7. During the first year, the Office managed to fill all positions in the UNDT and UNAT Registries and almost all in OSLA; facilitated and participated in the plenary meetings of the UNDT in November/December 2009 in Geneva and in June/July 2010 in New York; assisted with logistical and administrative arrangements for the preparation of the two UNAT sessions held in March/April in Geneva and in June/July 2010 in New York; continued its efforts to effectuate construction of courtrooms and, where appropriate, permanent offices in New York, Geneva and Nairobi; liaised with the Department of General Assembly and Conference Management to secure

search capability. In addition, the Office is in the process of developing a fully web-based case management system, which is expected to be available later this year.

10. Another of the mandates of the Office of the Executive Director has been to negotiate and conclude agreements with a number of entities in the UN Common system for their participation in the new system. To date, such agreements have been conclu

2. Election of the President

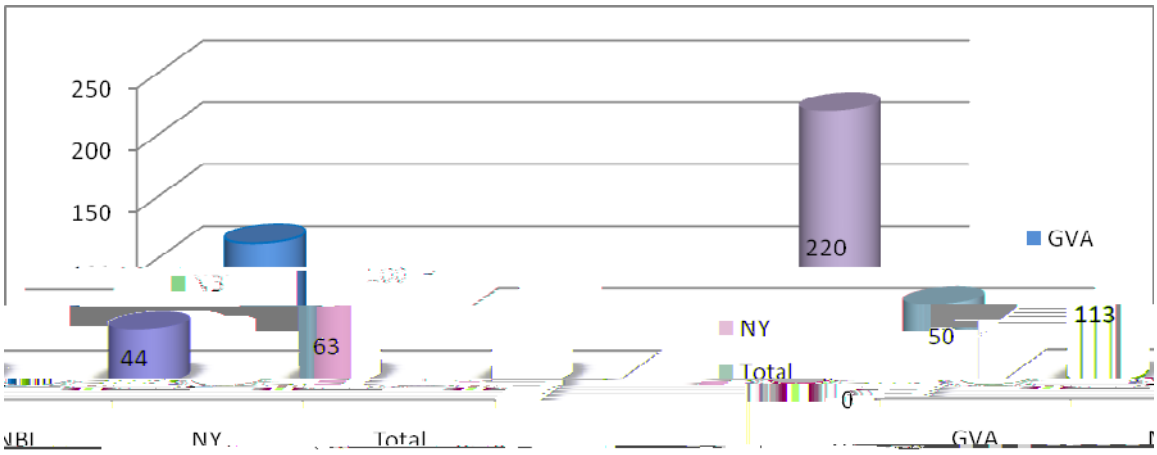
15. In accordance with article 1 of the then provisional Rules of Procedure of the UNDT, on 24 June 2009, the judges elected Judge Vinod Boolell as President for a period of one year, from 1 July 2009 to 30 June 2010. During its plenary meeting in Nairobi, the UNDT elected Judge Thomas Laker as President for one year, from 1 July 2010 to 30 June 2011.

3. Plenary meetings

16. During the reporting period, the Judges of the Tribunal held three plenary meetings: from 20

and 63 cases respectively. On average, the three Registries disposed of approximately 18 cases per month.

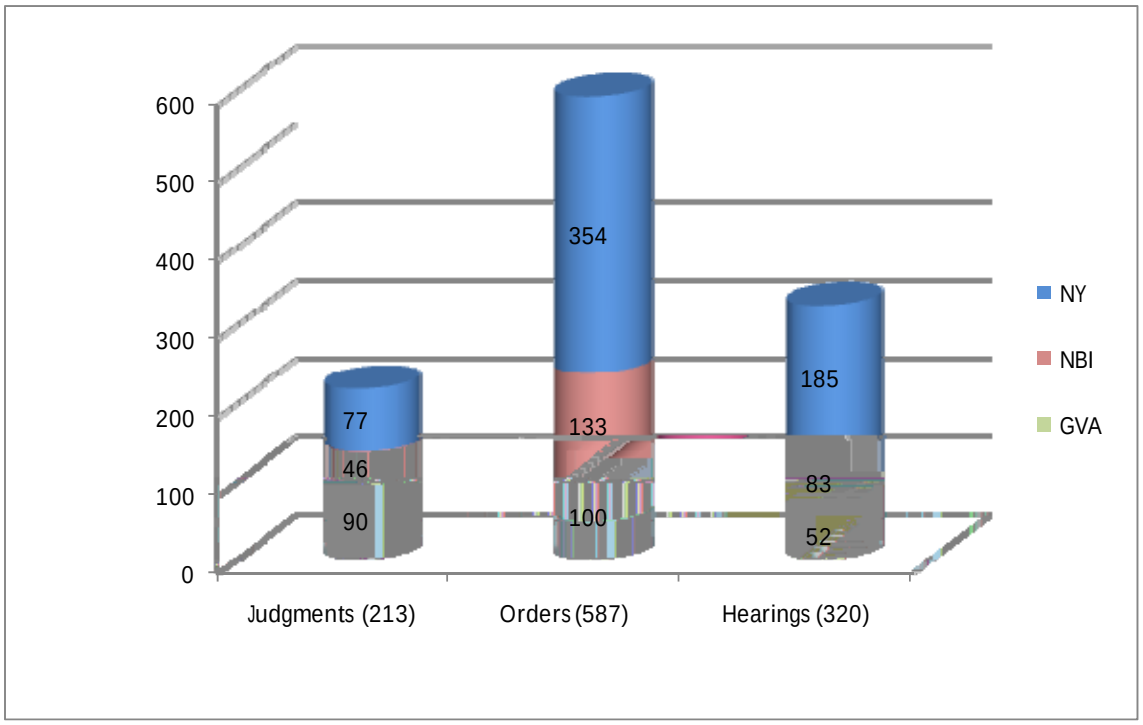
Chart 3 Cases disposed of by the Dispute Tribunal (1 July 2009–30 June 2010)



