

Sixth activity report of the Office of Administration of Justice  
1 January to 31 December 2012

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## I. Introduction

1. The sixth report of the Office of Administration of Justice (OAJ) outlines the activities of the Office for the period 1 January to 31 December 2012 and covers the activities of the Office of the Executive Director, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) and United Nations Appeals Tribunal (Appeals Tribunal or UNAT) and their Registries, and the Office of Staff Legal Assistance (OSLA).

2. The report provides updated statistical information for the UNDT, UNAT and OSLA. It also covers the main activities of the Office of the Executive Director and contains summaries of major legal pronouncements made by the UNDT and UNAT in judgments rendered in 2012, which are set out in Appendix I and Appendix II, respectively.

## II. Activities of the Office of the Executive Director

3. In May 2012, Ms. Linda Taylor became Executive Director, replacing Mr. Andrei Terekhov.

4. As in prior years, OAJ coordinated the preparation of the Secretary-General's report on administration of justice in the United Nations, and coordinated the replies to questions posed by the Advisory Committee for Administrative and Budgetary Questions and the Fifth Committee and the Sixth Committee of the General Assembly.

5. The Executive Director attended the meeting of the Staff-Management Committee (SMC) in Arusha in June 2012. Subsequently, the Executive Director visited Nairobi and Geneva and met with the UNDT judges, UNDT Registry staff, OSLA staff and stakeholders. She also met with the UNAT judges and UNAT Registry staff in Geneva during the Tribunal's summer session. The Principal Registrar also visited Geneva and Nairobi in mid-June 2012 to meet with the UNAT judges and Registry staff, and the UNDT Geneva and Nairobi judges and Registry staff.

6. OAJ continued to make improvements to the OAJ website and the new web-based court case management system (CCMS)T10 \* (2red)3.8 72redq2(i)-.11(of 4977 0 T8160208 Tc .0018 Tw [(OAJ confro

### III. Activities of the United Nations Dispute Tribunal

cases closed by inter-registry transfer. As at 31 December 2012, there were 267 pending cases before the UNDT, including nine cases that were transferred from the former system of administration of justice. Those pending cases amounted to approximately one year of work.

15. Table 1a below shows the number of cases received, disposed of and pending for the years 2009 to 2012. Table 1b provides a breakdown of the cases received, disposed of and pending from 1 July 2009 to 31 December 2012 by UNDT location.

Table 1a

Entity	Cases received					Disposition of cases and requests					Pending cases (end of year)			
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012
UNDT	283 <sup>1</sup>	305 <sup>2</sup>	282	258	1128	92	237	272	260	861	191	259	269	267

Table 1b

Entity	Cases received					Disposition of cases and requests					Pending cases (end of year)			
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012
Geneva	108	118	95	94	415	52	104	119	106	381	56	70	46	34
Nairobi	75	81	90	78	324	18	57	60	76	211	57	81	111	113
NY	100	106	97	86	389	22	76	93	78	269	78	108	112	120

16. Table 1c provides the average monthly rate of registration and disposal of cases for the same four-year period for each Registry.

Table 1c

Category	Jul.- Dec. 2009	Jan.- Jun. 2010	Jul.- Dec. 2010	Jan.- Jun. 2011	Jul.- Dec. 2011	Jan.- Jun. 2012	Jul.- Dec. 2012	Overall period (42 months)
A. Average monthly rate of registration of new cases in each reporting period								
Geneva	7.8	6.7	4.5	6.2	9.7	9.5	6.2	7.2
Nairobi	3.3	3.0	3.8	5.5	9.5	6.5	6.5	5.5
New York	7.8	4.7	4.3	9.2	7.0	10.0	4.3	6.8
Three registries combined	19.0	14.3	12.7	20.8	26.2	26.0	17.0	19.4
B. Average monthly rate of case disposal in each reporting period								
Geneva	8.7	10.5	6.8	9.7	10.2	9.0	8.7	9.1
Nairobi	3.0	4.3	5.2	4.7	5.3	6.0	6.7	5.0
New York	3.7	6.8	5.8	8.7	6.8	7.5	5.5	6.4
Three registries combined	15.3	21.7	17.8	23.0	22.3	22.5	20.8	20.5

17. Of the 258 cases received during the reporting period, 170 cases 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; 42 cases originated

<sup>1</sup> Includes 169 cases transferred from the former Appeals Board and Joint Disciplinary Committee.

