CONTENTS

III. Activities of the Office of the Executive Director

10. During the reporting period, the Office of the Executive Director closely monitored the discussions on the item "Administration of justice at the United Nations" in the Fifth and Sixth Committees of the General Assembly, particularly regarding to requests for additional resources. The Office of the Executive Director further supported the work of these bodies in their consideration of the item, providing briefings and additional information on the report of the Secretary-General (A/66/275) and the functioning of the system of administration of justice. Issues discussed by the Fifth and Sixth Committees included the amendments of the Rules of Procedure of the UNDT and UNAT proposed by the Judges, the Code of conduct for the judges and mechanism to address complaints against judges, proposals for staff-funded mechanisms to support OSLA and for recourse mechanisms for non-staff personnel, systemic issues relating to the case-law of the Tribunals, as well as the resources requirements for the functioning of the system of administration of justice.

11. The OAJ website was launched on 28 June 2010 in all six languages and provides information about the internal justice system at the United Nations. It is easy to navigate and provides practical step-by-step information. In the period 1 July to 31 December 2011, the OAJ website has continuously been updated to provide the most up-to-date information and to respond the various information needs expressed by the user community. During the period 1 July to 31 December 2011, the OAJ website was visited on average 8,000 times per month, compared to an average of 7,000 times per month as reported during the previous activity report. This constitutes an increase of approx 14%.

12. The Office reached another milestone on 6 July 2011, when it launched a fully web-based court case management system (CCMS), as part of its efforts to modernize operations, encourage innovation, build synergy and find further efficiencies in operations.

13. The CCMS comprises an integrated web interface (eFiling portal) that is available through the OAJ website. It encourages staff members at any duty station to file their submissions electronically to the UNDT and UNAT and allows parties to monitor their cases electronically, regardless of their geographical location. Approximately 800 cases are currently managed through this new system. CCMS also includes an internal case-management tool for the Registries of the UNDT and the UNAT to centralize the management of cases before the Tribunals as well as a separate case management tool for OSLA.

14. During the reporting period, the Office conducted several training sessions with the various stakeholders, including Registry staff, offices representing the Secretary-General, OSLA and private attorneys representing staff members. Supporting the users of this new system, especially the external eFilers, has been of highest

IV. Activities of the United Nations Dispute Tribunal

A. Composition of the Dispute Tribunal

1. Judges of the Dispute Tribunal

17. The current composition of the UNDT is as follows:

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

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

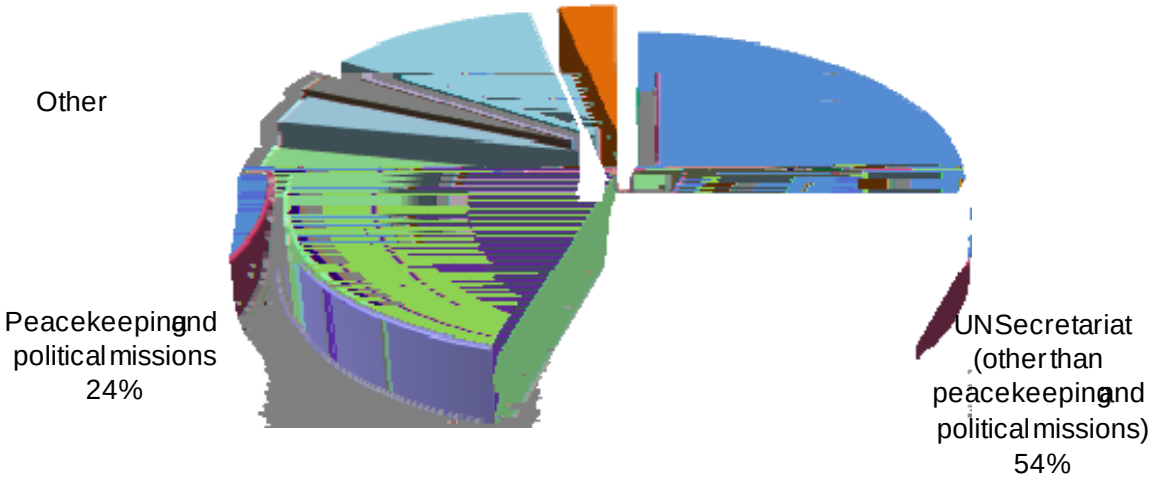
Judge Thomas Laker (Germany), full-time judge based in Geneva

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

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

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

Chart 1 Distribution of registered cases by clients (1 July-31 December 2011)



separation from service (non-renewal and other separation matters); 42 cases; and (6) other 19 cases. The Chart below shows the number of cases registered between 1 July and 31 December 2011 by subject-matter for the three Registries.