6. Number of judgements, orders and hearings

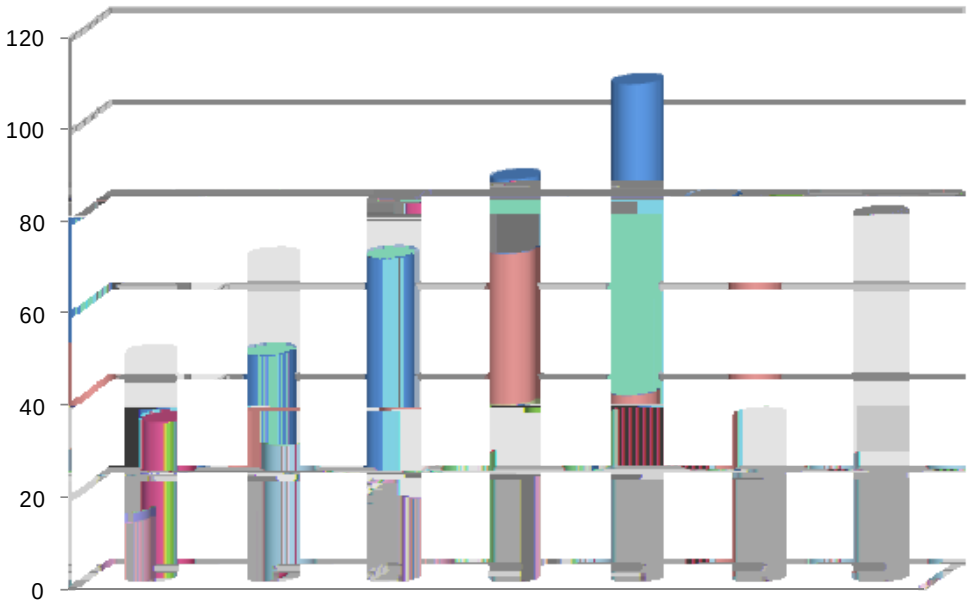
25. During the period 1 July 2009 to 30 June 2010, the UNDT issued 213 judgements on both the merits of cases and interlocutory matters. A total number of 587 orders were issued and 320 hearings were held by the UNDT. Chart 4 below details the numbers of judgements rendered, orders issued and hearings held by judges in Geneva, Nairobi and New York.

Chart 4 Number of judgements, orders and hearings in Geneva, Nairobi and New York (1 July 2009–30 June 2010)



7.

Chart 6 Nature of cases registered between 1 July 2009 and 30 June 2010



were represented by volunteers who were either current or former staff members of the Organization and 140 staff members represented themselves (see charts 8 and 9).

Chart 8 Legal representation of applicants, registered cases by Registry (1 July 2009–30 June 2010)

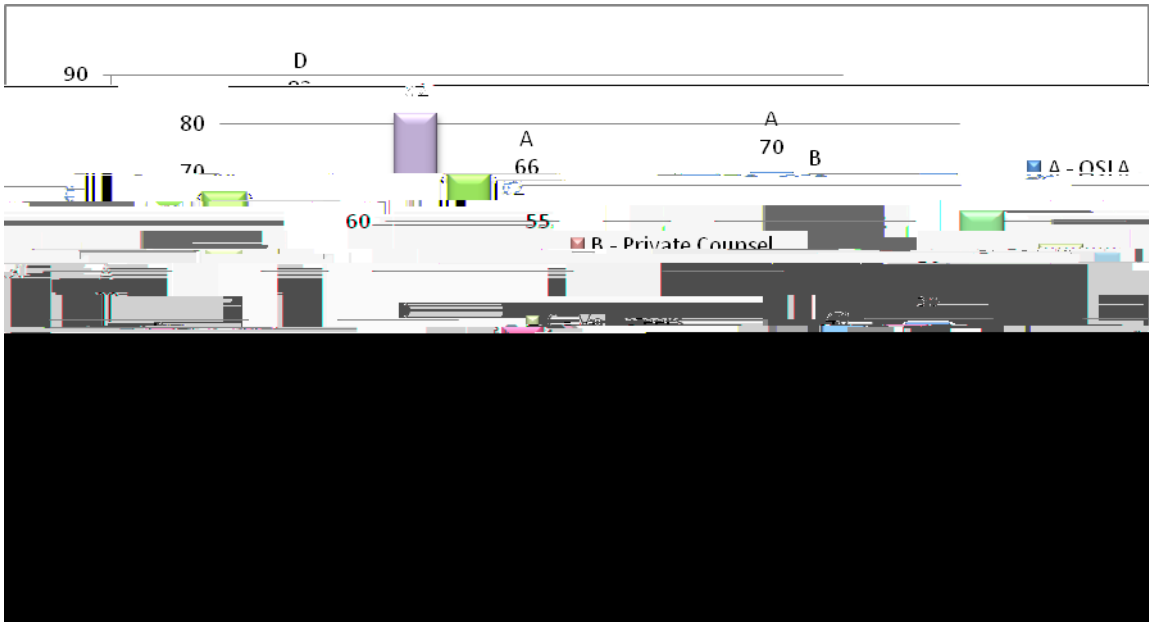
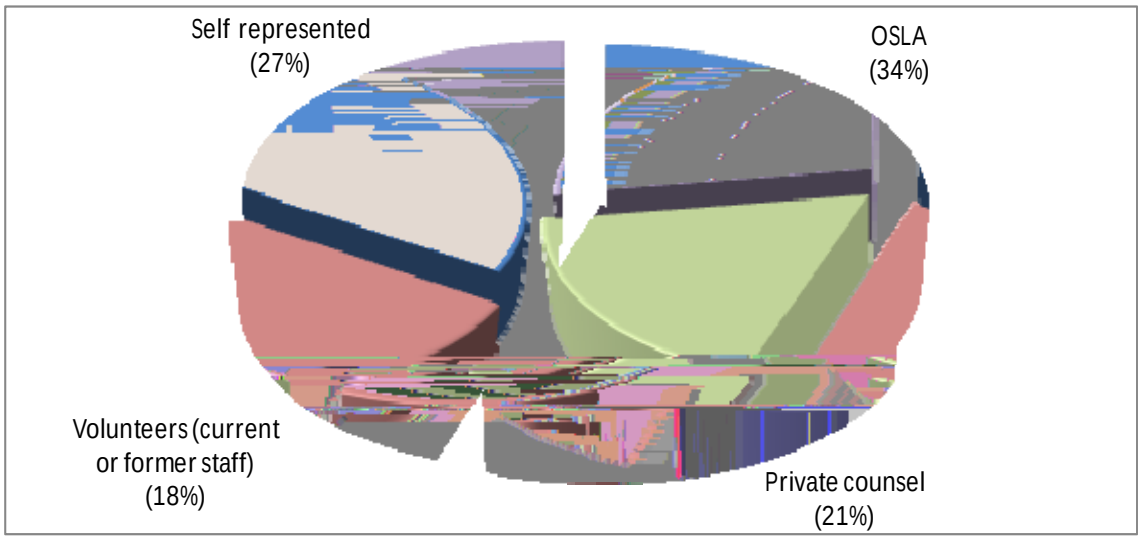