<sup>2</sup> Includes 143 cases transferred from the former UN Administrative Tribunal.

from peacekeeping and political missions; and 46 cases originated from UN agencies, and Funds and

rendered 65 judgments, issued 183 orders and held 88 court sessions; and the UNDT in New York rendered 64 judgments, issued 271 orders and held 75 court sessions. Table 2a reflects the total number of judgments, orders and court sessions for the years 2009 to 2012 and Table 2b provides the same information broken down by Registry.

Table 2a

Entity	Judgments					Orders					Court sessions				
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total
UNDT	97	217	219	208	741	255	679	672	626	2232	172	261	249	187	869

Table 2b

Entity	Judgments					Orders					Court sessions				
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total
Geneva	44	83	86	79	292	39	93	224	172	528	21	54	54	24	153
Nairobi	20	52	52	65	189	26	248	144	183	601	33	116	117	88	354
NY	33	82	81	64	260	190	338	304	271	1103	118	91	78	75	362

#### 5. Cases referred for mediation

21. At the outset of the reporting period, there were two ongoing mediation cases previously referred by the UNDT to Mediation Services in the Office of the Ombudsman and Mediation Services. During the reporting period, the UNDT identified twelve additional cases suitable for mediation and referred them. Of these, six cases were successfully mediated and four were unsuccessful. At the end of 2012, four cases were still pending completion of mediation.

#### 6. Cases referred for accountability

22. In 2012, two cases were referred for accountability under article 10.8 of the UNDT Statute.

#### 7. Cases pending before the UNDT as at 31 December 2012

23. As at 31 December 2012, the UNDT had 672 cases pending, 258 new cases, three cases transferred by the former JABs and JDCs and six cases transferred by the former Administrative Tribunal. As at 31 December 2012, 34 new cases were pending in the Geneva Registry, 106 new cases were pending in the Nairobi Registry together with 110 JAB/JDC cases and 16 cases from the former Administrative Tribunal, and 118 new cases were pending in the New York Registry together with one JAB/JDC case and one case from the former Administrative Tribunal.

#### 8. Cases by subject-matter

24. The nature of cases before the UNDT received during the reporting period fall into six main categories: (1) appointment-related matters (non-selection, non-promotion and other appointment-related matters): 126 cases; (2) benefits and emoluments: 30 cases; (3) classification: 9 cases; (4) disciplinary matters: 16 cases; (5) separation from service (non-renewal and other separation matters): 50 cases; and (6) other: 27 cases. Chart 2 below provides a breakdown of the number of cases registered between 1 January and 31 December 2012 by subject-matter for the three Registries.

