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II. Office of Administration of Justice

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required. There were 10,825 visitors to the OAJ website in 2016, of which nearly 33 per cent were new visitors.

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

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



OAJ Activity

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

UNDT	Judgments	Orders	Court Sessions <sup>6</sup>
2009	97	255	172
2010	217	679	261
2011	219	672	



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

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

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**21.** Information on the departments or offices where applicants were serving at the time of the contested decision is contained in Appendix I. Please note that the decision-maker of a decision which was challenged before the UNDT may not have been part of the department or office where the applicant served.

#### 4. Subject matter

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

## Chart 2: Applications received in 2016 by subject matter

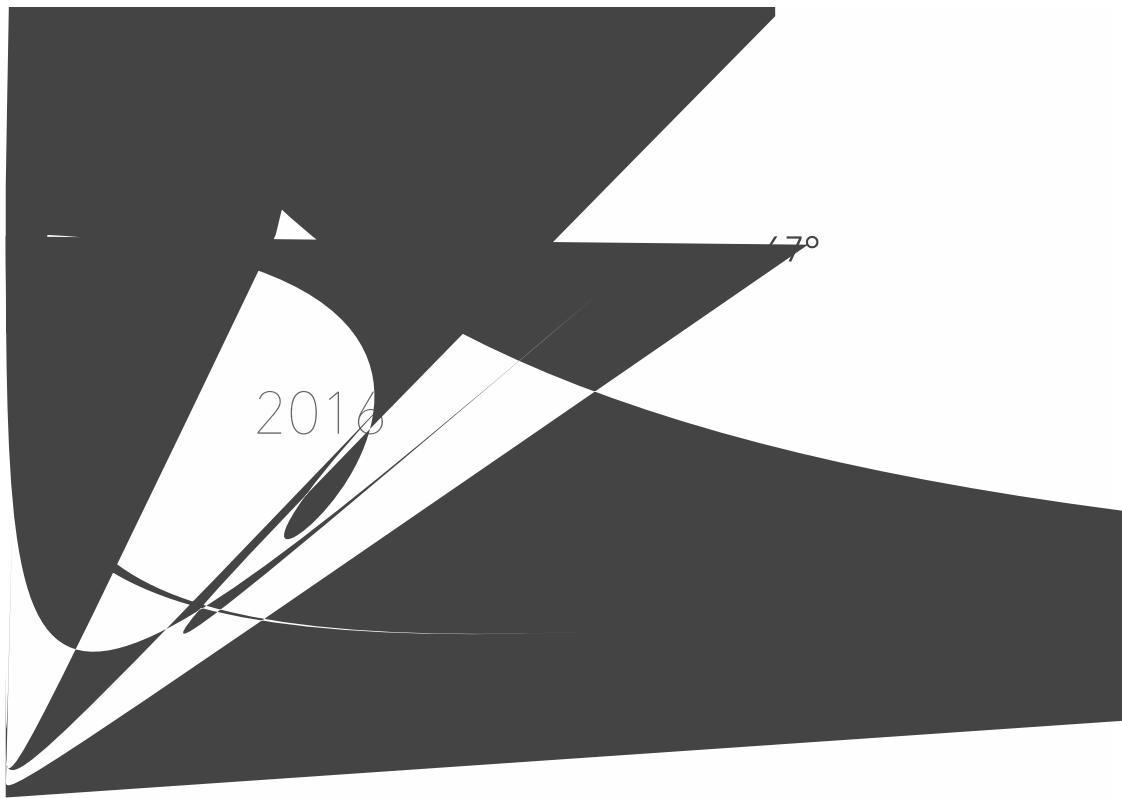
### 5. Representation of staff members

**23.** OSLA provided representation before the UNDT in 79 of the 383 applications received in 2016.<sup>9</sup> Staff members were represented by private counsel in 32 applications, by volunteers who were either current or former staff members of the Organization in 14 applications and were self-represented in 258 applications. This is illustrated in Chart 3 below.

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

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



#### 6. Informal resolution

24. As a result of the UNDT's case management leading to informal settlement, referrals by the UNDT to mediation by the Office of the Ombudsman and Mediation Services (UNOMS), withdrawal by applicants following informal settlement *inter partes*, or otherwise, a total of 44 applications pending before the UNDT were resolved without the need for a final adjudication on the merits.

#### 7. Referral for mediation

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

#### 8. Outcomes

26. The outcomes of the 401 applications disposed of by the UNDT in 2016 are illustrated in Chart 4 below. The applications that were informally resolved or withdrawn while they were pending before the Tribunal are included under "Withdrawals".

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

10. Referral for accountability

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

11. Jurisprudence

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

12. Outreach

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

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<sup>12</sup> UNDT/2016/094.



Table 5: Appeals

2016, 71  
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40. Chart

Chart 6: B

41. Table  
to 2016.

Table 7: U

UNAT	Orders	Hearings
2009	N/A	N/A
2010	30	2
2011	44	5
2012	45	8
2013	47	5
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#### 4. Representation of staff members

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

Chart 7: Representation of staff members

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#### 5. Outcomes

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

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<sup>14</sup> UNAT counts appeals by applicant, differently from OSLA, which lists the number of staff members who requested any assistance in relation to a possible UNAT appeal. Different registration dates may occur between UNAT appeals and requests to OSLA with regard to appeals.