Chart 9 Legal representation of applicants (combined data for the three Registries)



11. Outcome of disposed cases

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some claims on liability or procedure granted). A total of 37 applications were withdrawn, including cases successfully mediated or settled.

Chart 10 Outcome of closed cases, by Registry (1 July 2009–30 June 2010)

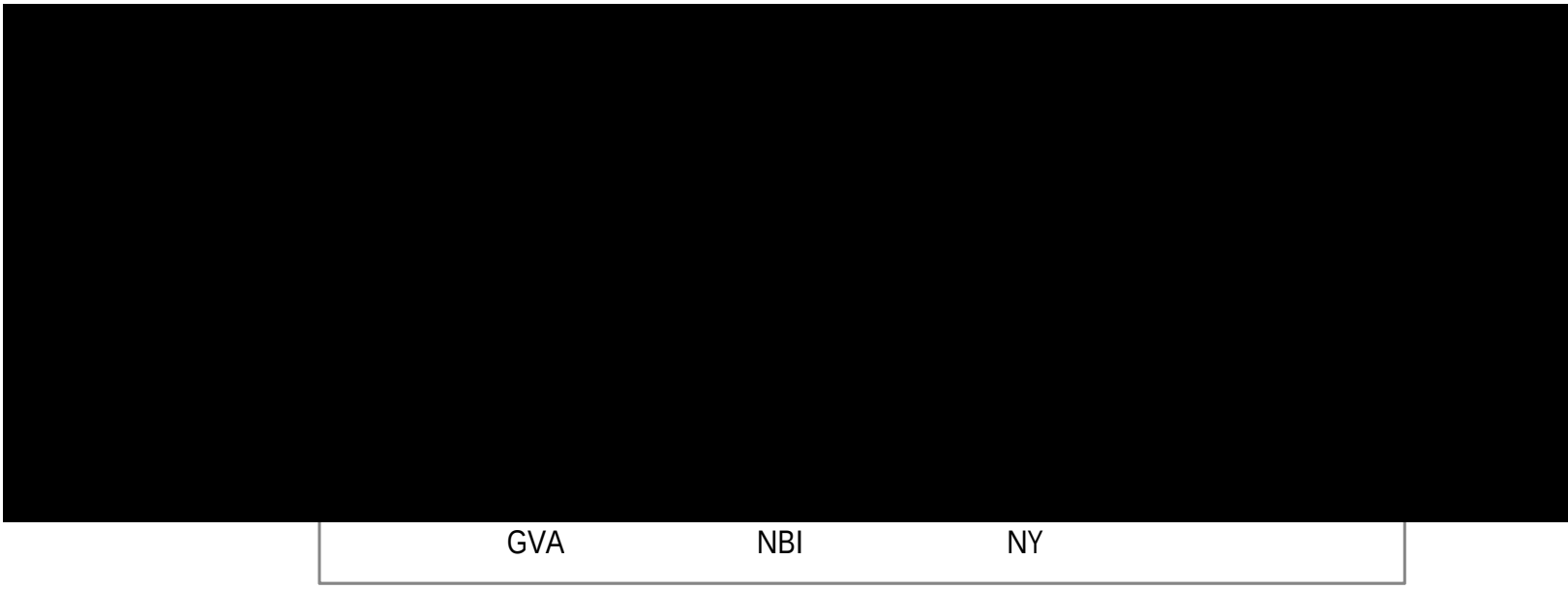


Chart 11 Outcome of closed cases (combined data for the three Registries)