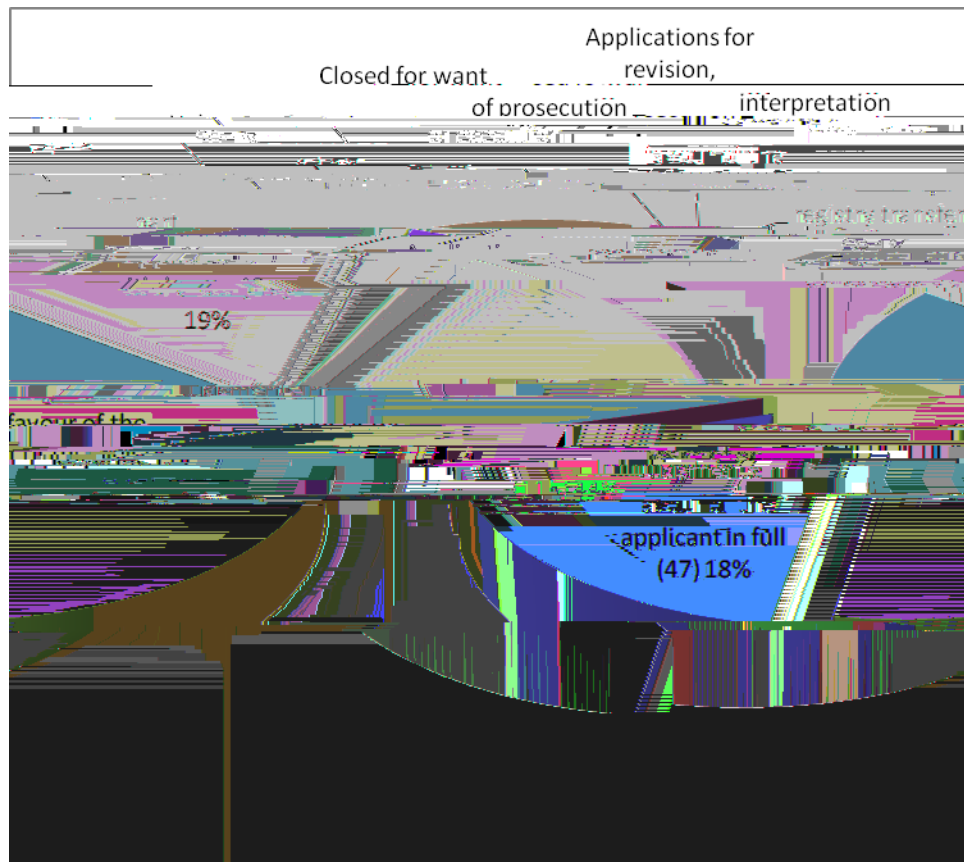




10. Outcome of closed cases

26. Of the 260 cases disposed of by the UNDT in 2012, 115 were decided in favour of the respondent (i.e., application rejected in full), 47 were decided in favour of the applicant in full and 38 were decided in favour of the applicant in part. (some claims on liability granted). A total of 49 applications were withdrawn, including cases successfully mediated or settled including as a result of the efforts of the judges; three cases were closed for want of prosecution; five involved applications for revision, interpretation or execution; and three were closed by inter-registry transfer. This is illustrated in Chart 4 below.

Chart 4 Outcome of closed cases (combined data for the three Registries)



11. Relief

27.

12. Information on staff who filed applications in 2012 by level, nationality, and employment entity

28. The level of staff who filed appeals during the reporting period was as follows: D: 14; P 152;

B. Judicial statistics

1. General activity of the Appeals Tribunal

34. UNAT held three sessions in 2012: a spring sess

Table 3b

Entity	Judgments					Orders					Hearings				
	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total	2009	2010	2011	2012	Total
UNAT	N/A	102	88	91	281	N/A	30	44	45	119	N/A	2	5	8	15

## 2. Outcome of disposed cases

40. Of the 91 judgments rendered by UNAT in 2012, 82 related to Dispute Tribunal judgments, four to UNRWA Dispute Tribunal judgments, two to decisions of the UNRWA Commissioner-General, one to a decision of the Standing Committee of the UNRB, one to a decision of the Secretary General of ICAO and one to a decision of the Secretary-General of IMO.

41. Of the appeals related to UNDT judgments, 58 were brought by staff members and 34 were brought on behalf of the Secretary-General. Of the 58 appeals filed by staff members, 48 were rejected and 10 were granted in full or in part. Of the 34 appeals filed on behalf of the Secretary-General, 10 were rejected, 23 were granted in full or in part and one case was remanded to the UNDT.

42. UNAT rendered six judgments on appeals filed by UNRWA staff members (two of decisions by the UNRWA Commissioner-General and four against the judgments of the Dispute Tribunal of UNRWA). The Appeals Tribunal rejected all six appeals.

43. UNAT joined three appeals of a decision taken by the Standing Committee, acting on behalf of the Pension Board. UNAT rejected all three appeals and upheld the contested decision.