Chart 3 Cases registered between 1 July and 31 December 2011 by subject-matter (combined data for the three Registries)

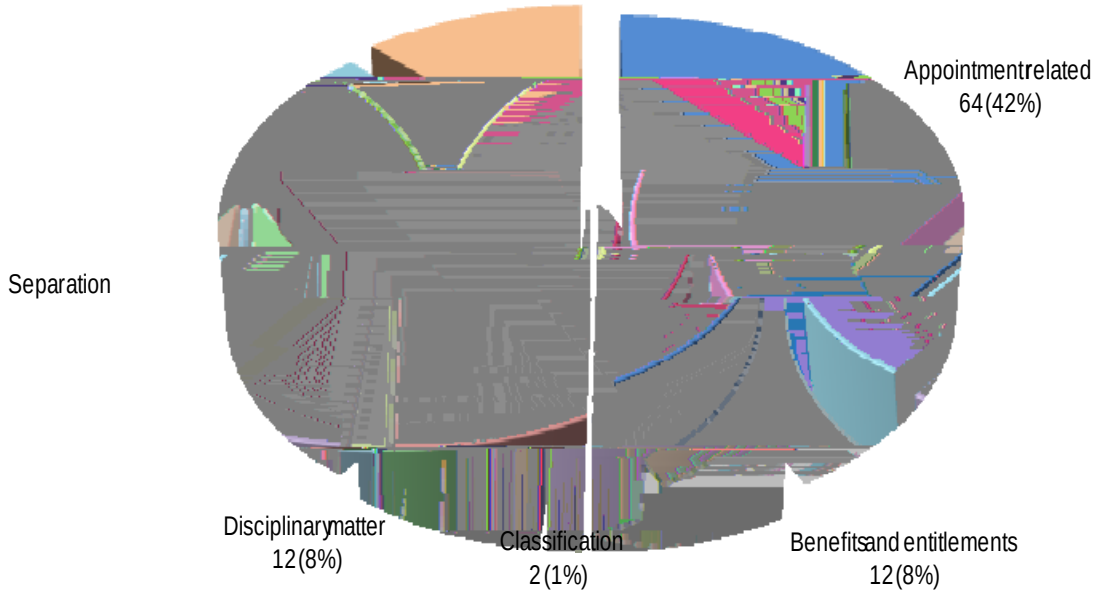
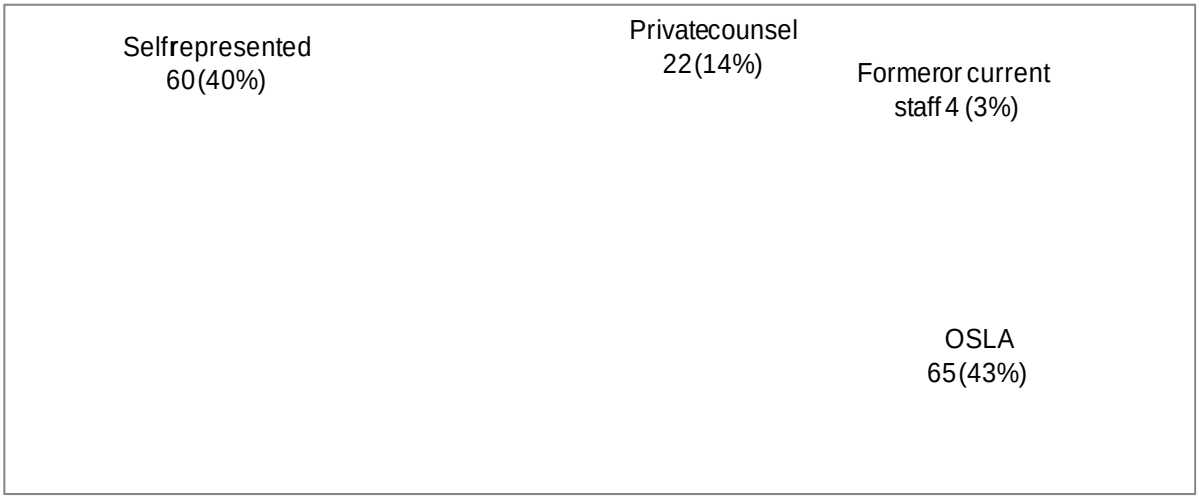