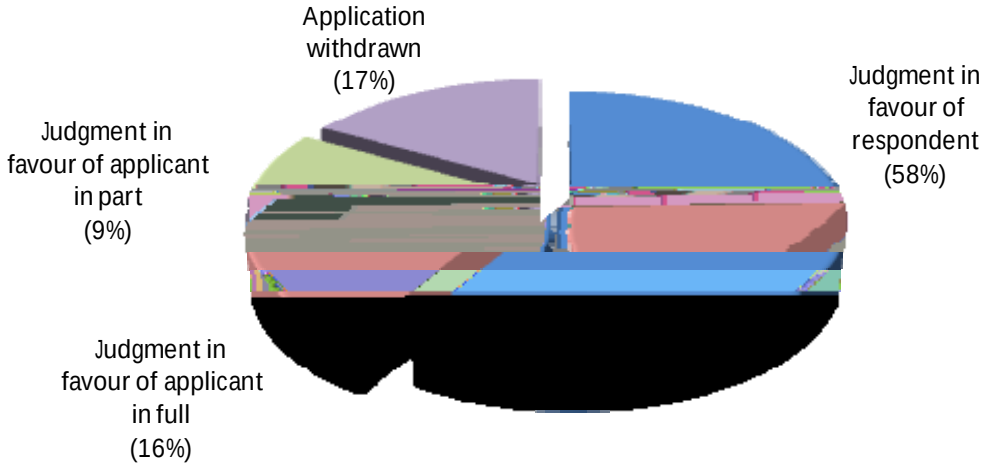
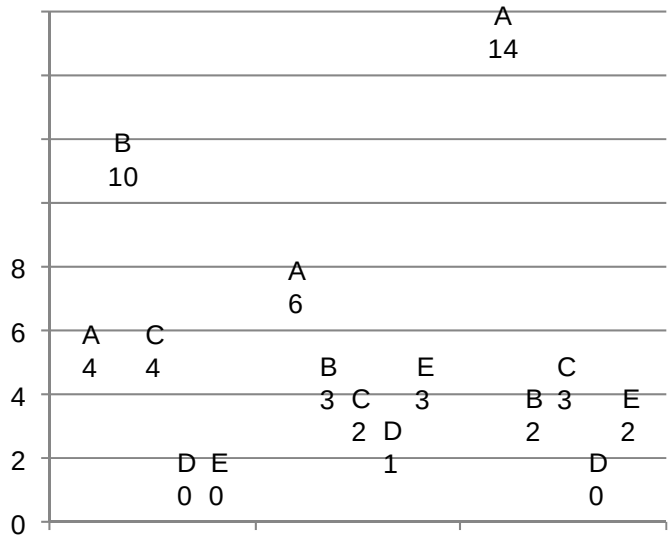


Chart 12 Relief ordered in closed cases, by Registry (1 July 2009–30 June 2010)



IV. Activities of the United Nations Appeals Tribunal

A. Composition of the Appeals Tribunal

1. Judges of the Appeals Tribunal:

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

Judge Inés Weinberg de Roca (Argentina)

Judge Jean Courtial (France) 9–13 TD-.00026Tc.0014Tc0 Tw(4Tc0 Tw97aE7ed Nat0 Tc( )Tj/TT6 1gh)Tj/Tia(rg)

between these agencies and entities and the United Nations, accepting the jurisdiction of the UN Administrative Tribunal under article 14 of its Statute, with the exception of the flat fee.

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

C. Judicial statistics

41. During the reporting period, UNAT received a total of 110 appeals, including 10 against the UNJSPB, 14 against UNRWA, and 53 cases appealing judgements of the UNDT by staff members and 33 by the Administration.

42. The UNAT held its first session from 15 March to 1 April and its second session from 21 June to 2 July 2010. During its first session, the Tribunal rendered 33 judgements and, during its second session it is scheduled to render 31.

1. Outcome of disposed cases

43. During the period covered by this report, 33 cases were disposed of. Eight judgements were rendered in appeals against the UNJSPB, seven of which were rejected and one was remanded to the Standing Committee, acting on behalf of the UNJSPB.

44. Ten judgements were rendered on appeals filed by UNRWA staff members against decisions by the UNRWA Commissioner-General. Seven appeals were rejected while three were entertained.

45. As for appeals against UNDT judgements, 15 judgements were rendered. Ten appeals were

49. At the inception of OSLA on 1 July 2009, 346 cases were transferred to it from the former UN Panel of Counsel. During the reporting period, 592 additional cases were brought to OSLA, bringing the total number OSLA handled in its first year to 938 cases. Of those, OSLA was able to close or otherwise find solutions for 510 cases. OSLA's aggregate figure of active cases as at 30 June 2010 was 428 cases. The number of cases under OSLA's responsibility is expected to grow with the completion of staffing of OSLA field offices in addition to dissemination of knowledge and access to OSLA's services and thereby the system of administration of justice for staff members in the field.

B. Advice and legal representation before and during formal litigation

50. 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 assess the merits of

54. On a number of occasions, 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. At times, these withdrawals occurred after considerable time and effort had been devoted to the case by OSLA.

C. Challenges and observations after one year of operations

55. As stated in Section A above, the establishment of the OSLA offices presented many challenges, especially in the early months when OSLA offices were established in Nairobi and Beirut (September 2009), and in Geneva (January 2010), each staffed by a single legal officer working without support staff. While some additional assistance has been obtained, especially in Geneva with a loan from UNHCR in February, the legal officer post in Addis Ababa, the fourth duty station, remains vacant, as does the post in Beirut, with the move of the Beirut legal officer to Geneva in June.

56. Over the course of the reporting period, OSLA benefited from the services of part-time legal officers, OSLA-affiliated volunteer counsel, a number of legal interns and external pro bono counsel. While this assistance is welcome and has been extremely helpful, it does not fill the human resources gap for the Office as a whole.

57. One way OSLA has attempted to gain additional funding is through the establishment of the "Trust Fund for Staff Legal Assistance". The Fund was approved by the Controller in January 2010 and was created to enhance the ability of OSLA to provide legal advice and/or representation to UN staff members within the new internal system of justice. Continuing efforts are being made to obtain additional funding, especially to enhance service to staff in the field.