44. UNAT rendered one judgment granting an appeal filed by a former ICAO staff member.

45. UNAT rendered one judgment rejecting an appeal filed by an IMO staff member.

## 3. Relief

### Appeals against UNDT judgments

46. In five judgments, UNAT overturned an award of compensation granted by the UNDT and in two judgments awarded compensation where none was awarded by the UNDT. In five judgments, UNAT reduced the compensation awarded by UNDT and in two judgments it increased the compensation awarded.

47. In one judgment, UNAT vacated a judgment of the UNDT rescinding the impugned decision and award of financial compensation. In two judgments, UNAT reduced compensation as an alternative to rescinding a decision to terminate the staff member's appointment.

48. In three judgments, UNAT vacated an order of UNDT with respect to costs against the staff member or former staff member.

### Appeal against a decision from the ICAO Secretary General

49. UNAT ordered the rescission of a termination decision or in the alternative payment of nine months' net base salary.

<sup>4</sup> The total number of appeals filed by staff members and the Secretary-General does not correspond to the number of appellate judgments addressing Dispute Tribunal judgments because these numbers include consolidated appeals. Four cross-appeals were filed by staff members and four cross-appeals were filed on behalf of the Secretary-General, however cross-appeals do not result in separate judgments.

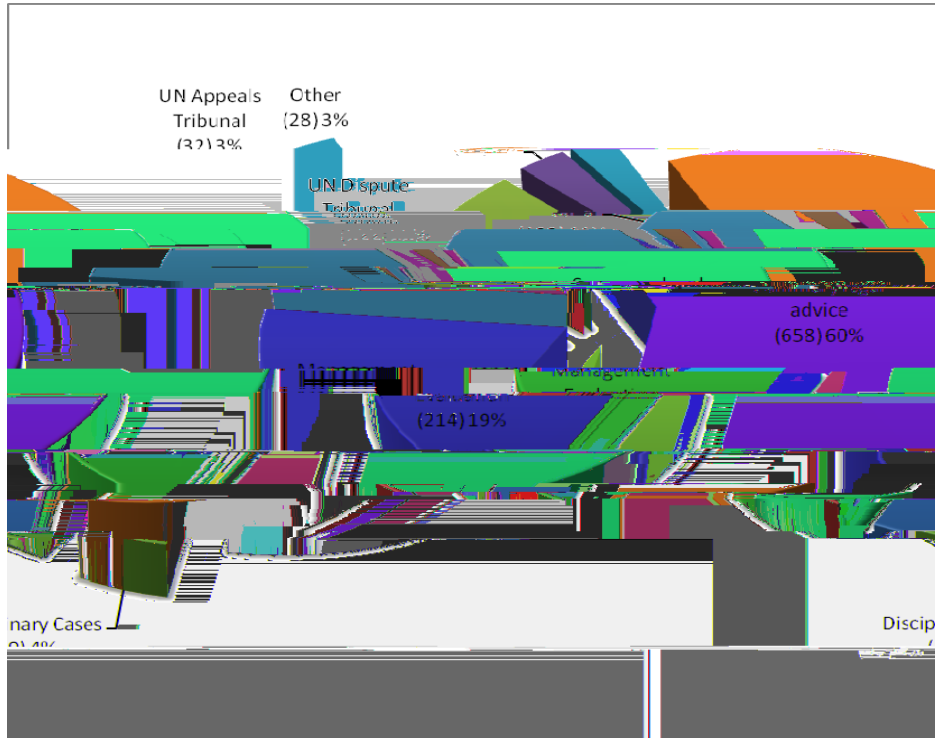
4. Legal representation of staff members (as appellants or respondents) before UNAT

50. With respect to the 142 new cases received during the reporting period, OSLA provided legal assistance in 27 cases and UNRWA OSLA in 7 cases. Sixty staff members were self-represented and 48 were represented by private or voluntary counsel.

