

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

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

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

2. Election of the President

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

3. Plenary meetings

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

B. Judicial statistics

1. General activity of the UNDT

11. As at 1 January 2013, the UNDT had 262 pending cases. During the reporting period, the UNDT received 289 new cases, including by inter-registry transfer, and disposed of 325 cases, including one remasn7 35.029Tw(11 86)-64 dis

Table 1c

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

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

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

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

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

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

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

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

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

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

4. Number of judgments, orders and court sessions

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

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

9. Legal representation of applicants before the UNDT

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

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

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

10. 10

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

13. Jurisprudence

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

IV. Activities of the United Nations Appeals Tribunal

A. Composition of the Appeals Tribunal

Table 3a

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

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

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

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

Chart 5 Cases registered between 1 January and 31 December 2013

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

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

Table 3b

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

2. Outcome of disposed cases

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

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

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

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

Appeals against UNDT judgments

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

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

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

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

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

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

50. In one judgment, UNAT ordered the redaction of certain parag0716 568.32 Tm

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

6. Jurisprudence

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

V. Activities of the Office of Staff Legal Assistance

A. General Activity

57.

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

Types of Cases	Number of cases received				
	2009	2010	2011	2012	2013
Summary Legal Advice	173	303	358	631	487
Management Evaluation Matters	61	90	120	196	113
Representation before the UNDT	127	75	116	96	71
Representation before the UNAT	10	39	21	31	34
Disciplinary Cases	156	69	55	46	38
Other	74	13	10	29	19
Total	601	589	680	1029	762

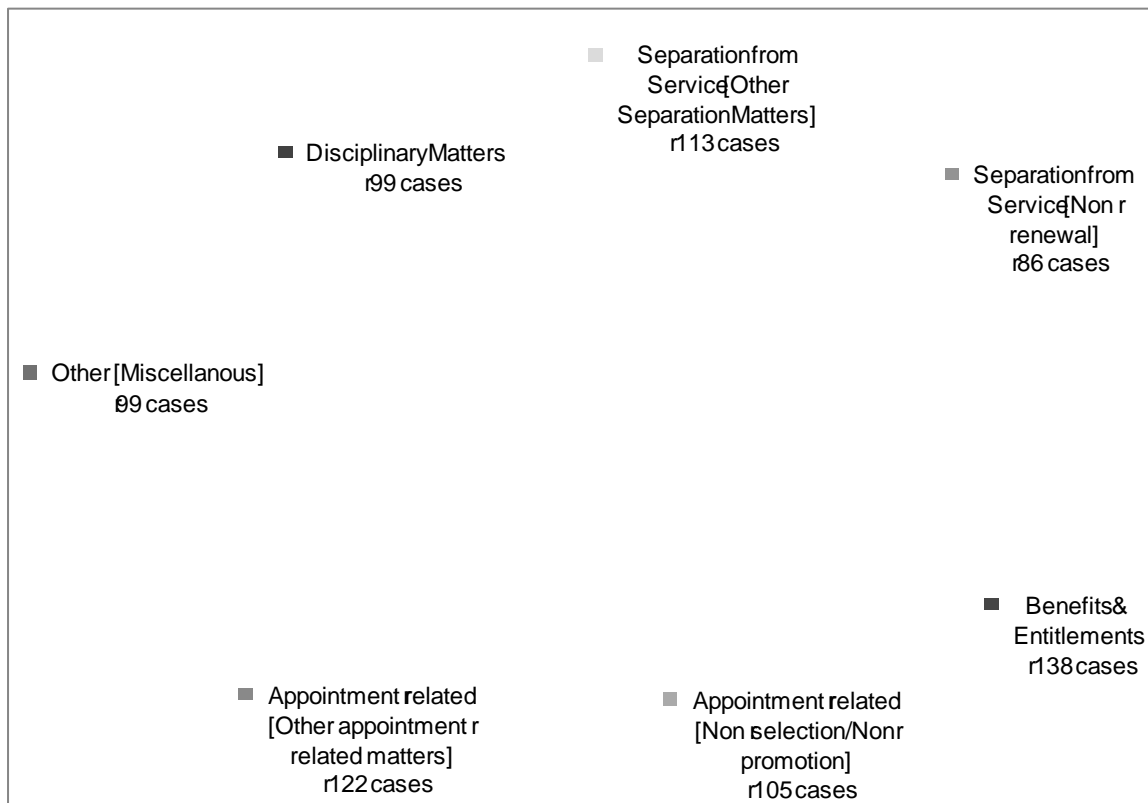
63. “Summary legal advice” cases vary significantly and can often involve identifying strengths and weaknesses of a case and advising staff members on options for seeking redress and likely outcomes and implications of a particular action or approach. It does not involve preparing an application or other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