Chart 4 Legal representation of applicants (combined data for the three Registries)



11. Outcome of disposed cases

32. During the period covered by this report, the UNDT disposed of 123 cases. Of these cases, 52 judgements were in favour of the respondent (i.e., applications rejected in full), 23 judgements were in favour of the applicant in full and 16 judgements were in favour of the applicant in part (i.e., some claims on liability granted). A total of 32 applications were withdrawn, including cases successfully mediated and settled (see Chart 5).

Chart 5 Outcome of closed cases (combined data for the three Registries)

12. Relief ordered and compensation awarded

33. During the period covered by this report, 39 judgements were rendered in favour of the applicant either in full or in part. In 12 cases, only financial compensation was ordered. In eight cases, both financial compensation and specific performance were ordered. Sp

V. Activities of the United Nations Appeals Tribunal

A. Composition of the Appeals Tribunal

1. Judges of the Appeals Tribunal:

34. The current composition of UNAT is as follows:

Judge Jean Courtial (France)

Judge Sophia Adinyira (Ghana)

Judge Kamaljit Singh Garewal (India)

Judge Mark P. Painter (United States of America)

Judge Inés Weinberg de Roca (Argentina)

Judge Luis María Simón (Uruguay)

Judge Mary Faherty (Ireland)

2. Election of the President and Vice-Presidents

35. In July 2011, during the summer 2011 session, the UNAT elected Judge Adinyira as President and Judge Garewal and Judge Simón as First and Second Vice-Presidents, respectively, for the year from 1 July 2011 to 30 June 2012.

B. Judicial statistics

1. General activity of the Appeals Tribunal

36. This report includes statistics from the Tribunal's 2011 summer session (27 June to 8 July) and from its 2011 fall session (10 to 21 October). At these two se

2. Outcome of disposed cases

40. During the period covered by this report, the Appeals Tribunal issued 62 judgements and disposed of 67 cases.

41. Four judgements were rendered on appeals of decisions taken by the Standing Committee, acting on behalf of the Pension Board. In three of these judgements, the Appeals Tribunal upheld the impugned decisions. In one judgement, the Appeals Tribunal overturned the decision of the Pension Board.

42. Two judgements were rendered on appeals filed by UNRWA staff members against decisions by the

General (A/66/275) noted the successful handling of a high volume of requests for assistance from staff around the work with a small number of legal officers and limited administrative support and in its report (A/66/158) the IJC has highlighted that requests by staff with meritorious claims greatly exceeds the capacity of OSLA to deal with them which remains an ongoing challenge.

51. Beyond formal litigation OSLA continues to play an important role in encouraging alternative dispute resolution in every case it handles and as the internal justice system matures and developments this is becoming a more prominent activity for the Office. The Office has a close working relationship with the informal dispute mechanisms including the Office of the Ombudsman and Mediation Division, and OSLA legal counsel regularly assist individual staff clients in mediation proceedings. In addition, OSLA legal counsel work with senior managers and administration personnel to settle cases in and doing avoid the related time, expense, and stress of pursuing court proceedings. During the reporting period there has a marked increase in the number clients assisted in this capacity.

B. Workload and human resources

52.

D. Statistics/Activities

1. Number of cases received in OSLA in the period 1 July to 31 December 2011

52. As at 30 June 2011, OSLA had 582 pending cases. From 1 July 2011 to 31 December 2011 458 new cases were brought by staff members (including former staff members or affected dependants of staff members) to OSLA. During the reporting period, 362 cases were closed or resolved, bringing the number of cases pending before OSLA as at 31 December 2011 to 678.