5. Jurisprudence



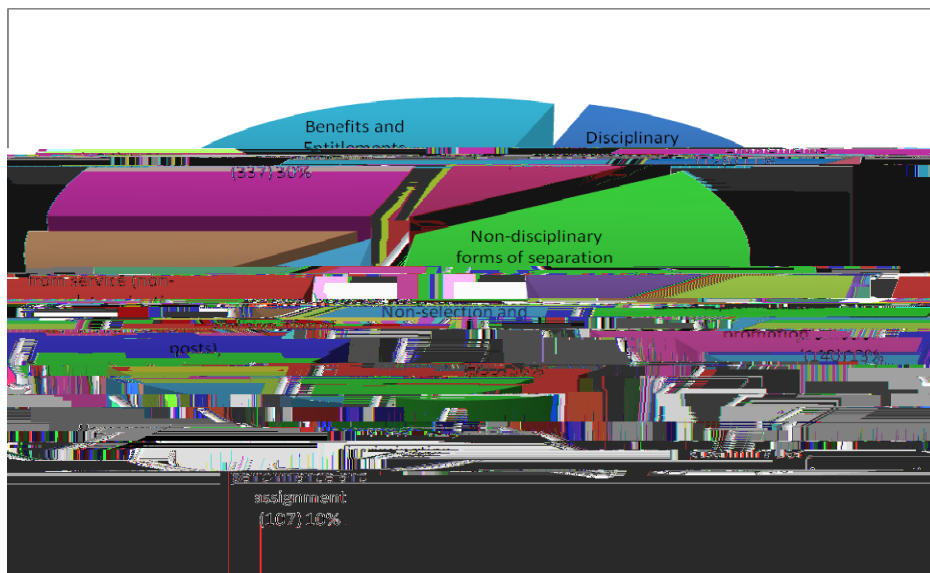
Chart 5



3. Cases by subject-matter

64. Chart 6 below provides a breakdown of the 1103 cases by subject matter.

Chart 6 New cases by subject matter





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

65. Chart 7 provides a breakdown of cases by the UN entity in which the client is employed, namely, the Secretariat departments or UN agency, peacekeeping and political missions, and Funds or Programmes during the reporting period. Chart 8 provides a breakdown of cases by duty station of the client.