44. Overall, UNAT disposed of 218 appeals by judgment (two applications from ICAO staff; one application from ITLOS staff; 187 appeals against UNDT judgments; two applications against UNJSPB Standing Committee decisions; 22 appeals against UNRWA Dispute Tribunal judgments and four interpretation/revision cases), and closed three appeals by judicial order or administratively.
45. UNAT issued two judgments on appeals of decisions taken by the Standing Committee, acting on behalf of the UNJSPB.
46. UNAT rendered 19 judgments, disposing of 21 appeals filed by UNRWA staff members and one appeal filed by the UNRWA Commissioner-General.
47. UNAT rendered two judgments disposing of appeals filed by ICAO staff members.
48. UNAT rendered one judgment on an appeal filed by an ITLOS staff member.
49. UNAT rendered four judgments disposing of four applications by staff members for interpretation or revision of judgments.
50. Charts 8 and 9 illustrate the outcome of appeals against UNDT judgments by party.

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

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

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*Appeals against UNRWA DT judgments*

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

*Costs*

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

7. Jurisprudence

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



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

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



2. Breakdown of requests

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

Chart 10: New requests by recourse body in 2016<sup>16</sup>

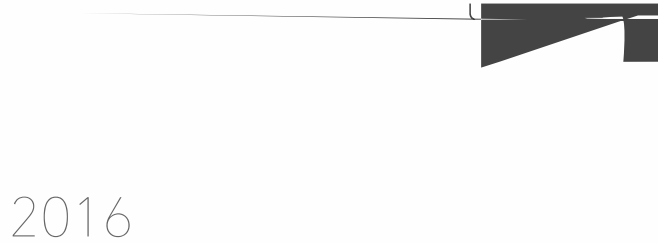


Chart 11: New requests by subject matter in 2016

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2016

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





Chart 13: New requests by duty station<sup>18</sup>

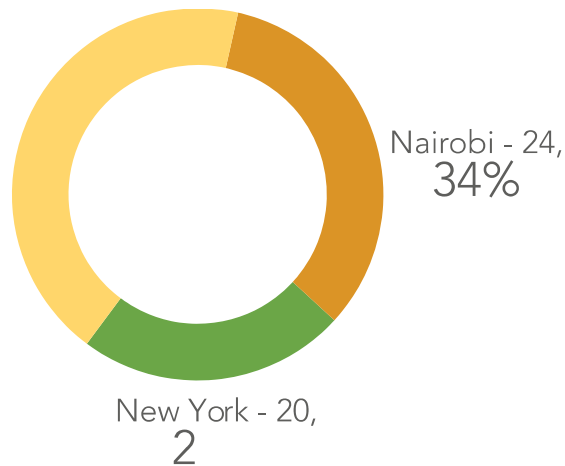
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<sup>18</sup> The column "Other Offices" refers to duty stations with five or fewer requests.

Chart 14: New requests by gender



Chart 15: New requests before the UNDT by location



### 3. Informal resolution and settlement

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





	UNSOS	2
	Other	16
	Total	74
Regional Commissions	ECA	6
	ECE	1
	ECLAC	3
	ESCAP	3
	ESCWA	1
	Total	14
Special political missions	UNAMA	6
	UNSMIL	2
	Other political	1
	Total	9
Tribunals		

APPENDIX II:

7. The UNDT determined that the Applicant's former post of Chief Judicial Affairs Officer effectively did not cease to exist but was reassigned to the new D1 position in the office of the Deputy SRSG, Rule of Law. A comparison of the functions of the new D-1 position with the functions performed by the Applicant as Chief of the LJSS Division, and taken together with the functions of the generi

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



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

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

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

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

26. The UNDT found that the contested decision was unlawful and that the Applicant was deprived of a significant and real chance for promotion as a result. The UNDT rejected the Applicant's request for retroactive promotion and his claim for material and moral damages. The UNDT also rejected his request for his candidacy to be remanded to the Organization with specific instructions for a fresh selection exercise as the UNDT did not have the authority to make operational amendments to the Promotions Policy. The UNDT rescinded the promotion decision and awarded compensation in lieu of rescission in the amount of CHF 6,000 for the lost chance of promotion.

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Judgment UNDT/2016/181 – Abolition - permanent appointment -



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

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

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

55. The UNDT found that an exercise to retain a permanent staff member on a matching post under staff rule 13.1(d) was distinct from a regular competitive selection process open to external candidates. Staff rule 13.1(d) envisaged a matching exercise taking into account relevant factors

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

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

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

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

64. UNICRI and UNOV, which administers UNICRI, made efforts to find a suitable post for the Applicant within UNICRI and UNQW when that she held a permanent appointment. The Office for Human Resources Management (OHRM) had been alerted about the Applicant's situation by both UNICRI and UNQV.



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

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

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

## APPENDIX III: PRONOUNCEMENTS OF UNAT

### Introduction

1. A summary of major legal pronouncements made by UNAT in judgments rendered during its 2016

office. However, UNAT reversed the UNDT's order to remand the case to the Administration, stating that a second remand was unviable and unfair having regard to the fact that the protracted classification review process was mainly due to the reluctance and failure of management to follow their own rules, regulations and administrative instructions. Furthermore, the majority of the a

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

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