

# Office of Administration of Justice 2018 Activity Report



more than 35 outreach briefings and events for groups of staff members and managers, including onboarding sessions for newly recruited staff, at a wide range of field and main locations, including Addis Ababa, Amman, Brindisi, Entebbe, Goma, Kinshasa, Naqoura, Nairobi, New York, Nicosia, The Hague and Valencia. At some of these events (such as in Naqoura and Nicosia), the Office of Staff Legal Assistance held clinics with staff members. As part of the strategy, information is provided, on a regular basis, on the intranets of organizations, in particular iSeek, which has featured a specific Office of Administration of Justice page since 25 October 2017 and posted three articles in 2018 with topical information on a range of topics. The Department of General Assembly and Conference Management disseminat4ssemin



## The United Nations Dispute Tribunal

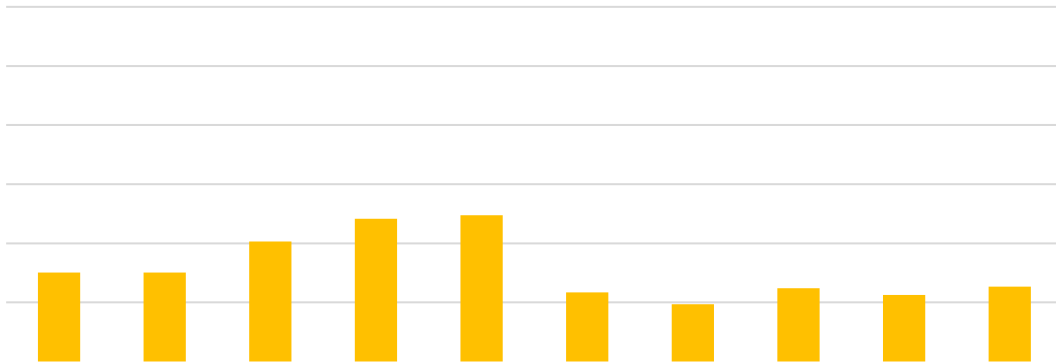
The United Nations Dispute Tribunal (UNDT) comprises independent judges appointed by the General Assembly on the nomination of the Internal Justice Council.

### Composition

At the start of 2018, the UNDT consisted of three full-time judges in New York, Geneva and Nairobi, and two half-time judges who are deployed by decision of the UNDT President to any of the three locations of the Tribunal. The UNDT also included three ad litem (or temporary) judges, one at each location, on a full-time basis. Ad

The receipt and disposal of applications provides an indication of the workload and output of the UNDT, both of which fluctuate over time. Another indicator are the number of judgments, orders and court sessions.

The judgments listed below do not include judgments on withdrawal as they do not render a decision



Appointment-related applications relate to non-selection and non-promotion. Separation from service applications relate to non-renewal of contract and termination of contract. Miscellaneous applications include a variety of issues such as classification and due process issues.

The outcome of applications, as such, are an important indicator for the work that is done by the UNDT and for the areas in which the Registries support the Tribunal. It also gives an indication of the success rate of applications. It should be noted that an application may be withdrawn because the Applicant and Respondent have found a mutually agreeable solution to the dispute. "Other" outcomes are those which may not have been requested in the Application but decided by UNDT. The following graph depicts how the percentages over 100% vary over the years.