2. Breakdown of the cases

64. In cases before the UNDT and UNAT, OSLA held consultations and provided legal advice to staff member clients, drafted submissions on their behalf, provided legal representation in oral hearings, held discussions with opposing counsel and, to the extent possible, negotiated settlements. OSLA similarly provided advice and

Chart 8 OSLA cases by UN recourse body

Chart 9 OSLA cases by subject matter



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

Chart 10 OSLA settled cases in 2013

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

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

Chart 11 Cases by UN entity of the client

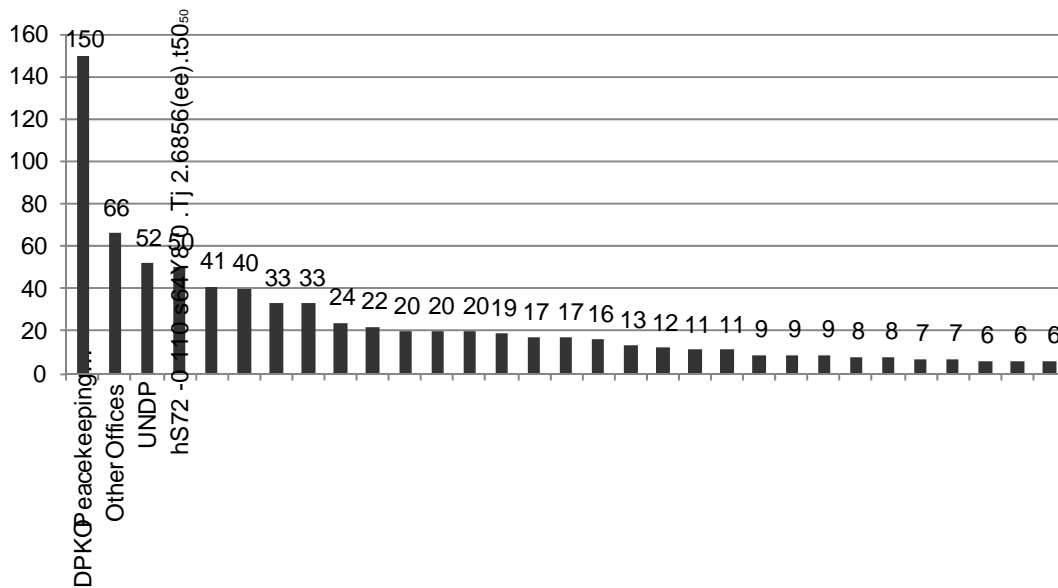
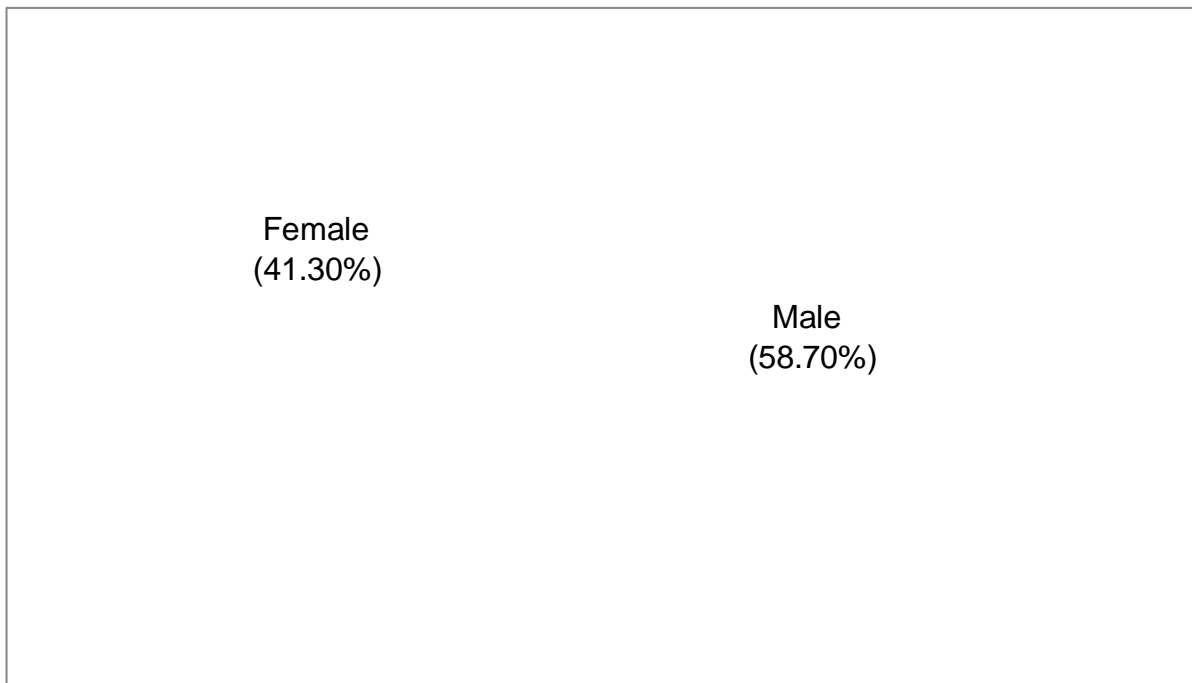