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

53. The table below provides further details of the 458 new OSLA cases for the current reporting period (1 July to 31 December 2011), including a breakdown of forums before each of them main recourse bodies, other recourse bodies or where summary advice was provided.

54. In Table 1, "Disciplinary cases" indicate those cases where OSLA provided assistance to staff members in responding to allegations of misconduct. 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.[7]

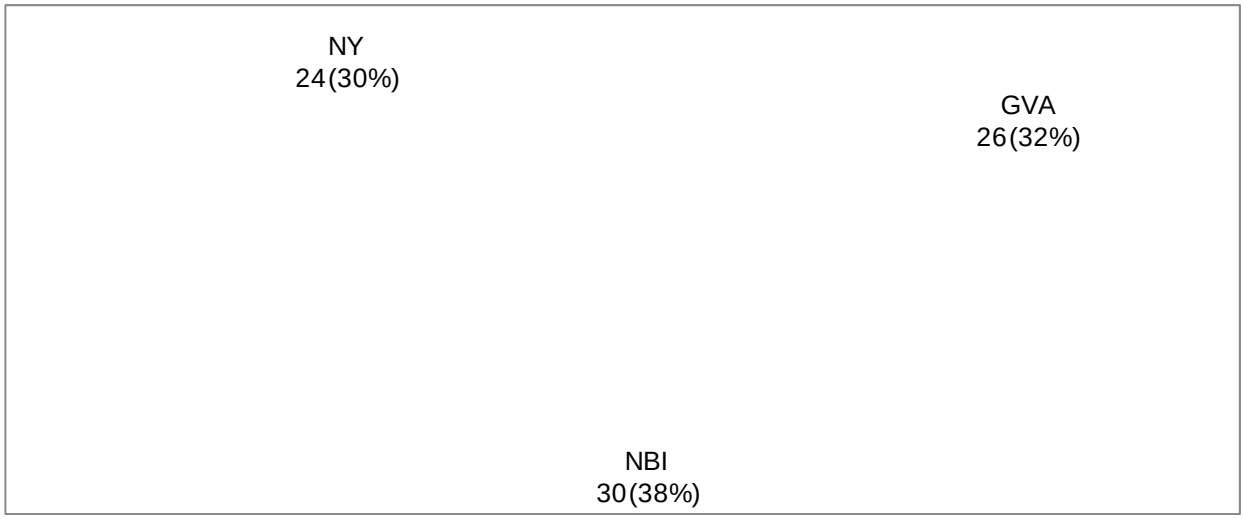
Forum:	New cases
Disciplinary Cases	37
Management Evaluation	69
UN Dispute Tribunal	80
UN Appeals Tribunal	17
Other	1
Summary legal advice	254
Total	458

3. Representation before the Dispute Tribunal

55. Chart 6, below, shows a breakdown of new OSLA cases registered in the current reporting period (1 July 2011 to 31 December 2011) before the UNDT by venue.

[7] OSLA also counts cases in which it provides advice and assistance as cases in which it represents UINDT applicants. Thus, OSLA's number is higher than that provided by the UNDT. (See paragraph 33, supra)

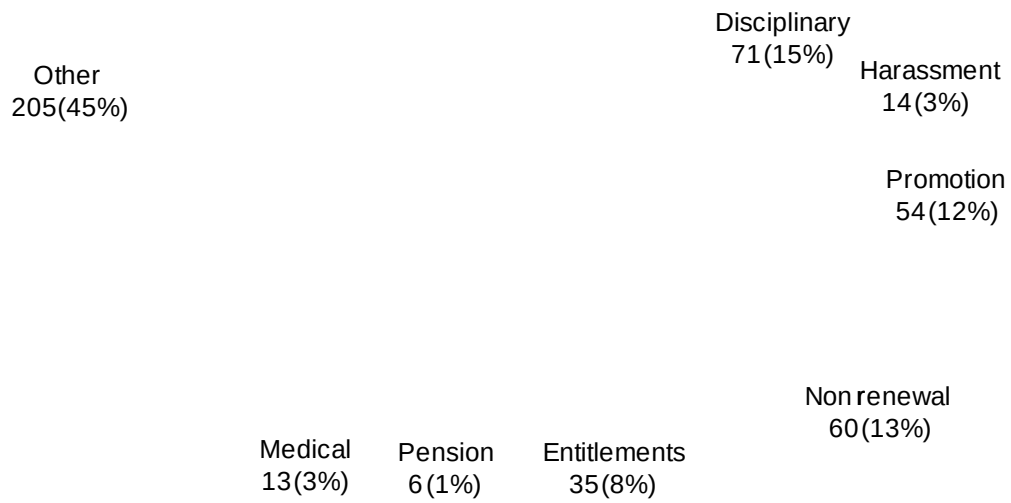
Chart 6 OSLA new cases before UN Dispute Tribunal by venue (Geneva, Nairobi and New York)