58. Failure to engage and maintain sufficient human resources for the Office may require OSLA to make difficult decisions such as managing the caseload on a "triage" basis, with only the most serious new cases being accepted for intake. This is something that, to date, OSLA has implemented only in a very limited way.

59. Developments before the Tribunals themselves with respect to procedural and normative issues has resulted in OSLA legal officers having to make submissions and representations in new areas of public international administrative law with a view to the development of further jurisprudence, particularly at the UNAT. It is anticipated that once further UNAT judgements are issued there will be greater legal clarity which would help OSLA in providing legal advice to clients.

60. OSLA continues to endeavour to develop and strengthen its ties with UN staff union representatives and staff-at-large, to work in closer tandem with Ombudsman and Mediation Services and to strengthen its liaisons with counterparts in the legal offices of the Secretariat and UN agencies, funds and programmes.

61. Against this background, much has been achieved with limited resources during OSLA's first year, as the following statistics will demonstrate.

D. Statistics

1. Number of cases received in 2009

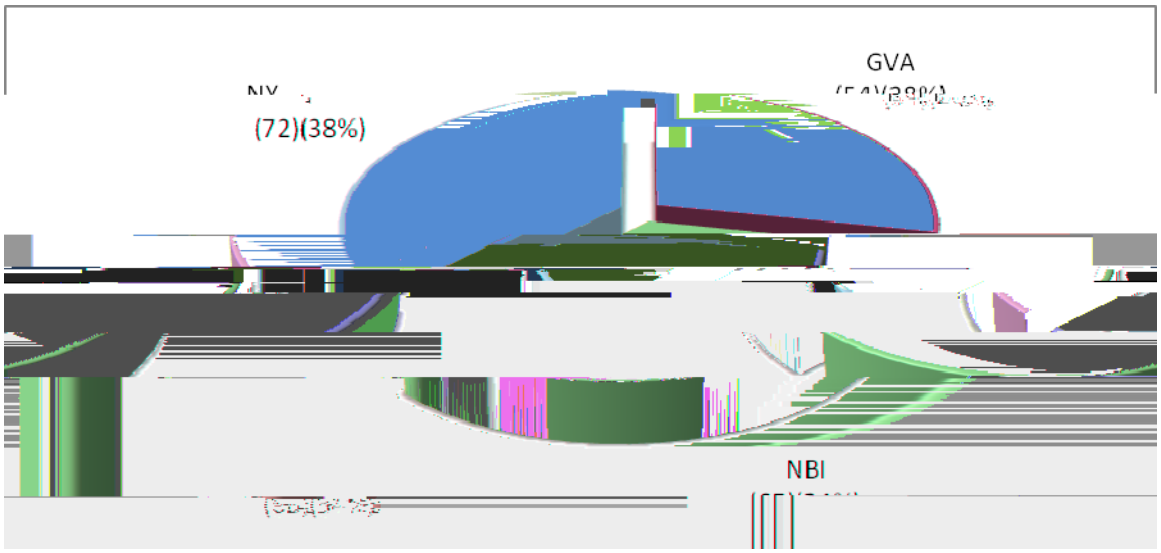
62. On 1 July 2009, 346 cases were transferred from the former Panel of Counsel (POC) to the newly created OSLA. From 1 July 2009 to 30 June 2010, 592 additional cases were brought by staff members (including former staff members or affected dependants of staff members) to Oe,..8(in gbersal of)1

since their having responded to allegations. In cases before the UNDT and UNAT, as well as the former UN Administrative Tribunal, OSLA held consultations and provided legal advice to staff member clients, drafted submissions on their behalf, represented them in hearings (UNDT), held discussions with opposing counsel, and negotiated settlements. OSLA similarly provided advice and assistance in submissions and processes before other formal bodies listed in the table below.

Table 1 OSLA cases

Cases by recourse body:	New cases	Transferred from Administrative Tribunal	Closed/Resolved
Human Resources (disciplinary cases)	209		60

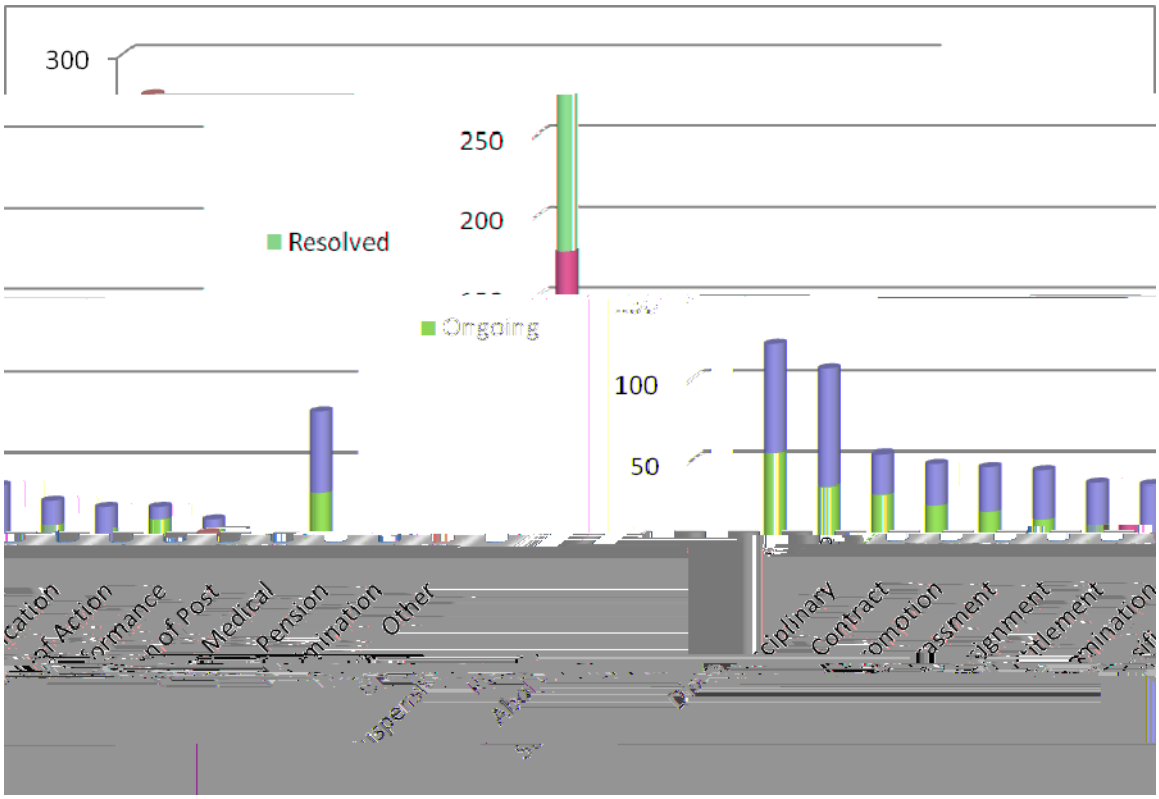
Chart 16 OSLA representation of cases before the UNDT (Geneva, Nairobi and New York)