Chart 7 Cases by UN entity of the client

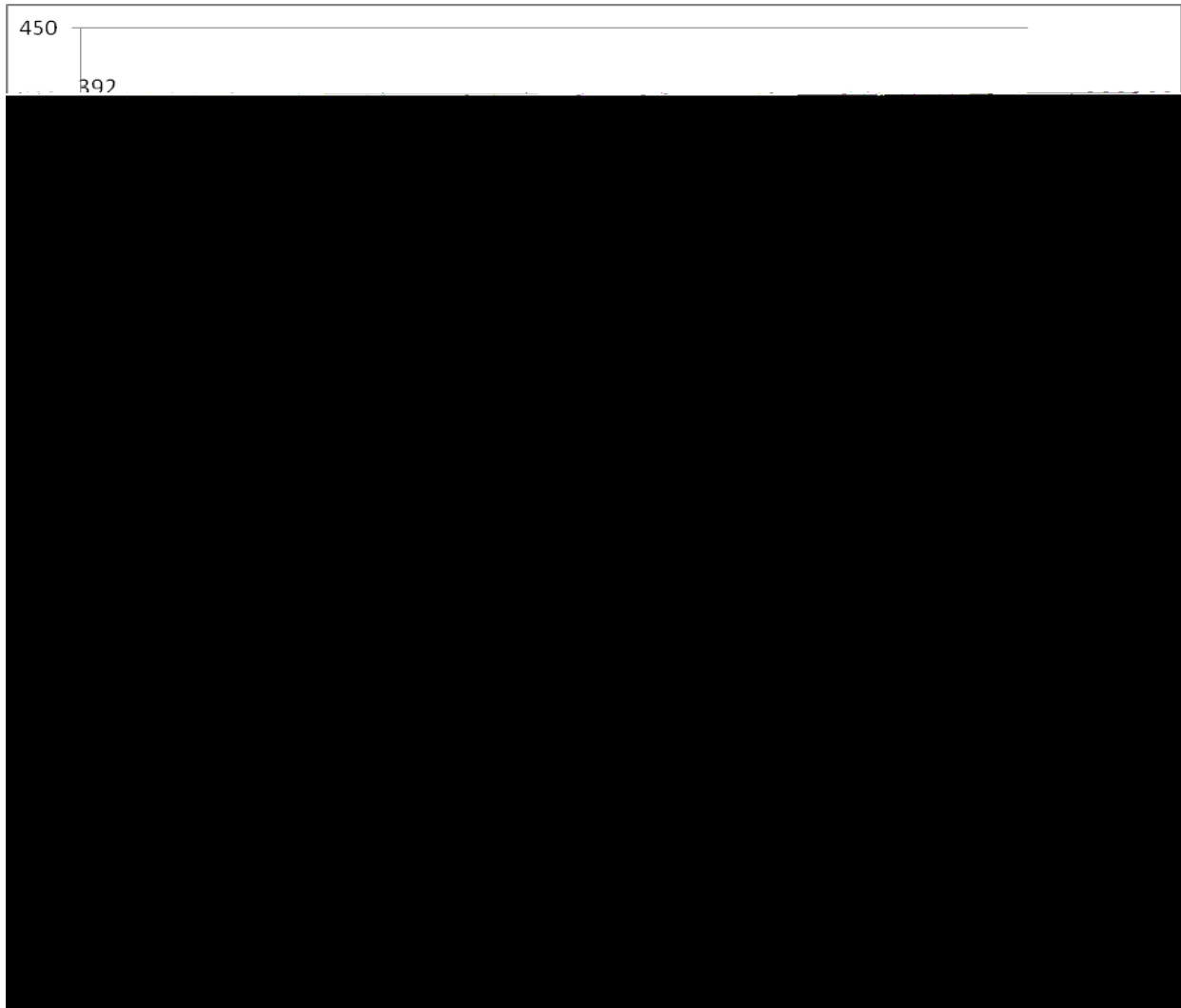


Chart 8 Cases by duty station of the client (arranged according to jurisdiction)

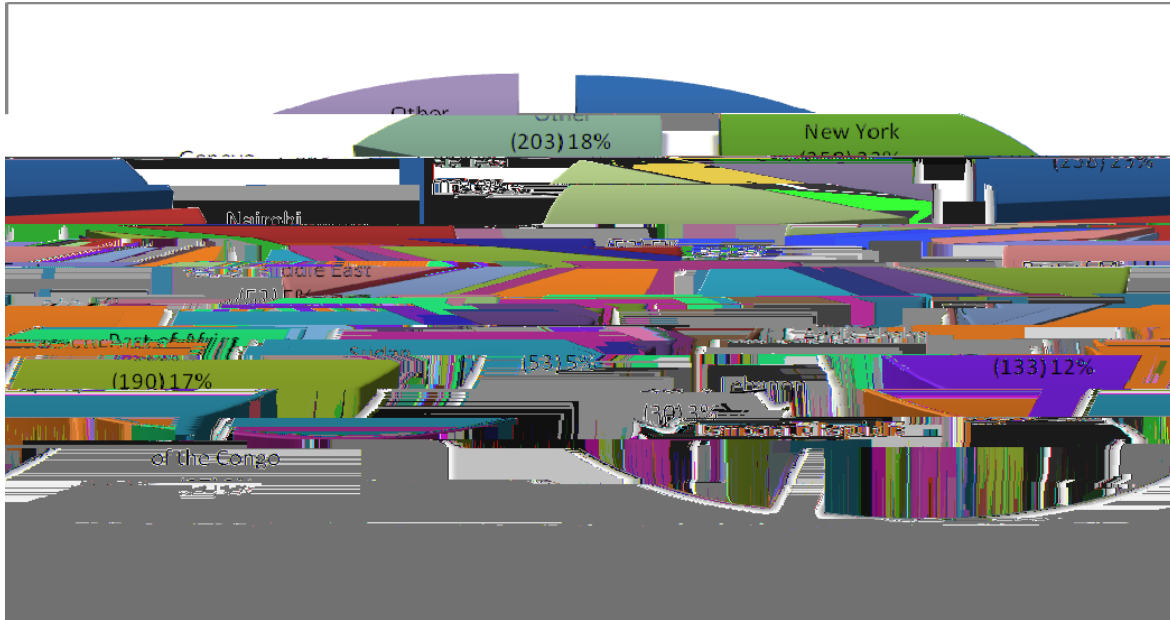
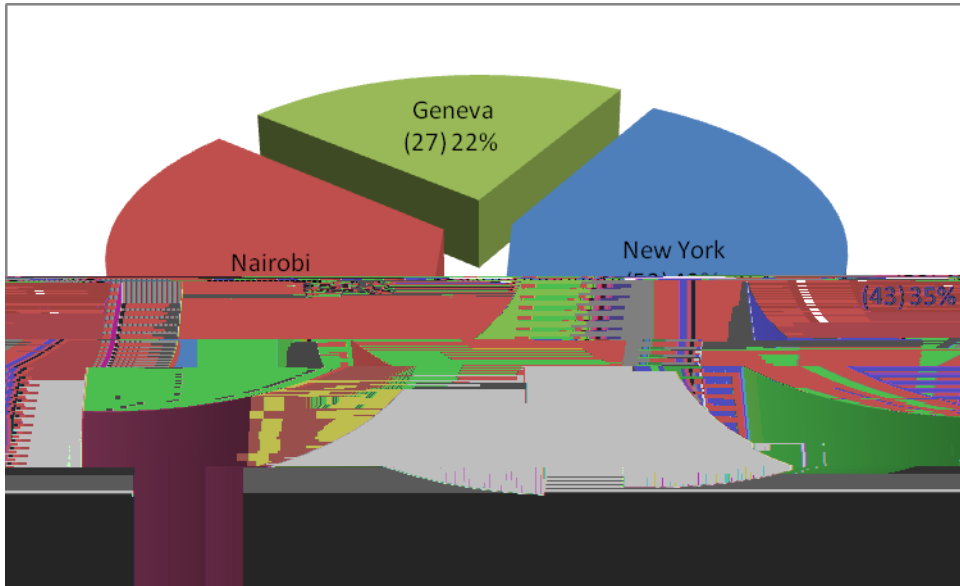