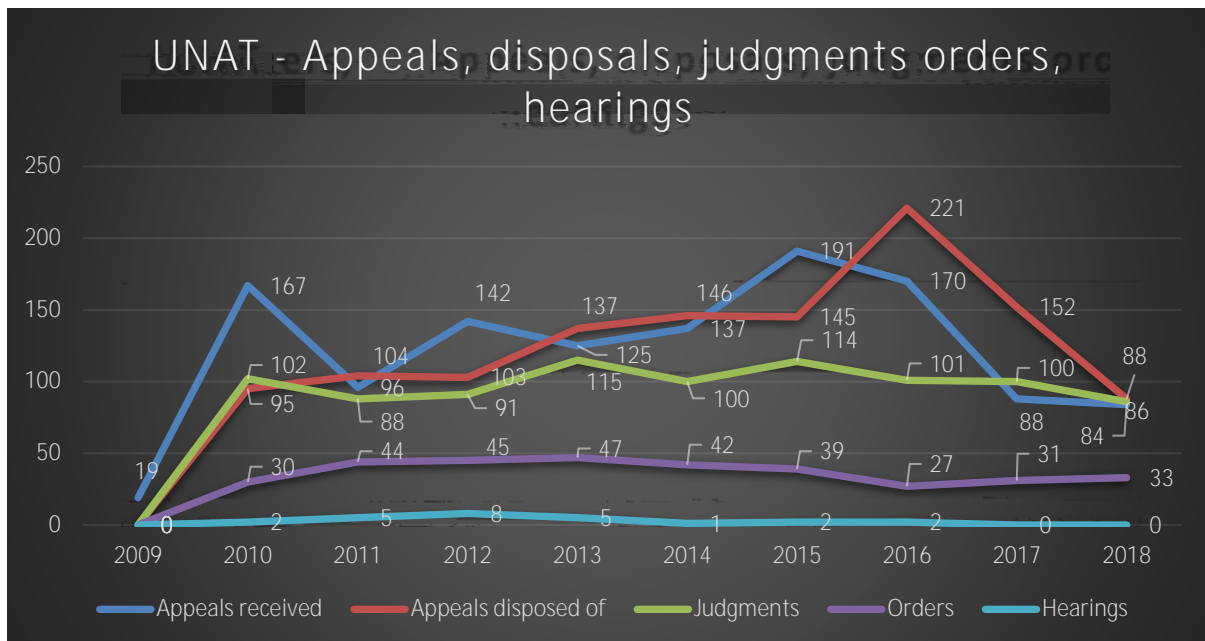
Receivability refers to whether the Applicant



- ◁ United Nations Joint Staff Pension Fund (jurisdiction over decisions of the Standing Committee of the Fund and Fund staff members)
- ◁ United Nations Relief and Works Agency
- ◁ World Meteorological Organization.

Both the Applicant and the Respondent in a first-level dispute can appeal the judgment or decision in that dispute.

From 2009 to 2018, the UNAT Registry supported the Tribunal in its adjudication of 1,219 appeals. An appeal can be disposed of by judgment or order. Several appeals may be disposed of in one single judgment.



## The Office of Staff Legal Assistance

The Office of Staff Legal Assistance (OSLA) provides a wide range of legal services to staff. Although established as part of the formal system of internal justice (management evaluation, UNDT, UNAT), in the context of the General Assembly's emphasis on informal resolution of disputes, staff are encouraged to visit OSLA at the earliest stage of a dispute. This will contribute to early resolution of a dispute, before any formal process has been initiated. At that early stage, OSLA would assist with informal settlement or provide the necessary advice to staff to conclude the matter.

OSLA's workload has increased year-on-year since its establishment in 2009 as illustrated below. In 2018, OSLA received 3,216 new requests for assistance, and had 1896 matters carried over from the previous year. In 2018, OSLA closed or resolved 2,483 requests.

Which kind of requests for assistance did OSLA receive over the years? The Office counts each staff member client as a separate "request for assistance".

<i>Year</i>	<i>Summary advice</i>	<i>Management evaluation matters</i>	<i>Representation before UNDT</i>	<i>Representation before UNAT</i>
-------------	-----------------------	--------------------------------------	-----------------------------------	-----------------------------------

much better able to attend effectively to the many requests for assistance it receives each week. Significantly, in its resolution 73/276 the General Assembly, recognizing the ongoing positive contribution of OSLA to the system of administration of justice, decided to extend the voluntary supplemental funding mechanism for OSLA for a period of three years, to 31 December 2021. This will enable a longer-term recruitment strategy, which in turn will help ensure greater continuity of counsel for OSLA's clients and greater capacity to provide consistent and comprehensive legal assistance.



employment contract. UNDT further found that, under the circumstances of the case and with reference to the documentation on record, the Applicant had a legitimate expectation to be placed on a regular budget post rather than a general temporary assistance as her parent post. UNDT ordered, as specific performance, the Administration to place the Applicant on a regular budget post with all deliberate speed and, in the interim, if applicable, place her on an extra budgetary post, which the Applicant submitted would provide a more secure funding stream and stable assignment period.