4. Cases by subject-matter

66. Chart 17 below provides an overview of OSLA cases by subject-matter. The bulk of the cases handled by OSLA for the reporting period 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.

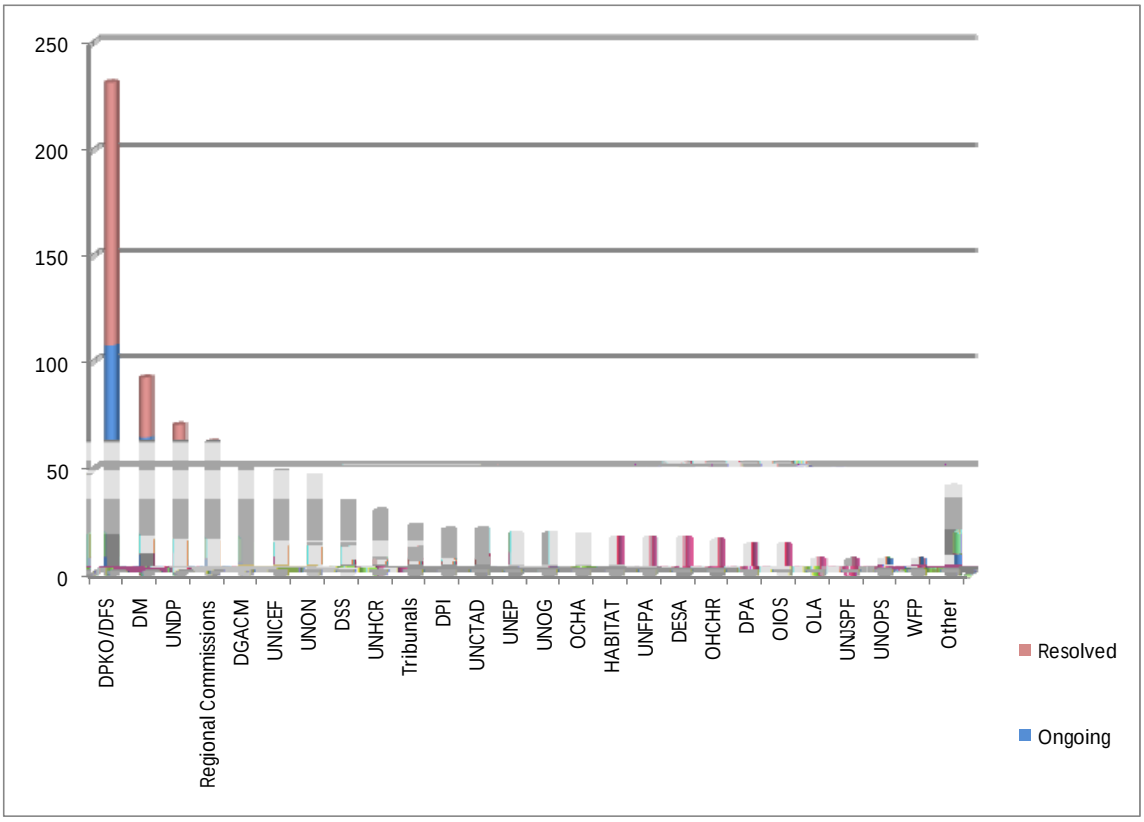
Chart 17 Cases by subject matter as at 30 June 2010



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

67. Chart 18 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) (231 cases). A large number of cases stem out of contested decisions made by the Department of Management (DM) (92 cases). The next largest caseloads by entity are UNDP (70), Regional Commissions (62), DGACM (50) and UNICEF (48). A total of 197 cases are from four Secretariat entities, namely DM, DGACM, DSS and DPI. This may be explained by the fact that NY-based staff can more readily contact OSLA as opposed to colleagues in field missions.

Chart 18 Cases by client (department, agency, fund or programme)



APPENDIX I

Proceedings of the UNDT

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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 followingu]m-5.8(a atedg)c4yr by is provided below. The summaries are not authoritative and the judgments nprehensive. For a complete set of the judgments issued during the period by the UNDT, the website of the UNDT (http://un.org/en/oaj/dispute/) should also be borne in mind that, at the time of the writing of the report, a ments were being appealed before the UNAT by either the applicant or the the findings made by the UNDT in a number of the judgments mentioned onsidered final and the website of the UNAT should be consulted for the e 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 relevant 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

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 a priori burden of proof on either party.