4. Cases by subject-matter

56. Chart 7, below, provides an overview of the new OSLA cases registered during the period 1 July to 31 December 2011 by subject matter.

Chart 7 New cases by subject matter for the period 1 July to 31 December 2011



Benefits and entitlements

8. In Johnson UNDT/2011/144, the Tribunal held that in the Organization, as in most national systems,

Decision to impose a break in service

15. In Omer UNDT/2011/188, Garcia UNDT/2011/189, and Neskorozhana UNDT/2011/196, the Tribunal held that the decision to impose a requirement of a br

that determination was reasonably open to the Administration to make. Whilst acknowledging that it is for a staff member's managers and not for the Tribunal to make decisions as to the competence of the staff member and her or his suitability for a permanent appointment, the Tribunal may, in appropriate cases, call into question that assessment if it appears to lack essential components of fair decision-making or appears to have been arrived at in circumstances that could reasonably be considered to have been unfair.

Breaks in service

25. In Villamoran UNDT/2011/126, the Tribunal held that for staff on fixed-term appointments who are being reappointed under temporary appointments following the expiration of their fixed-term appointments, there was no requirement, in law, to take a break in service prior to the temporary appointment (see Villamoran, the Under-Secretary-General for Management promulgated ST/AI/2010/4/Rev.1, introducing the break in service requirement).

Delegation of authority

26. In Muratore UNDT/2011/129, the Tribunal held that the Assistant Secretary-General for Human Resources Management cannot derogate from an administrative instruction issued by the Under-Secretary-General for Management, who is a higher authority in the Organization.

27. In Gehr UNDT/2011/150 and Gehr UNDT/2011/178, the Tribunal held that a delegation of power should not be guessed at or presumed. In Gehr UNDT/2011/150, the Tribunal endorsed the view that "the principle of equality means that those in like case should be treated alike, and that those who are not in like case should not be treated alike".

Legal hierarchy

28. In Villamoran UNDT/2011/126, the Tribunal stated that the Charter of the United Nations is at the top of the hierarchy of the Organization's internal legislation, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions. Information circulars, office guidelines, manuals, and memoranda are at the bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

Proper promulgation of administrative issuances

29. In Villamoran UNDT/2011/126, the Tribunal stated that due to the importance of administrative issuances, the Administration must follow specific steps when promulgating them. Administrative issuances regulate matters of general application and directly concern the rights and obligations of staff and the Organization. Decisions of general application that affect contractual rights must be issued through properly promulgated administrative issuances.

Exceptions to staff rules

30. In Villamoran UNDT/2011/126, the Tribunal held that the right to request and to be properly considered for an exception is a contractual right of every staff member and that it cannot be unilaterally taken away. Under staff rule 12.3(b), any request for an exception to the Staff Rules—and, by extension, to administrative issuances of lesser authority—must be properly considered in order to determine whether the three parts of the test established by staff rule 12.3(b) are satisfied. Failure to do so would result in a violation of contractual rights of the staff member requesting the exception.

Reassignment and transfer

31. In Rees UNDT/2011/156 and

32. In Gehr UNDT/2011/142, the Tribunal reiterated that the Secretary-General enjoys broad discretion in the organization of work and the assignment of tasks to staff members. Such discretion is not unfettered but is subject to limited control by the Tribunal.