UNDT/2018/055 (affirmed by judgment 2018-UNAT-892)

Private legal obligations of staff members, alimony payments, deduction from salary, minimum vital income, judicial immunity, exercise of discretion

Applicable law:

- Article 2.1(a) UNDT Statute
- Staff rule 3.18(c)(iii)
- ST/SGB/1999/4

UNDT judgment: The Applicant, a staff member of the United Nations Interim Administration Mission

staff members), the Administration had discretionary authority in determining the amount to be deducted on the basis of the Kazakh court order.

The UNDT ruled that the discretionary power of the Secretary-General in implementing the deductions could not be such as to deprive a staff member e.g. of his/her own subsistence amount or minimum vital. The UNDT considered that the Administration had failed to lawfully exercise its discretion by not taking into account all relevant considerations including whether the relevant court proceedings had been concluded in absentia and whether other national court orders had granted alimonies to the concerned staff member's other family members. The UNDT also noted as relevant considerations the Organization's duty of care vis-à-vis its staff members, as well as an assessment of the needs of the family members from whom the national court order provided alimonies for, the cost-of-living at the place of residence of the minor child(ren) and the minimum vital of the staff member.

The UNDT found, for instance, that the Administration had failed to consider the impact of the Kosovo court order, which referred to the alimonies to be paid to the Applicant's then three minor children by equal share. The UNDT further found, without substituting itself to the Secretary-General, that a monthly deduction of 25 per cent appeared unreasonable, in light, inter alia, of the amount of child dependency allowance paid to the mother by the UN in Kazakhstan (USD 27) and of the fact that the Applicant had, at the time of the contested decision, two-and since February 2017 three-other minor children.

The UNDT rescinded the contested decision and to reimburse the Applicant the amounts deducted

In December 2014, the Applicant requested management evaluation of the decision to terminate her contract and requested that she be included in the comparative review process for a Supply/Warehouse Assistant since these were the functions, she performed in the Supply Section. Although the Respondent conceded that the Applicant had been excluded from the comparative review of Supply/Warehouse Assistants in error, she was not allowed to participate in the comparative review exercise post facto and the decision to terminate her contract was upheld. The Tribunal noted that despite having the functional title of Administrative Assistant while working in the Warehouse Unit, the Applicant's day to day work was essentially the same as that of her other colleagues working at the GL-5 level in the Warehouse Unit.

The Tribunal held that separation of the Applicant from service was the sole decision of the UNAMI Chief of Administrative Services.

The Tribunal noted that the Respondent's first reaction to the application was to claim that the Applicant was not qualified to be included in the comparative review which was to determine which staff members would be retained in the Kuwait duty station of UNAMI following the restructuring. He subsequently admitted in amended pleadings that the Applicant had been excluded in error; but that even if she had been included in the comparative review, she would not have scored highly enough to warrant her retention. The Tribunal found that the Respondent did not ask for and was never in possession of the Applicant's updated PHP. He was therefore not in a position to review it, or to come to the erroneous conclusion that even if the Applicant had been included in the comparative review in the Warehouse and Supply section, she would have scored the least marks.

The Tribunal did not accept the Respondent's argument that the Applicant was excluded from the comparative review because she was an Administrative Assistant and not a Warehouse Assistant even though the details of the Applicant's role and functions were readily available. The Tribunal found that the conduct of UNAMI's Chief of Administrative Services, both as a manager within the Organization





"unwelcome" conduct does not require that the alleged offender be put on notice that his or her

that both parties can accurately determine. The reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines while an unambiguous re-examination by the Administration of an earlier decision would give rise to a new and separate administrative decision. The application was deemed receivable.