Chart 10 OSLA cases before UN Dispute Tribunal



## APPENDIX I: PRONOUNCEMENTS OF THE UNDT

### Introduction

1. A summary of major legal pronouncements made by the UNDT in judgments rendered from 1 January to 31 December 2012 is provided below. The judgments summarized are provided for illustrative purposes only and are not intended to be authoritative, representative or exhaustive. A complete set of UNDT judgments issued during the period covered by this report is available on the OAJ website (<http://un.org/en/oaj/dispute>). Further, certain UNDT judgments summarized may be appealed to UNAT by either party. Accordingly, the UNAT website should be consulted for the final determination made in the cases under appeal.

### Appointment and promotion

2. In UNDT/2012/056

found that the Administration could not withdraw its October 2011 decision beyond the 90-day time



employment. Finally, she suffered the stress and anxiety of pursuing the claim against the decision that she was incapacitated while at the same time demonstrating her increasing capacity for work.

18. The Tribunal held that since the non-pecuniary injuri

be addressed directly to the Search General. However, such a request must be formulated by the staff member in sufficiently clear terms to be regarded by the Administration as a request for an exception to the Staff Rules or subordinate instruments under former staff rule 112.2(b).

#### Counting of years of experience, disregarding work experience prior to Master's degree

25. In Korotina (*supra*), the Tribunal stated that not having specified that the five years of work experience had to be completed after the master's degree, in the absence of properly promulgated issuances stating otherwise the Respondent is bound by the terms of the vacancy announcement, which did not include any such requirement. It is a natural right of every staff member to receive full and fair consideration for job openings to which they apply. Even if OHRM's internal guidelines contained a provision that only experience obtained after a master's degree should be counted, the lawfulness of such provision would be questionable, as it would appear to be manifestly unreasonable and imposing unwarranted limitations on qualification requirements. The adopted unwritten practice of not counting the experience obtained prior to the master's degree is not supported by any rules or regulations forming part of the staff member's contract and lends itself to being arbitrary and manifestly unreasonable. Such a provision may constitute an unfair restriction on the eligibility of a group of staff members for appointment and promotion without any basis in any of the properly promulgated administrative issuances.