Right to harmonious work environment

33. In Corbett UNDT/2011/195, the Tribunal held that every staff member has the right to a harmonious work environment that protects his or her physical and psychological integrity. If this right is violated, proper compensation is warranted.

Performance evaluation

34. In Rees UNDT/2011/156, the Tribunal held that the formal way to provide a factual basis for the Administration's finding that the applicant was lacking in performance was through the use of the performance evaluation system, which affords both manager and staff member the opportunity for an objective and fair evaluation of the staff member's performance.

35. In Ehounoubakrohi UNDT/2011/141, the Tribunal found that it is not its function to substitute its judgment for that of a properly constituted assessment panel, including on issues concerning the performance of staff members. The internal mechanisms are designed to perform that review function. However, it is right and proper for the Tribunal to intervene if it considers that there was a lack of due process in the manner in which the internal processes operated.

36. In Rees UNDT/2011/156, the Tribunal held that the heads of departments and offices have primary responsibility for the timely execution, overall compliance with, and fair implementation of performance evaluation reports. Without a document that properly and fairly reflects the staff member's shortcomings in accordance with the administrative instruction, the Administration has no reliable grounds for taking decisions based on poor performance, whether they be about reassignment, non-renewal or others.

37. In Gabriel-van Dongen UNDT/2011/197, the Tribunal held that although heads of departments and offices have the primary responsibility for the timely execution of, overall compliance with, and fair implementation of the performance evaluation process, staff members also bear responsibility for complying with the established procedures.

Medical fitness

38. In Gabaldón UNDT/2011/132, the Tribunal found that the decision on the medical fitness of a staff member to discharge certain functions is within the discretion of the Organization's medical service. It is not for the Tribunal to interfere with a well-founded expert opinion or to substitute its own views for that of the medical service.

39. In Shanks UNDT/2011/209, the Tribunal held that it is not for the Tribunal to review the medical decisions of the Organization's medical service. However, the medical service has the responsibility to act in a consistent and coordinated manner in the best interests of staff and Organization, and the Tribunal may review whether this responsibility has been met.

Compliance with procedures

40. In Gordon UNDT/2011/172, the Tribunal reiterated that when the Administration decides to use a specific procedure, it is bound to fully comply with this procedure.

41. In Allen UNDT/2011/203, the Tribunal stated that the fact that the Administration has mistakenly taken a different decision on previous occasions does not create any right for the staff member, given that the Administration must put an end to its errors.

Acquired rights

42. In Omer UNDT/2011/188, Garcia UNDT/2011/189, and Neskorozhana UNDT/2011/196, the Tribunal discussed the general principle of acquired rights, drawing the distinction between fundamental or essential and non-fundamental and non-essential elements of the conditions of employment. Chattopadhyay

UNDT/2011/198, the Tribunal held that an acquired right is breached only when an amendment to the rules adversely affects the balance of contractual obligations by altering fundamental or essential terms of employment.

Release of investigation reports

43. In Klein UNDT/2011/169, the Tribunal found that the Organization has the obligation to reasonably exercise the discretion to withhold or modify investigation reports requested by the Member States. The Organization is required to only produce, maintain and disseminate investigation reports that have been created in accordance with the requirements of fairness and due process. Inherent in this obligation is a corollary obligation not to produce, maintain or disseminate improperly created material.

Note in file of a former employee

44. In Seddik Ben Omar UNDT/2011/182, the Tribunal found that a note placed on a staff member's personnel file should be accurate and the staff member should be given a fair and genuine opportunity to comment on it. Failure to be given an opportunity to comment is a breach of due process rights. The Tribunal found that the Organization is permitted to place adverse material

Tribunal specified that non-pecuniary harm is sometimes referred to as “moral damage” or “moral damages”, particularly in jurisdictions with civil law tradition. The Tribunal held that, generally, the burden is on the injured party to substantiate her or his claims for such damages.

52. In Bridgeman UNDT/2011/145, the Tribunal held that it should not uncritically accept compensation-related claims based on the subjective assessment of an individual. The Tribunal must be satisfied that the injuries suffered by the Applicant were caused by the breach of rights or that the infringement, in any significant degree, contributed to this harm.