## UNAT

Judgment 2018-UNAT-811 - Fraud in form of false accounting and uttering of forged and falsified documents to the Organization constitutes serious misconduct justifying summary dismissal without benefits

Applicable law:

- Article 7(1)(c) UNAT Statute
- < Article 18(1) UNAT Rules of Procedure
- ST/AI/2011/4

UNAT judgment: The staff member appealed the decision to summarily dismiss her. The UNDT found that there was clear and convincing evidence to substantiate the allegation that the staff member had committed misconduct by submitting requests for special education grants for her children overstating the fees charged by the school and by omitting to declare sibling discounts and scholarships received from the school for three school years. However, the UNDT held that the decision to summarily dismiss her from service for fraud was disproportionate and therefore unlawful. The UNDT upheld the staff member's application in part, ordered partial rescission of the dismissal decision (to be replaced with separation from service with termination indemnity) or alternative compensation in place of the complete rescission of the dismissal decision. The Secretary-General appealed the UNDT Judgment.

UNAT held that the Secretary-General had discharged his burden to establish the facts of misconduct by clear and convincing evidence in relation to all the allegations of wrongdoing regarding the special education grants. The evidence proved not only fraud in the form of false acco nBT3((t).04 Tf1 0 0 1 72.024 390.19

disciplinary procedure and obtain additional evidence. As an alternative, the UNDT ordered in-lieu compensation.

UNAT found that the UNDT erred in limiting its review to the investigative process. The right of a staff member to "appeal" an administrative decision imposing a disciplinary measure, in terms of Article 2(1)(b) of the UNDT Statute, is not restricted to a review of the investigative process. On the contrary, it almost always will require an appeal de novo, comprising a complete re-hearing and redetermination of the merits of a case, with or without additional evidence or information, especially where there are disputes of fact and where the investigative body had neither the institutional means or expertise to conduct a full and fair trial of the issues.

UNAT, however, noted that there will be cases where the record before the UNDT arising from the investigation may be sufficient for it to render a decision without the need for a hearing. Considering the proven facts in this case, UNAT found that the UNDT was too circumspect in the weight it ascribed to the evidence and erred in its conclusion that the fact of sexual harassment had been established only on a balance of probabilities. UNAT held that the undisputed facts, the evidence of a credible report, coherent hearsay evidence pointing to a pattern of behavior, the consistency of the witness statements, the unsatisfactory statement of the staff member and the inherent probabilities of the situation, taken cumulatively, constituted a clear and convincing concatenation of evidence establishing, with a high degree of probability, that the alleged misconduct in fact occurred. Accordingly, it concluded that the sanction imposed by the Administration in this case was proportionate and vacated the UNDT decision.

resulted in their being paid reduced gross and net base salaries, violated their acquired rights and was thus unlawful. Accordingly, the UNDT rescinded the contested decisions. With regard to the staff members' claim that the transitional allowance had a discriminatory effect on them, the UNDT found that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal and discriminatory because the claims concerned a legislative or regulatory decision and not an administrative decision.

The Secretary-General appealed the UNDT judgment. The majority of the judges held that the Secretary-General's implementation of the resolutions involved an administrative decision with an adverse impact. These judges accepted that the Secretary-General had little or no choice in the implementation of the General Assembly resolutions and that the power he exercised was a purely mechanical power, more in the nature of a duty. However, they found that such exercises of power were administrative in nature and involved a basic f1 01 0wsd(n)38.010.000008871 0 595.32 4 Tf92 reW\* nd 3(n)



held that it was immaterial whether or not the staff member had passed the exam for the Professional level at some point since the abolished post she was encumbering at the critical time fell into the General Services category and not into the Professional category; c) the UNDT erred in finding that an affected staff member had a right to be retained in suitable positions occupied at the date of abolition by staff members having a lesser level of protection under Staff Rule 9.6(e). UNAT held that the Administration was bound to consider the redundant staff members only for suitable posts that were vacant or likely to become vacant in the future; and d) the UNDT erred in finding that staff members were entitled to be retained without having to apply for vacant job openings. UNAT held that a staff member holding a continuing or indefinite appointment facing termination due to abolition of his or

decision-maker could reach. UNAT concluded that the rescission of the contested decision by the UNDT was therefore correct and within its remedial powers under Article 10(5) of the UNDT Statute. As for the contention that the investigation panel was improperly constituted, UNAT noted that Section 5.14 of ST/SGB/2008/5 does not introduce a mandatory condition that the panel be constituted by individuals from the department, office or mission and only exceptionally from the