#### Counting of years of experience, relevant professional experience

26. In Korotina (*supra*), the Tribunal found that it follows from OHRM's own guidelines that "relevant professional experience" is generally any work experience after the first university degree that contributes to professional competencies/skills and prepares a candidate to perform the functions of the post, and that such experience should be counted towards the requirement of five years. The expression "in most cases" also indicates that there is no absolute hard and fast proscription or bar on the [(the 1



knowledge by a harasser is an alternative to the requirement for actual knowledge and as such is a necessary component of liability for sexual harassment in the workplace. s5.3(h I )5.3(otakes)446 actco

## APPENDIX II: PRONOUNCEMENTS OF THE UNAT

### Introduction

1. A summary of the major legal pronouncements made by the Appeals Tribunal in judgments rendered during its 2012 sessions is provided ~~below~~. The judgments summarized are provided for illustrative purposes only and are not intended to be authoritative, representative or exhaustive. A

6. In *Benchebbak* (2012-UNAT-256), the Appeals Tribunal granted the Secretary-General's appeals against three UNDT orders on the basis that the UNDT had exceeded its jurisdiction by ordering the suspension of the contested decision beyond the completion of management evaluation in a matter concerning an appointment. In *Hersh* (2012-UNAT-243) and *Bali* (2012-UNAT-244), the Appeals Tribunal granted the Secretary-General's appeals on the basis that the UNDT exceeded its jurisdictional powers by placing an application for suspension of action on the general cause list.

7. In *Benchebbak* (supra

## APPENDIX III: UNDT CASES 2012- COUNTRY OF NATIONALITY

Country	Number	Country	Number
Albania	1	Mauritania	2
Argentina	6	Moldova, Republic of	1
Australia	9	Montenegro, Republic of	1
Austria	10	Morocco	1
Bangladesh	4	Mozambique	1
Belarus	1	Netherlands	3
Belgium	2	New Zealand	2
Benin	1	Nigeria	2
Bosnia and Herzegovina	2	Norway	1
Bulgaria	1	Pakistan	4
Burundi	2	Peru	2
Cameroon	4	Philippines	2
Canada	20	Portugal	1
China	3	Qatar	1
Congo, The Democratic Republic	3	Romania	3
Croatia	1	Russian Federation	2
Denmark	1	Rwanda	1
Dominica	1	Senegal	6
Egypt	6	Serbia, Republic of	2
France	6	Seychelles	1
Germany	7	Somalia	2
Ghana	3	Spain	3
Guyana	2	Sudan	6
Haiti	2	Sweden	4
Honduras	1	Syrian Arab Republic	3
India	4	Tanzania, United Republic of	6
Iraq	1	Thailand	3
Ireland	3	Togo	1
Italy	2	Trinidad and Tobago	1
Jamaica	1	Tunisia	2
Jordan	4	Turkey	3
Kenya	6	Uganda	3
Kyrgyzstan	2	United Kingdom	5
Lebanon	4	United States	33
Liberia	3	Venezuela	1

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**APPENDIX IV: UNDT CASES 2012- EMPLOYMENT ENTITY**

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ITC	4
UNCCD	2
UNCTAD	2
UNDP	5
UNEP	8
UNFCCC	1
UNFPA	2

	UNAMA	5
	UNAMI	2
	UNOCI	1
	Other	2
	<hr/> Total	<hr/> 13
Tribunals	ICTR	11
	ICTY	20
	<hr/> Total	<hr/> 31
UN Secretariat (Headquarters)	DESA	9
	DFS	8
	DGACM	12
	DM	12
	DPI	4
	DPKO	2
	DSS	9
	OCHA	2
	OIOS	3
	OLA	1
	UNODA	1
	Other	11
	<hr/> Total	<hr/> 74
	UNEP	2
	UN-Habitat	1
	UNICRI	1