53. In Seddik Ben Omar UNDT/2011/182, the Tribunal held that, in determining appropriate relief, it is necessary to take into account the action of the Applicant to ascertain whether he or she failed to mitigate his or her losses or contributed to the harm suffered.

Conduct of proceedings

54. In Bridgeman UNDT/2011/145, the Tribunal held that if a party knowingly furnishes false evidence to the Tribunal, or allows this to be furnished, this may constitute an abuse of proceedings.

55. In Mistral Al-Kidwa UNDT/2011/199, the Tribunal found that a withdrawal of an admission of liability upon which the parties have relied may result in a finding of manifest abuse of proceedings, warranting an award of costs. The Tribunal found a manifest abuse of process by the Respondent and awarded the amount of USD1,500 as a portion of the Applicant’s costs that was the direct result of the Respondent’s conduct

Contempt of court; abuse of proceedings

56. In Bagula UNDT/2011/138, the Applicant contested his dismissal for taking payment from local citizens in exchange for, or with the promise of, securing them jobs. During the court hearings, the Applicant tried to bring impostors to appear before the Tribunal in Kinshasa. The Tribunal found that the Applicant’s actions were criminal in the extreme and amounted to a blatant abuse of the Tribunal’s process and aggravated contempt of court in facie curiae. Tta .001 Tc .09516.78 Tm 0 Tc 6491 Tw [(. .02232 442.8 T6a Tw [(s(. is or)]TTD .018 g)-5.3(s)

APPENDIX II: PROCEEDINGS OF THE UNAT

Introduction

1. A summary of the major legal pronouncements made by the Appeals Tribunal in judgements rendered during the reporting period (1 July 2011 to 31 December 2011) is provided below. The summaries are not authoritative and the judgements cited below are not comprehensive. For a complete set of the judgements issued by the Appeals Tribunal during the period covered by this report, please consult the OAJ website (http://un.org/en/oaj/appeals/).

Jurisdiction

Ratione materiae

2. In Larkin (2011-UNAT-135), the Appeals Tribunal held that the services provided by the Office of Staff Legal Assistance (OSLA) and the way the representation is implemented can have an impact on a staff member's terms of employment and can therefore fall within jurisdiction of the UNDT, without interfering with the professional independence of counsel. The Appeals Tribunal found that the decision taken by the Chief of OSLA not to disclose a potential conflict of interest in Mr. Larkin's case could have an impact on Mr. Larkin's terms of employment and therefore constituted an administrative decision subject to review by the UNDT.

3. In Koda (2011-UNAT-130), the Appeals Tribunal held that the Office of Internal Oversight Services (OIOS) operates under the "authority" of the Secretary-General, but has "operational independence". To the extent that any OIOS decisions are used to affect an employee's terms or contract of employment, OIOS' report may be impugned. For example, an OIOS report might be found to be so flawed that the Administration's taking disciplinary action based thereon must be set aside.

4. In Cherif (2011-UNAT-165), the Appeals Tribunal held that the contested decisions of the governing body of ICAO requiring "the written approval of the President of the Council for any hiring, appointment, promotion, extension and termination of P-4 employees and above" are not, within the mandate of the Appeals Tribunal, administrative decisions. These decisions are regulatory decisions that are not subject to the review by the Appeals Tribunal.

Ratione personae

5. In Basenko (2011-UNAT-139), the Appeals Tribunal recalled that access to the new system of administration of justice can be extended to persons who are not formally staff members but who can legitimately be entitled to rights similar to those of a staff member. This exception must be understood in a restrictive sense. The Appeals Tribunal held that interns have no access to the new system of administration of justice.

Non-promotion

6. In Vangelova (2011-UNAT-172), Bofill (2011-UNAT-174) and Dualeh (2011-UNAT-175), the Appeals Tribunal held that an irregularity in promotion proceedings will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Thus, where the irregularity has no impact on the status of a staff member because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation.

Standard of proof in disciplinary cases

7. In Molari (2011-UNAT-164), the Appeals Tribunal recalled that when a disciplinary sanction is imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. It ruled that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof means that the truth of the facts asserted is highly probable. It requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.