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 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. Similarly, in UNDT/2010/046, Tra-bi, and UNDT/2010/041, Liyanarachchige, the Tribunal found that "the decision to summarily dismiss the applicant was proportionate to the nature of the charges".

16.

work of equal value, and that this right is not necessarily linked to equality between genders but refers also to equality for each employee performing a defined job. The Tribunal also held that the reliance on budgetary restraints in the face of strong evidence that the classification was justified

have been implemented in its entirety at the end of the administrative leave. Thus, it found that the application for suspension of action was receivable.

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

31. 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 consider 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 granting 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

32. 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.

33. In UNDT/2009/064, Buckley, the Tribunal defined the expression "appears prima facie to be unlawful" as meaning that there is an arguable case that the contested decision is unlawful. To establish a reasonably arguable unlawfulness, the applicant must show, in respect of contract extension, that there was a legitimate expectation of renewal that gives legal rights and not merely a reasonable expectation of renewal of contract. In 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 leave 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

34. In 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

damage was not merely financial and could not be repaired by possible restoration of withheld salaries or award of damages.

Urgency

35. In UNDT/2009/007, Rees; 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 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

36. In UNDT/2009/058, Tadonki, the Judge 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[a] body. By contrast, in UNDT/2009/071, Corcoran, the Tribunal held that suspension pending management evaluation and suspension during the proceedings are two types of interim measures with different functions, restrictions and scope, which 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

37. 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 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.

38. In Order No. 29 (GVA/2010), Calvani, and Order No. 49 (GVA/2010), Pacheco, the Tribunal held that, for an interim measure to be ordered pursuant to article 10.2 of the Tribunal's Statute and article 14.1 of the rules of procedure, it is an i

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 Judges 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.

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46.

a person cannot obtain the status of a staff member of the United Nations before his letter of appointment is signed by a duly authorized official of the Organization. The Tribunal found that the record shows that

Conduct of counsel

58. In UNDT/2010/062, Rosca, the Tribunal held that personal attacks on witnesses or parties that cannot be justified by the evidence are contrary to the obligation of counsel to exercise their independent judgment; they are an abuse of the office of counsel and bring both counsel and the administration of justice into disrepute.

Compensation

59. 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 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 established breaches have on the victim.

60. In UNDT/2010/011, Costelloe, the Tribunal held that [illegible] 10.5 of the Statute in order to place the staff member in the same position as s/he would have been if the debt had been paid when it was due. The applicable rate was set at 8 per cent per annum from the date upon which the debt was due to be paid, namely thirty days after accrual. In UNDT/2010/026, Kasyanov, the Tribunal reiterated that compensation under art. 10.5 of the Statute serves the duty to place a staff member, as nearly as money can do so, in the same position as he would have had if there were no breach, in respect of any direct or foreseeable loss, whether economic or otherwise. The practical difficulty of measuring the amount of compensation to be awarded does not mean there has been no compensable loss or make such compensation punitive. The Tribunal held that, with respect to damages, the burden of proof rests with the applicant, and the respondent bears the burden of establishing the mitigating circumstances that would limit the award of compensation.

61. In UNDT/2010/071, Hastings, the Tribunal elaborated that, although not expressly stated in the Statute, it may reasonably be inferred from its context that compensation under 10.5(b) is to compensate an applicant for losses other than the more easily quantifiable material losses available under article 10.5(a), i.e., adverse but non-material consequences of a legal wrong. The Tribunal determined that the applicant's loss of chance be compensated based on the balance of probabilities regarding each step of the selection process and expressed in percentages.

62. In UNDT/2010/040, Koh, the Tribunal found the Administration liable for depriving the applicant of an opportunity to apply for positions for which he was suitable and, it was agreed, for which he would have been short-listed as a staff member on an abolished post. The Judge held that the principle issue in assessing compensation was the valuation of loss of a chance to be a candidate and that the positive value of a chance of benefit and the loss involved in being subjected to a significant possibility of future detriment must be taken into account in the assessment of compensation for breach of contract. Other relevant factors were held to be the applicant's chance of success at interview, the likely duration of the position, termination indemnities already paid and income earned during the relevant period. The Judge also held that, unless a case was exceptional, the compensation [illegible]

approximating just compensation than compliance with the cap would permit. He stated that this

confidentiality of the evidence and, if it finds the evidence to be confidential, it is the Tribunal's responsibility to ensure that measures are taken to preserve such confidentiality. In this case, the Tribunal did not use the confidential documents it had requested from the respondent and therefore did not communicate them to the applicant.

69. In Order No. 29 (GVA/2010), Calvani, the Tribunal held that, if it issues an order requesting the Administration to provide certain information, it is the duty of the Administration to comply with the order without delay. It is not within the prerogative of the Administration to discuss the relevance of the requested information for the resolution of the dispute, an assessment which is within the exclusive competence of this Tribunal.

70. In UNDT/2010/055, Abbasi, the Judge discussed various principles of document discovery and held that, given the difficulties of proving discrimination, staff members are entitled to have the opportunity of looking at such material which is in the possession of the Organization and which will be necessary to enable the Tribunal to consider the

Tribunal held that in non-disciplinary cases, it is a matter of judicial discretion to hold an oral hearing or to abstain from it and that in cases deemed suitable to be decided by summary judgment, an oral hearing was usually not necessary.