Chart 12 Breakdown of OSLA cases by duty station of the client

4. Cases by gender

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

Chart 13 OSLA cases by client gender



5. Representation before the Dispute Tribunal

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

Chart 14 OSLA cases before UN Dispute Tribunal

APPENDIX I: UNDT CASES RECEIVED IN 2013 – EMPLOYMENT ENTITY

UN Secretariat (Headquarters)

DESA

5

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

Country	Number	Country	Number
Afghanistan	6	Liberia	13
Albania	2	Madagascar	1

APPENDIX III: PRONOUNCEMENTS OF THE UNDT

Introduction

1.

Selection, appointment, and promotion

Interviews/written test

9. In *Lex*UNDT/2013/056, the UNDT stated that the interview process is not a robotic exercise in which each staff member must necessarily be asked identical questions without any regard to their background and answers provided by them. A reasonable degree of flexibility during interviews is permitted, provided that all candidates are given full and fair consideration.
10. In *Wang*UNDT/2013/099, the UNDT confirmed that, in the absence of a guiding mechanism for the conduct of written tests, a hiring manager has discretion in developing a standard to be used to govern the awarding of scores and ratings.

Selection of roster candidates

11. In *Charles* UNDT/2013/040, *Charles* UNDT/2013/041,

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

Other

Retaliation

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

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

Reasons for administrative decisions

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

Abuse of authority

57.

Principle of equal pay for equal work

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

Organization of work

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

Implementation of UNDT judgments

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

APPENDIX IV: PRONOUNCEMENTS OF UNAT

Introduction

1. A summary of the major legal pronouncements made by the Appeals Tribunal in judgments rendered during its 2013 sessions is provided below. The judgments summarized are provided for illustrative purposes only and are not

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

Time limit for management evaluation

7. In

were non-staff members employed as either waiters or security guards at a residential camp in South Sudan. The Appeals Tribunal found that the weight of the evidence in that case justified the decision taken by UNICEF. While acknowledging the importance of confrontation and cross-examination of witnesses, the Appeals Tribunal considered that due process did