Default judgment

83. In UNDT/2010/080, Bertucci, the Judge awarded default judgment (with the amount of compensation not yet determined) after excluding the respondent from the proceedings for failure to comply with the Tribunal's orders to produce documents to the Tribunal. The respondent had also refused to permit the applicant to prove facts and had made it clear that he did not intend to adduce any facts on his own behalf. He therefore declined to prove that any, let alone, full and fair consideration, was given to the applicant's candidacy in the case. As the respondent chose not to litigate the question of the likelihood of the applicant's selection and would not provide the information that would enable a comparison of the applicant's claims with those of the other candidates, the only fair inference able to be drawn was that which was most favourable to the applicant; that he was the outstanding candidate and, had all necessary and proper things been done, would have been so likely to have been appointed that his compensation should be awarded on the basis that he would have been appointed. Where the favourable inference concerns a crucial fact such as this, it will result almost invariably in a favourable judgment.

Requirement to follow process of challenging administrative decision

84. In UNDT/2010/033, Zhang, the Judge confirmed that a contested administrative decision must be a decision which is taken by or on behalf of the Organization in the course of managing its affairs and that requests for administrative review and management evaluation are necessary steps in the appeal process of such a decision. The applicant's claims in the matter that the Organization had not properly used its human resources, nor promoted gender equality did not impugn any specified administrative decision. The Judge also reiterated that, in the absence of a properly contested administrative decision, the Tribunal is not an appropriate forum in which to request the awarding of a post commensurate with an applicant's skills and qualifications.

Appraisal of staff on short-term contract

85. In UNDT/2010/078, Miyazaki, the Judge held that ST/AI/292 alone does not provide adequate "rebuttal" procedures for short-term staff. The creation of two classes of short-term staff which may occur via ST/AI/2002/3 has the potential to violate the doctrine of equal treatment in like circumstances. Accordingly, the applicant was allowed to undertake a rebuttal process, as she sought. In Riquelme, the Judge stated that although the undertaking of an ePAS appraisal where the staff member's term of employment is less than one year is "discretionary" pursuant to ST/AI/2002/3, this discretion is not to be exercised arbitrarily but in accordance with proper principles of managerial decision-making. If it is "appropriate" pursuant to section 1 of the instruction to undertake such an appraisal, then it must be undertaken. It was stated that it would be useful to provide some guidelines to management as to when it will or might well be appropriate to exercise this discretion.

Participation in proceedings

86. In Lutta, the Tribunal held that an application by the respondent for permission to participate in proceedings may also contain a motion for the belated filing of a reply under Article 19 of the UNDT Rules of Procedures. Such an application should give the reasons why the reply was not filed in a timely manner.

APPENDIX II

Proceedings of the UNAT

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Introduction

1. As indicated above, during the period covered by this report, the UNAT rendthe pn 35.2 on

Haniya's termination purportedly "in the interest" of the agency, was in fact a disciplinary measure, and therefore reviewed it as such.

3. Entitlements

9. In Judgment No. 2010-UNAT-031, Jarvis, the Appeals Tribunal held that the UNDT erred in finding that by accepting a lump-sum payment for home leave travel, the appellants forfeited any right of appeal the amount of the lump-sum received. It remanded the case to the UNDT for consideration on the merits.

4. Conflict of interest

10. In Judgment No. 2010-UNAT-001, Campos, the Appeals Tribunal affirmed the UNDT findings that there was no flaw in the procedure used by the Staff Management Coordinating Committee to select a staff representative on the Internal Justice Council. It also affirmed the UNDT judgments rejecting Campos' allegations of conflict of interest on the part of the UNDT and the Appeals Tribunal judges.

5. Receivablity

11. In Judgments No. 2010-UNAT-005, Tadonki, No. 2010-UNAT-008, Onana, and No. 2010-UNAT-011, Kasmani, the Appeals Tribunal was seized of appeals by the Secretary-General against UNDT decisions ordering the suspension of the contested decisions beyond the deadline for management evaluation. The Appeals Tribunal clarified that, generally, only appeals against final judgments would be receivable, because otherwise, cases would seldom proceed if either party was dissatisfied with a procedural ruling. It however noted that prohibitions on appeals in Articles 2(2) and 10(2) of the UNDT Statute cannot apply where the UNDT issues orders that purport to be based on these articles, but in fact exceed its authority. Article 2(2) of the UNAT Statute authorizes the UNDT to order a suspension of a contested decision only "during the pendency of the management evaluation". The Appeals Tribunal found that the UNDT exceeded its jurisdiction in ordering suspension of the contested decision beyond the deadline for management evaluation.

12. In Tadonki, the Appeals Tribunal emphasized that almost no preliminary matters would be receivable, for instance, matters of evidence, procedure, and trial conduct. Only when it is clear that the UNDT has exceeded its jurisdiction, a preliminary matter will be receivable.

13. In Judgment No. 2010-UNAT-032, Calvani, the Appeals Tribunal rejected the Secretary-General's interlocutory appeal against a UNDT order for production of documents. The Appeals Tribunal considered that the UNDT has discretionary authority in case management and the production of evidence in the interest of justice, and that an order for production of documents cannot be subject of an interlocutory appeal.

14. In Judgment No. 2010-UNAT-025, Doleh, the Appeals Tribunal found that it was a common practice of the Administration to raise pleas of appeals being time-barred without verifying the facts. It held that this practice deserved to be deprecated in the strongest possible terms.

15. In Judgment No. 2010-UNAT-013, Schook, the Appeals Tribunal elaborated that an "administrative decision" for the purpose of former Staff Rule 111.2(a) of the Staff Rules needs to be communicated to a staff member in writing to ensure that time-limits are correctly calculated.

16. In Judgment No. 2010-UNAT-010, Tadonki, the Appeals Tribunal dismissed an appeal by the Secretary-General against the interpretation of a judgment. It found that the appeal was not receivable because interpretation of a judgment is not a judgment within the meaning of Article 2(1) of the Appeals Tribunal's Statute.